

# **Intellectual Property Strategic Program 2004**

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# Intellectual Property Strategic Program 2004

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# **Introduction**

## **1. Introduction**

### **< An overview of the situation in Japan >**

By eagerly introducing advanced technology from Europe and the United States and gradually modifying and improving such technology, as well as by effectively utilizing the teamwork of a diligent workforce, Japan successfully established the world's best manufacturing system for the "creation of tangible products." As a result, in the 1980s, Japan attracted attention not only from developing countries but also from Europe and the United States.

However, in the 1990s, which is referred to as the "lost decade," the situation in Japan changed drastically. Due to a complicated mixture of various factors including the prolonged bad debt issue, Japan has remained in an unprecedented, extended economic slump ever since the bubble burst. Although Japan has recently seen a slight economic recovery due to an increase in exports, the employment situation remains severe, and deflation has not yet been overcome.

### **<Changes in the Environment and Delay in Response>**

There are various factors behind the significant decline recently in the international competitiveness of Japanese industry, which had held the top rank in the world until the beginning of the 1990s. One of these factors is that Japan has been content with its old-style industrial system as a result of past successes and has failed to drastically reform the conventional "Japanese model," amid the rapid changes in the environment in recent years.

One example is that, regardless of the changes in the environment including the globalization of economic activity and intensified and accelerated global competition, firms are continuing to operate too many different types of business, instead of concentrating resources on selected domains that could be internationally competitive.

Furthermore, the impact of Asian countries on the international competitiveness of Japanese industry cannot be ignored. With technology that has improved rapidly in recent years and the availability of low-cost labor, Asian countries are surpassing Japan in their ability to mass-produce standardized products at lower cost. As a result, Japan's traditional approach to gaining the upper hand in competition by providing cost-competitive products at a designated level of quality has been rendered less effective nowadays.

## **<Importance of Innovation and Necessity of Reforms in the Knowledge-Based Economy>**

In considering the current state of the Japanese economy, it is necessary to focus on another factor related to economic growth; specifically, the significant importance of the role of innovation in the recent economic growth in developed countries. As implied in the term “knowledge-based economy,” the value added by knowledge is becoming much more important than ever before in current economic activities. The competition that companies currently experience is not the conventional price competition of similar products or services; rather, competition is becoming more dynamic in that companies are being required to provide innovative products and services differentiated from those of their competitors.

Under these circumstances, it is necessary for companies to continuously create new innovations, and to this end, establishing a system to effectively utilize the outstanding abilities of individuals is important. In this regard, Japan still has much room for improvement. As it is expected that the workforce will decrease as the birthrate declines and that there will be a limit to the vigorous investment activity that has been seen so far, the key to Japan’s future economic growth will be an increase in productivity fueled by innovation.

Consequently, in order to achieve sustainable economic growth, Japan should quickly carry out drastic reforms to establish a mechanism by which innovations are continuously produced. Fortunately, as Japanese industries and universities retain stocks of knowledge that have supported past economic developments, it is not at all impossible for Japan to generate creative and innovative resources capable of producing the new “knowledge-based economy.” Japan is rich in industrious and skilled human resources. Unlike tangible and finite resources such as land and energy, intangible resources such as knowledge and technology will never be exhausted as long as ingenious people continue to exist and create them.

Furthermore, Japanese media content including movies, animated cartoons and game software are highly evaluated internationally. Domestically, the broadband-based content business has come to be recognized as a new industry with high potential. In light of this, it is important to promote the creation, protection and exploitation of such content and, in a narrow sense, the technology used to create and distribute it.

## **<Aiming at Making Japan an Intellectual Property-based Nation>**

In order to generate the creation of innovations and original content in the new “knowledge-based economy” and to utilize such resources for economic growth, it is primarily necessary to stimulate and revitalize intellectual creation at universities and other institutions. However, this in itself is not sufficient. Economic revitalization will not be achieved unless the results of such creation are properly protected and effectively utilized as intellectual property.

Based on such awareness, the Strategic Council on Intellectual Property established the Intellectual Property Policy Outline in July 2002, setting the goal of making Japan an “intellectual property-based nation,” for the purpose of achieving a dynamic economy and vigorous society through the strategic creation, protection and exploitation of intellectual property. Making Japan an intellectual property-based nation means expressly establishing a national direction which places emphasis on inventions and creation, and in which the production of intangible assets is recognized as the foundation of industry, i.e., the production of “information of value” including technology, design, brands and the content of music, movies, and the like. This is a national policy underpinned by the vision of revitalizing the Japanese economy and society.

In the United States, as appellate courts rendered inconsistent judgments in patent lawsuits and their adverse impacts became serious, the Court of Appeals for the Federal Circuit (CAFC) was established in 1982 as a court with exclusive jurisdiction over patent lawsuits. Though the CAFC was established for the principal purpose of rendering consistent judgments, it solidified rights and improved the predictability of judgments, thereby contributing to a pro-patent business approach. For this reason, the establishment of the CAFC is considered to have played a core role in establishing the pro-patent trend in the United States.

In 1985, the president’s advisory council created the so-called “Young Report” on U.S. competitiveness. Since that time, through the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) concluded at the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) negotiations as well as through bilateral negotiations, the U.S. Government has taken measures to raise the level of protection of IP in countries where intellectual property has not been sufficiently protected and thereby has indirectly assisted U.S. companies in expanding their businesses overseas.

Consequently, there is little dispute that the various reforms undertaken by the U.S., resulting in the shift to the pro-patent policy in the 1980s, contributed to successfully restore and strengthen the international competitiveness of U.S. industry, under the social and economic changes stemming from the full-fledged start of the information age and the knowledge-based economy, and resulted in the

achievement of long-term economic growth in the country.

In Japan, on the other hand, the Basic Law on Intellectual Property, based on the Intellectual Property Policy Outline, was enacted in November 2002. Under the law, the Intellectual Property Policy Headquarters (hereinafter referred to as the “Policy Headquarters”) was established in the Cabinet Secretariat in March 2003. Thus, arrangements were made to design an Intellectual Property Strategic Program (hereinafter referred to as the “Strategic Program”), and Japan took the first step toward becoming an “intellectual property-based nation.” Today, 20 years after the United States took its first step, Japan must design a Strategic Program that is not constrained by an existing framework or a traditional mind-set and promote intellectual property strategy; otherwise, it will be too late to revitalize the Japanese economy.

However, this does not mean that it will suffice to simply introduce the U.S. system to Japan. As intellectual property systems are international by nature, Japan’s IP system should not only be internationally viable but also be founded on an original and firm strategy.

Based on such recognition and for the purpose of carrying out drastic reforms, the Policy Headquarters should strongly support the promotion of measures included in the Strategic Program. By making the best use of intellectual property as a source of national wealth, including patents, know-how, and content such as movies and game software, Japan should aim at becoming an “intellectual property-based nation” as soon as possible. This is an urgent task for achieving sustainable growth of the Japanese economy.

To this end, it is necessary for various sectors including universities, companies, and the government to review conventional systems and practices thoroughly and work effectively together to establish the world’s best IP system.

### **<Activation of the Intellectual Creation Cycle>**

In order to increase national wealth through the effective use of intellectual property, it is necessary to promote the creation of high-quality intellectual property in the R&D sector and the contents businesses and promptly protect such IP legally, thereby maximizing the added value of IP in industry. As this flow is established more firmly, it will become strong and solid, enhancing reproduction of intellectual property. Thus, a virtuous cycle, an intellectual creation cycle, will be established.

It is impossible to make Japan an “intellectual property-based nation” only through the efforts of certain people engaging in intellectual property affairs. Rather, this goal will not be achieved unless everyone is able to enjoy the benefits of intellectual property and is encouraged to participate in the

intellectual property cycle in order to create such benefits.

In this respect, in order to make Japan a true “intellectual property-based nation,” it is necessary to take measures to the maximum extent for the creation, protection and exploitation of intellectual property as well as for the development of human resources that support such activities, from the perspective of ensuring the participation of the entire public in society. Furthermore, it is important to carry out such measures through integrated and organized efforts; otherwise, it will be impossible for the intellectual creation cycle to move speedily and dynamically.

### **<Society Realized in an Intellectual Property-based Nation>**

Becoming an “intellectual property-based nation” means expressly indicating a national direction of placing emphasis on inventions and creation and promoting the creation of “information of value” such as technology, design, brands and the contents of music, movies, etc., thereby revitalizing the Japanese economy and society.

The strong driving force for the devastated Japanese economy in the post-war period was competitiveness in the “production of tangible goods,” especially in various manufacturing industries. In the future, the Japanese economy must be based on the “creation of information”; specifically, the creation of original and unrivaled Japanese information. By making the best use of the value added by such information, Japan will be able to also revitalize the field of “production of tangible goods” where Japan is suffering due to the rapidly increasing competitiveness of Asian countries.

The “creation of information” will not only serve as a foundation for the “creation of tangible products,” which has been supporting Japan until the present time, but also will generate a new business field. Therefore, by making Japan an “intellectual property-based nation,” it will also be possible to restore and strengthen the technical capability and competitiveness of the Japanese manufacturing industry while revitalizing the Japanese economy through the creation of new job opportunities.

The “creation of information” will not only contribute to increasing material wealth through the strengthening of international competitiveness and by achieving sustainable development of Japanese industry, thereby raising the national income level. The “creation of information” means creating contents such as music, movies and animated cartoons, that is to say, creating Japanese “culture” itself. Thus, in a “nation built on intellectual property,” quality and attractive culture will be fostered, and the general public will be able to enjoy such culture; i.e., attain spiritual wealth as well.

## **2. Policy for Making Japan an “Intellectual Property-based Nation”**

### **<Three Viewpoints>**

All of the Japanese intellectual property systems, including the Patent Law and the Copyright Law, have their own histories starting from the Meiji era and have been deeply rooted in the current economy and society of Japan. Many decades have already passed since the existing frameworks were first established (Patent Law, Design Law, and Trademark Law in 1959 and Copyright Law in 1970). On the other hand, the longer these systems have existed, the more necessary it has been to review them constantly with respect to whether they have satisfied the demands of the times. Accordingly, amendments have been repeatedly made until the present time.

However, the current economy and society are changing at an extremely fast rate and on a dynamic scale. At present, Japan has yet to emerge from its long-protracted recession, and is still seeking a clear vision of the future. Now that the goal of aiming to become an “intellectual property-based nation” has been clearly delineated, Japan should actively carry out reforms by anticipating changes in the social and economic situations, rather than only responding to such changes passively, and revitalize the economy as soon as possible.

Japan will work to become an “intellectual property-based nation” under the following policies.

### **(1) Developing Special Measures on Intellectual Property that are not Constrained by the Conventional Framework**

For the purpose of strengthening the international competitiveness of Japanese industry and achieving a dynamic society and economy, Japan should establish a mechanism that will promote international harmonization of intellectual property systems while contributing to increasing national wealth in accordance with the direction of such harmonization, beyond the framework of conventional ideas and in a bold and flexible manner.

### **(2) Establishing the World’s Best IP System**

In the current borderless global economy, companies pursuing more attractive market environments have freedom to choose the countries in which they will do business. As more companies place intellectual property strategy at the core of their business planning and management, the countries that have established more favorable intellectual property systems for

businesses are able to attract more companies from all over the world and enjoy vigorous business activities in various fields, which results in the further economic development of such countries. Considering that the intellectual property system competition has already started to intensify around the world, Japan should keep up with such developments and establish the world's best IP system.

### **(3) Carrying out Reforms Rapidly and in a Timely Manner**

“I thought that I was able to view the world without being influenced by daily concerns, but actually, I was too concerned about the present situation of Japan. Today, the world is progressing at a considerable rate,” said Mr. Soichiro Honda 50 years ago.

And now, the world is changing at a much more formidable pace. To avoid falling behind in the world, not only Japanese companies but also the Japanese national system should continue to evolve in order to respond to the changes in the global environment in a timely manner.

#### **<Implementation>**

Japan can afford no further delay in becoming an “intellectual property-based nation.”

The individual items included in the Strategic Program shall be undertaken by the ministry or agency in charge. Where two or more ministries or agencies are in charge, they should secure close coordination with each other to promote the measures. For these reasons, the individual items in the Strategic Program are assigned to the specific ministries or agencies in charge.

The Policy Headquarters shall regularly check the progress of the measures taken by the ministry or agency in charge and encourage them to implement such measures if there is any delay. Furthermore, if there is any delay in the implementation of measures due to the lack of communication between the ministries and agencies in charge, the Policy Headquarters shall comprehensively coordinate the measures. Though not being specifically designated in the Strategic Program, the Policy Headquarters shall be involved in the implementation of all policies.

Highly important issues shall be considered by the ministry or agency in charge as well as investigated and discussed by the Policy Headquarters. To this end, task forces shall be established in the Policy Headquarters under the provision of Article 2 of the Cabinet Order on the Intellectual Property Policy Headquarters (Cabinet Order No. 45 issued in February 2003).

The goal of making Japan an “intellectual property-based nation” will not be achieved unless the general public shares the understanding of such a goal. Consequently, the Policy Headquarters shall ask

for public opinions constantly and also start holding explanatory meetings and symposia on intellectual property strategy at various locations in order to encourage efforts by local governments and business and to have a frank exchange of views with local people throughout Japan.

### **3. Points to Be Considered in Making Japan an “Intellectual Property-based Nation”**

#### **(1) Support for SMEs and Venture Companies**

SMEs play a significant role in supporting the industrial foundation of Japan and developing local economies. Much is expected from venture companies from the perspective of creating new industries. With the aim of achieving diversified and dynamic development in the current severe economic situation where it is impossible to hire additional staff or acquire sufficient operating funds, SMEs and venture companies should become aware of the importance of intellectual property and take measures to protect and exploit it in a strategic manner.

However, it is often the case that SMEs and venture companies, which own and use innovative technologies for their businesses, fail to sufficiently understand the idea of protecting and exploiting such technologies as intellectual property. They do not have sufficient IP management systems compared with large enterprises.

The GOJ should take the necessary measures to support SMEs and venture companies with respect to all phases of creation, protection and exploitation of intellectual property as well as human resource development.

#### **(2) Regional Development**

The recent trend of decentralization is leading to the development of regional societies that emphasize their own regional characteristics.

Amid such a situation, local governments have started taking full-fledged measures related to intellectual property to achieve innovative technological development through industrial-academic cooperation between universities, related research institutes and R&D-related companies, with universities, which are the center of intellectual creation, serving as the regional core. Furthermore, based on the human networks that are developed in such cooperation, some local governments form regional clusters and launch new businesses that emphasize regional characteristics.

The GOJ should continue to promote such efforts so that unique inventions and works will be

created throughout Japan, and Japan as a whole will become rich in intellectual property.

### **(3) Improvement of Administrative and Judicial Services**

With the aim of making Japan an “intellectual property-based nation,” administrative and judicial authorities should listen sincerely to users' demands and make constant efforts to improve their services.

Until the present time, intellectual property has not been familiar to the general public due to its technical expertise and legal nature.

In light of the progress in the development of social networks and for the purpose of actuating the intellectual creation cycle speedily and dynamically, administrative agencies and courts should make positive efforts to provide the public with more information and to improve their services by streamlining the application procedures and reviewing systems for settling disputes on intellectual property, including pioneering inventions.

### **(4) Significance of Competition Policy and Attaching Importance to Freedom of Expression**

Strengthening intellectual property rights is an inevitable requirement of this information age. However, at the same time, strengthening rights may bring with it adverse effects: (i) obstacles to competition and (ii) conflict with the basic values of modern society, such as freedom of expression.

Antitrust laws and other competition laws play a central role in eliminating obstacles to competition, and therefore these laws need reinforcement as appropriate. In the United States, the Antitrust Law is strictly applied to intellectual property monopoly. Such application engenders competition and leads to the development of new industries. Japan too must find a balance and make the appropriate responses.

In the case where the protection of intellectual property goes to extremes, it conflicts with the basic values of modern society, such as fair and free competition, academic freedom and freedom of expression. For this reason, in establishing intellectual property systems, we must pay attention to these basic values and strike a balance between these values and the protection of intellectual property rights.

Furthermore, we must not forget that universities should not only respond to expectations for the creation and exploitation of intellectual property but also carry out their primary role of

providing education. In designing systems for intellectual property at universities, it is necessary to make such systems flexible, based on the diversity of academic and research fields.

#### **4. Progress in Intellectual Property Policy in the Past Year**

##### **(1) Completing the Strategic Program**

To make Japan an “intellectual property-based nation” in which the international competitiveness of industry is strengthened by focusing on intellectual property, thereby increasing national wealth, the Policy Headquarters developed the Strategic Program on July 8, 2003.

The Strategic Program consists of about 270 items of measures to be implemented by the ministries and agencies concerned in order to promptly create an internationally viable system. It promotes activities based on collaboration by the ministries and agencies concerned at the initiative of the Policy Headquarters.

##### **(2) Discussions of Task Forces**

Three task forces—“Task Force on Strengthening of the Foundation for Right Protection,” “Task Force on Contents,” and “Task Force on the Protection of Patents of Medical-Related Acts”—were established to discuss important issues in intellectual property policy, which had been considered to require further study and discussion in order to complete the Strategic Program. These three task forces started their discussions in the fall of 2003. The Task Force on Strengthening of the Foundation for Right Protection created the “Comprehensive Measures for Accelerating Patent Examination” and “Creation of Intellectual Property High Court” in December 2003, as well as “Strengthening Measures against Counterfeits and Pirated Copies” in May 2004. In addition, the Task Force on Contents prepared the “Contents Business Promotion Policy” in April 2004. The task forces reported their achievements to the Policy Headquarters. Furthermore, the Task Force on the Protection of Patents of Medical-Related Acts is developing discussions on handling medical-related acts under the Patent Law from the viewpoint of promoting the progress of useful and safe medical technology that contributes to improving the level of national health care, while giving due consideration so as not to have an adverse effect on medical acts, etc., to be provided to all residents equally under a relationship of trust between

patients and doctors.

In addition, the “Task Force on Intellectual Property Policy” in the Council for Science and Technology Policy discussed the handling of research results at universities, etc., and coordinated the handling of such results in May 2004.

### **(3) Achievement Made by the Strategic Program**

Various measures in the Strategic Program have already resulted in achievements. First of all, taking advantage of their recently acquired independent legal status and corresponding independence in management, national universities have made certain that research results achieved at their institutions are attributed to them and have also been establishing rules and systems to promote industry-academic collaboration, including the establishment of University Intellectual Property Headquarters and the strengthening of cooperation with TLOs. This movement is expected to lead to the appropriate protection and management of intellectual property produced at universities as well as its use in industry.

In addition, regarding patent examination, for which the number of cases on the waiting list is expected to expand to 0.8 million, the GOJ is instituting comprehensive measures to accelerate the patent examination process, including submitting a bill for the “Law for Partial Amendment of the Patent Law, etc.” to the Diet and increasing fixed-term examiners by 98 in FY 2004. By continuing to promote these measures strongly, the GOJ aims to eventually eliminate the examination waiting period altogether, and is expected to achieve the world’s highest level in prompt and precise patent examination.

As for intellectual property-related dispute settlement functions, in order to further enhance and accelerate court procedures for intellectual property-related cases, a bill to establish an Intellectual Property High Court specialized in such cases was submitted to the Diet. Along with it, a bill for the “ Law for Partial Amendment of the Court Organization Law” was also submitted to this session of the Diet. The bill included measures such as expanding and clarifying the authorities of judicial research officials, making the proof of infringement easier, protecting trade secrets, and coordinating the relationships between patent infringement litigation and trial for invalidation. Through the establishment of such systems, the Japanese court is expected to achieve fair and prompt intellectual property litigation as a world-leading court.

As for strengthening measures against counterfeits and pirated copies, the GOJ amended the Customs Tariff Law and enforced the law in April 2004 in order to disclose to right holders the

information on the importers and manufacturers of products suspected of infringing an intellectual property right. This is expected to further increase the accuracy and transparency of infringement-finding procedures and to facilitate the right holder's exercise of rights in a country where infringement has been exposed or in Japan. In addition, there has been certain progress in terms of measures in overseas markets, as, for example, the protection of intellectual property rights was incorporated in the ODA Charter and APEC Summit Declaration/Ministerial Declaration.

In regard to the use of intellectual property, a bill to amend the Trust Business Law was submitted to the Diet. If established, the law will diversify the means of managing and using intellectual property owned by companies, etc. and the means of financing with the use of intellectual property, through the use of a mechanism of trust. In addition, the Bankruptcy Law was enacted in May 2004, aiming to protect any company, etc. that has obtained a license for an intellectual property right in the case that a company in the position of the licensor of the relevant intellectual property goes bankrupt. In addition, companies have shown movement toward becoming "intellectual property-based companies" by placing intellectual property at the center of their management strategy.

Moreover, in recent years, the IP contents created by Japan have been highly rated overseas, but their attraction is currently not taken full advantage of in business. Therefore, the Task Force on Contents mentioned above compiled the "Contents Business Promotion Policy" relating to the modernization of the IP industry, human resources development, financing, and other matters. In addition, comprehensive activities based on cooperation between the public and private sectors are being promoted, including the establishment of the Entertainment Lawyers Network and the publication of content programs by the University of Tokyo.

In order to promote comprehensive content, a bill for the "Law Concerning Promotion of Creation, Protection, and Exploitation of Contents" was submitted to the Diet. In addition, from the viewpoint of establishing the foundation for ensuring that profits are returned to right holders, a bill for the "Law for Partial Amendment of the Copyright Law" was also submitted to the Diet to take measures toward preventing "the phonograms banned to be sold in Japan" from flowing back to Japan and to grant the right to loan out books and magazines.

Regarding the development of experts in intellectual property, as the number of legal professionals increases, many attorneys at law voluntarily participate in intellectual property law-related training, revealing an increase in interest in intellectual property among attorneys at

law. In addition, regarding patent attorneys, amid the expansion of the number of patent attorneys, patent attorneys acting as counsels in intellectual property infringement lawsuits (limited to cases in which an attorney at law serves as a representative in actual litigation) have been in existence since FY 2003. Moreover, all 68 law schools that were established in April 2004 have been steadily promoting education on intellectual property through the establishment of course subjects on intellectual property laws and other measures. Additionally, the GOJ is considering making intellectual property laws an optional subject for the national bar examination.

The above exemplifies the main achievements of the Strategic Program, but in addition to those, the Strategic Program has had many other achievements. Those achievements are listed in the “Progress in Intellectual Property Policy in the Past Year” section at the end of this report.

## **5. Developing the Intellectual Property Strategic Program 2004 and Future Schedule**

The environment surrounding intellectual property of Japan is consistently changing, and thus, the Strategic Program schedule for improving and implementing intellectual property strategy must be reviewed constantly.

From such a viewpoint, the Policy Headquarters recently reviewed the Strategic Program on the basis of the Basic Law on Intellectual Property and established the “Intellectual Property Strategic Program 2004.”

In the review, the Policy Headquarters made the existing measures even more specific and added measures and incorporated efforts to tackle problems for insufficient progress had been made, while reviewing the overall intellectual property strategy. Consequently, the measures to be implemented reached about 400 items.

### **<Schedule>**

As its immediate targets after the development of the Intellectual Property Strategic Program 2004, the Government of Japan (GOJ) will implement the measures that should be taken by the end of FY 2004 and submit as many intellectual property-related bills as possible to the ordinary session of the Diet to be held in 2005.

Furthermore, the GOJ will follow up on the progress of the Program by the end of FY 2004 and take additional measures as necessary.

## **Chapter 1 Creation**

An intellectual creation cycle begins with the creation of intellectual property. The goal of making Japan an “intellectual property-based nation” cannot be achieved without a mechanism for producing creative and innovative R&D assets and for supplying those assets to society. Universities and public research institutes, which own most of the R&D resources in Japan, play an extremely important role in this respect.

In order to make Japan an “intellectual property-based nation,” it is therefore necessary to establish a mechanism by which universities and public research institutes create outstanding intellectual property, including inventions, software, and databases and for such property to be utilized to the maximum extent in society. It is also necessary to increase the motivation of remarkably talented researchers to create intellectual property.

Based on such awareness, the GOJ will take the following measures with the aim of encouraging the creation of high-quality R&D assets at universities and public research institutes, while establishing a society where researchers who create outstanding intellectual property are sufficiently rewarded.

### **1. Development of a Foundation for the Creation of Intellectual Property**

#### **(1) Promoting Education for the Purpose of Encouraging Creativity as well as Education Emphasizing Scientific Technology to Develop World-Class Human Resources with Outstanding Abilities**

In FY 2004, in order to foster researchers with abundant creativity, the GOJ will continue to create educational environments and promote educational measures which enhance the unique characters and abilities of individuals while placing emphasis on scientific technology, thereby developing world-class human resources with outstanding abilities.

(Ministry of Education, Culture, Sports, Science and Technology)

#### **(2) Making Universities More Attractive and Enriching Research Personnel**

## **1) Revitalizing universities and improving their international competitiveness**

- i) On the basis of the status of information disclosure at universities, based on surveys conducted and published in FY 2003, the GOJ will continue to conduct a similar survey in FY 2004, thereby enhancing the disclosure of information on the education provided at universities and their research results.
- ii) Taking into consideration that national universities acquired independent legal status and thereby acquired the right to introduce a more flexible personnel system at their own discretion, the GOJ will continue to evaluate research results including patents in FY 2004 and encourage universities to change their employee promotion systems from seniority-based promotion systems to merit-based systems.
- iii) In FY 2004, the GOJ will continue to foster globally competitive universities, being defined as universities that carry out outstanding education and research activities in individual fields. In examining proposals for scientific research grants, the GOJ will take care not to excessively burden universities.

(Ministry of Education, Culture, Sports, Science and Technology)

## **2) Improving the mobility and diversity of researchers**

In order to improve the mobility of researchers for the purpose of realizing the principle of competition as well as to enhance their diversity in order to encourage them to stimulate one another and vitalize their research activities, the GOJ will take the following measures.

- i) The progress of the Plan for the Improvement of Mobility of Researchers was surveyed and publicized in FY 2003. Based on the “Basic Guidelines for the Improvement of Mobility of Researchers” prepared by the Council for Science and Technology Policy, the GOJ will continue, in FY 2004, to conduct similar surveys as well as publicize the progress of the Plan and take necessary measures to implement the Plan. So as to prevent researchers who change offices from suffering economic disadvantages, the GOJ will also consider actions to improve the relevant systems.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

- ii) Based on the plan entitled “For Training and Ensuring Research Personnel to Improve International Competitiveness” prepared by the Council for Science and Technology of the Ministry of Education, Culture, Sports, Science and Technology, the GOJ will, in FY

2004, continue to encourage individual universities and public research institutes to clearly design specific actions, based on their independent judgment, for attracting and recruiting researchers from other universities and the private sector, foreign researchers, and female researchers (i.e., improving both the research environment and living environment to attract foreign researchers).

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

iii) For the purpose of encouraging the private sector to employ young researchers such as graduates of doctoral programs and post-doctoral fellows, the GOJ will continue to provide support to improve the business abilities and the practical skills of such researchers in 2004.

(Council for Science and Technology Policy, and other ministries and agencies concerned)

### **3) Enabling researchers to devote themselves to research activities**

Researchers can cultivate their abilities in the initial stages of their careers and therefore it is important to create an environment where they can devote themselves to research activities during such stages. In order to enhance education at universities and graduate schools and enable young researchers, in particular, to devote themselves to research activities, the GOJ will, in FY 2004, continue to encourage individual universities and public research institutes to increase the number of full-time research assistants based on their independent judgment, on the basis of the plan entitled “For Training and Ensuring Research Personnel to Improve International Competitiveness.”

(Council for Science and Technology Policy, and Ministry of Education, Culture, Sports, Science and Technology)

### **(3) Developing Other Environments for the Creation of Intellectual Property**

In FY 2004, the GOJ will continue to take the following measures.

- i) Further promote the improvement of research facilities and equipment based on the “Five-year Plan for Urgent Development of Facilities of National Universities, etc.” prepared by the Ministry of Education, Culture, Sports, Science and Technology.
- ii) Promote collaboration between local governments and universities/R&D-type

independent administrative agencies based on intellectual property strategy developed by local governments.

- iii) Consider environmental development for companies or individuals contributing to universities.
- iv) Promote the distribution of R&D results and research papers by improving the function of universities and academic societies to disseminate information through the establishment of a mechanism to systematically collect research information at universities, such as academic digital content based on the academic content portal system as well as through the development of electronic academic magazines issued by Japan, and to develop a system for promoting the global distribution of research information.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

## **2. Promoting the Creation of Intellectual Property at Universities and Public Research Institutes**

### **(1) Promoting R&D Focused on the Creation of Intellectual Property**

#### **1) Promoting R&D focused on the creation of intellectual property at universities and public research institutes**

- i) In FY 2004, with the participation of private companies, the GOJ will continue to advance the R&D system, which covers the overall R&D process from basic R&D to the application of research results and technology transfer, and promote R&D activities that are carried out with the intention of obtaining important intellectual property that should be acquired under the national strategy. In doing so, the GOJ will conduct research and evaluation that give due consideration to the creation, protection and exploitation of intellectual property.
- ii) In FY 2004 and beyond, the GOJ will focus on the expansion of competitive research grants, with the aim of doubling them, under the “Second Science and Technology Basic Plan.”
- iii) In FY 2004, the GOJ will continue to promote the development and practical application of advanced technology equipment with competitive research grants. In

addition, the GOJ will also encourage the utilization of the most advanced large facilities and equipment so that Japanese researchers can conduct world class research activities.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **2) Utilizing patent information in R&D**

- i) Based on the consideration of specifications for a comprehensive system for searching bibliographical information (including research papers) and patent information, the GOJ will start developing a system in FY 2004, with the aim of launching the system in FY 2005.
- ii) Patent information search helps researchers to avoid overlapping research and Intellectual Property right infringement. Therefore, by the end of FY 2004, the GOJ will inform researchers at universities and public research institutes of the importance of patent information searches, and encourage them to search relevant patent information when conducting an investigation of potential research themes or evaluating research results. The GOJ will also promote risk management at universities and public research institutes.
- iii) In FY 2004, the GOJ will continue to make efforts to improve the functions of the Industrial Property Digital Library (IPDL) and expand the amount of available information. The GOJ will also develop an environment where researchers at universities and public research institutes can easily access high-quality patent information by providing active support for the wide use of the IPDL at universities and public research institutes, including discussion about a dedicated line connecting the IPDL and the national universities..
- iv) In FY 2004, the GOJ will continue to enhance training programs concerning methods for searching and utilizing patent information, including the dispatch of experts in patent information searches.
- v) In FY 2004, the GOJ will continue to use patent information in selecting research targets with respect to R&D sponsored by the national government.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports,

Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **3) Assigning personnel in charge of intellectual property at R&D sites**

In FY 2004, in the fields where the creation of technology-related intellectual property is expected, the GOJ will continue to encourage universities and public research institutes to assign an industry-academic-government collaboration coordinator in charge of intellectual property to each appropriate R&D site in universities and public research institutes and encourage such institutions to provide the collaboration coordinator with training on intellectual property.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

## **(2) Exploiting Intellectual Property in R&D Evaluation**

### **1) Utilizing comprehensive evaluation indicators regarding intellectual property**

In FY 2004 and beyond, the GOJ will utilize “comprehensive evaluation indicators” as indicators regarding intellectual property that are to be used in R&D evaluation and in the distribution of R&D funds and other R&D resources, while referring to the number of patents obtained (or patent applications filed). These comprehensive evaluation indicators focus on quantitative aspects such as the number of license contracts, the amount of income from such contracts, and the frequency of patents and research papers being cited in other patent application documents, as well as achievements in joint research and business startups, and the number of consultations.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

### **2) Manifesting that making social contribution is included in the researcher’s duties and attaching importance to intellectual property in performance evaluation**

i) Taking into account that “disseminating research results at national universities and promoting the utilization thereof” was clearly positioned as one of the operations of national universities, in FY 2004 and beyond, importance will be attached to intellectual

property such as research papers when evaluating the performance of researchers in fields where the creation of intellectual property is expected. “Comprehensive evaluation indicators” will be utilized in such evaluations.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

ii) In FY 2004 and beyond, the GOJ will encourage universities to establish appropriate evaluation systems, while giving due consideration to transparency and fairness to the greatest possible extent, and diffuse such systems throughout universities. In establishing evaluation systems, it is important to make reference to personnel systems utilized by companies as well as to evaluation systems operated by other universities and research institutes in Japan and abroad. In light of this, the GOJ will provide universities with necessary information by publishing specific examples.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

### **3) Considering intellectual property-related activities in evaluating universities and R&D-type independent administrative agencies**

In 2004 and beyond, the National Institution for Academic Degrees and University Evaluation and the National University Evaluation Committee will evaluate universities in consideration of their characteristics and on the basis of the efforts of individual universities to create, protect and exploit intellectual property and will publish the evaluation results. In the evaluation of R&D-type independent administrative agencies, “comprehensive evaluation indicators” regarding the creation, protection and exploitation of intellectual property will also be applied as indicators for ex post evaluation.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **4) Adding to the items in the applications for research funds by public subscription and the items for ex post facto assessment**

The GOJ will require applicants for scientific research subsidies and research funds by public subscription to state their intellectual property activities on application forms so that

the GOJ can use such information as reference in evaluation and in selecting research targets in FY 2004 and beyond. The GOJ will also require applicants to present the status of their intellectual property activities in performance reports.

(Council for Science and Technology Policy, and other ministries and agencies concerned)

### **(3) Providing Various Incentives to Researchers**

#### **1) Clarifying the rules for returning royalties to individual researchers**

In FY 2004 and beyond, the GOJ will promptly encourage universities and public research institutes to clarify the payment rules for returning royalties to individual researchers, who have obtained relevant research results in cases where universities and public research institutes are assigned the rights for research results created by the researchers and receive the royalties corresponding to such rights, and to clarify the payment rules for universities' returning royalties to the faculties and departments to which relevant researchers belong.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

#### **2) Reflecting university efforts to create intellectual property in the allocation of GOJ funding for research**

In FY 2004 and beyond, as part of the measures to encourage the creation of intellectual property, the GOJ will establish a mechanism to reflect university IP-related efforts in resource allocations. In this case, "comprehensive evaluation indicators" will be utilized.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

### **(4) Enhancing Funds for Intellectual Property-Related Activities Including Obtaining and Managing Intellectual Property Rights**

i) In FY 2004 and beyond, the GOJ will enhance financial support for national, public and private universities and TLOs for patent-related expenses, including the costs for filing foreign patent applications and the additional administrative and maintenance costs,

under the principle of competition, while respecting their independent judgments. The GOJ will also encourage individual universities to independently secure necessary patent-related expenses.

- ii) As soon as possible in FY 2004, the GOJ will clarify and inform universities of the details regarding competitive research grants, as a portion of the indirect expenses can be appropriated to patent-related expenses and in order to encourage the active use of such a research grant system, and will also expand the system. Furthermore, the GOJ will encourage the flexible handling of patent-related expenses while taking into consideration the time lag between when R&D is actually carried out and when patent-related expenses are incurred.

In addition, the GOJ will take similar measures with respect to indirect expenses in government research funds other than competitive research grants.

- iii) The GOJ has just taken a measure that gives due consideration so as not to reduce incentives for intellectual property-related activities, including handling income from patents separately when assessing subsidies for IP management for universities and public research institutes. The GOJ will actively promulgate the measure.
- iv) In FY 2004 and beyond, with respect to joint research projects in which universities and public research institutes are proactively engaged, the GOJ will secure sufficient funds to strategically obtain and maintain intellectual property for the purpose of commercializing the research results. To this end, the GOJ will encourage universities and public research institutes to secure, in advance, the cost of obtaining and maintaining intellectual property from research funds provided by sponsoring companies. In doing so, the GOJ will promote the flexible handling that enables universities and public research institutes to carry over such research funds or use them for other research results.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

**(5) Establishing Comprehensive Systems for Intellectual Property such as University Intellectual Property Headquarters and Technology Licensing Organizations (TLOs)**

## **1) Establishing University Intellectual Property Headquarters**

### **i) Establishing characteristic Intellectual Property Headquarters for universities**

In response to the establishment of University Intellectual Property Headquarters in many universities, in FY 2004, the GOJ will continue to enhance and strengthen the functions of University Intellectual Property Headquarters, based on the creative efforts of individual universities, and provide support for individual universities to ensure that various types of intellectual property management systems are established according to the circumstances of the individual universities.

### **ii) Establishing management and utilization systems for patents, etc. under consolidated management**

By the end of FY 2004, the GOJ will encourage individual universities and public research institutes to clarify their own intellectual property policy under consolidated management and to establish, as soon as possible, a system (framework, procedure, etc.) to promptly and precisely determine the most appropriate method to protect and utilize patents, etc. or to publish research papers, depending on the contents of individual research results. Also, the GOJ will encourage universities and public research institutes to establish a system so that patent applications can be promptly filed without excessive burden on researchers if it is determined that the researchers should file the patent applications.

### **iii) Establishing Super Industry-Academic-Government Collaboration Headquarters that have international competitiveness**

As soon as possible in FY 2004 and beyond, the GOJ will evaluate intellectual property-related activities carried out by University Intellectual Property Headquarters, strictly select headquarters that carry out vigorous activities and which are expected to strengthen the international competitiveness of Japanese industry, designate a Super Industry-Academic-Government Collaboration Headquarters, and reinforce support for such headquarters.

### **iv) Disseminating information on human resources**

The Japan Patent Attorneys Association has collected and organized information on patent attorneys to develop a database and is introducing appropriate human resources in response to the requests of universities. In FY 2004, the GOJ, with the cooperation of patent attorneys, attorneys at law and relevant industrial organizations, will disseminate

information on excellent human resources who are able to participate in activities of University Intellectual Property Headquarters (such as (i) private-sector employees who have abundant knowledge and experience on intellectual property and (ii) patent attorneys and attorneys at law who have advanced practical abilities), thereby introducing and providing appropriate human resources in response to the requests of universities and public research institutes.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **2) Developing TLOs**

### **i) Promoting the development of TLOs**

In FY 2004, the GOJ will continue to provide newly established TLOs with financial support for a certain period and assistance in filing foreign patent applications.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **ii) Developing Super TLOs that specialize in specific technical strategic fields**

By the end of FY 2004, the GOJ will evaluate the activities of existing TLOs to strictly select Super TLOs that have excellent technology licensing performance in technical fields with high actual demand. By providing such Super TLOs with support for developing and securing experts, the GOJ will radically reinforce the Japanese technology licensing system.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

### **iii) So as to allow TLOs to start management trust businesses of intellectual property rights including the right to obtain a patent without any restrictions in principle, a bill to amend the Trust Business Law was submitted to the ordinary session of the Diet in 2004. If the bill becomes law, the GOJ will inform TLOs of the new law and encourage them to actively utilize it.**

(Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

### **3) Establishing the guidelines for handling intellectual property and providing one-stop services**

Based on the fact that many universities have established University Intellectual Property Headquarters and intellectual property policy, in FY 2004 and beyond, the GOJ will promote the utilization of the consultation services available at the ministries and agencies in order to support the above activities by universities and enable universities to file patent applications and transfer patented technologies in a timely manner.

(Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

### **4) Clearly indicating the sections in charge of university-industry collaboration**

Based on the development of University Intellectual Property Headquarters at many universities and public research institutes, in FY 2004, universities and public research institutes will continue to take measures to clearly indicate the sections in charge of university-industry collaboration, which are to receive offers for the utilization of intellectual property and joint research projects from industry, by integrating the offices for industry-academic-government collaboration and intellectual property management.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **5) Establishing comprehensive systems for intellectual property at universities and strengthening the functions of such systems**

i) Based on the establishment of University Intellectual Property Headquarters at many universities, in FY 2004, the GOJ will encourage individual universities to establish comprehensive systems for promoting the creation, protection and exploitation of intellectual property through collaboration between University Intellectual Property Headquarters and TLOs and to drastically strengthen university activities related to intellectual property, such as disseminating and raising awareness of intellectual property, providing various guidelines and rules, coordinating joint research and contract research, obtaining intellectual property rights, carrying out technology transfer, transferring rights for digital content, dealing with legal affairs, supporting

business startups, serving as incubator, and additionally, expediting the relevant procedures.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) In FY 2004, the GOJ will promote the establishment of a comprehensive system based on collaboration between University Intellectual Property Headquarters and TLOs focusing on the following points, while referring to several models of ideal organic linkage of the organizations for industry-academic-government collaboration, such as IP sections within universities and TLOs.

- In order to avoid the situation in which inventions created at universities are left unused and remain as non-performing assets, the GOJ will encourage universities to establish a system for sufficiently utilizing the knowledge and experience stored in TLOs, while utilizing appropriate human resources including individuals in the private sector and lawyers/patent attorneys, and the aforementioned system will be employed when University Intellectual Property Headquarters evaluate research results and consider the possibility of obtaining rights and marketing.
- As for investments made by universities in TLOs and personnel exchange, such as serving concurrently as Director, for the strengthening of collaboration with TLOs, the GOJ will inform universities and TLOs of the significance and advantage of collaboration and cooperation between them.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **6) Evaluating University Intellectual Property Headquarters and TLOs**

In FY 2004, the GOJ will continue to follow up activities carried out by University Intellectual Property Headquarters and TLOs annually. In FY 2004 and beyond, the GOJ will establish appropriate evaluation methods, evaluate University Intellectual Property Headquarters and TLOs by such methods, and publish evaluation criteria and evaluation results in order to utilize them for resource allocation.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports,

Science and Technology, and Ministry of Economy, Trade and Industry)

## **7) Promoting cooperation and networking**

- i) In order to strengthen and improve the “Japan Association for University Intellectual Property and Technology Management,” which is a nationwide collaborative organization established in 2003, in order to prevent a vicious circle in which universities and TLOs have difficulty in achieving economic independence as they file patent applications and obtain patents without any prospect for licensing, the GOJ will, in FY 2004, continue to ensure that universities and TLOs cooperate with one another in (i) investigating “good practices” of industry-academic-government collaboration and technology licensing, (ii) promoting the exchange and sharing of information and the establishment of information networks, (iii) coordinating opinions, and (iv) promoting human resource development by utilizing case studies.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

- ii) In FY 2004, in order to ensure that TLOs in Japan cooperate with one another to effectively exploit intellectual property created at universities by licensing such property to the appropriate companies and that University Intellectual Property Headquarters and TLOs also deal effectively with technology transfers from such universities and public research institutes (including local institutes) that have not yet established relationships with TLOs, the GOJ will continue to support dramatic improvement of such business cooperation, enhance industry-academic-government collaborative organizations and technical licensing organizations, and promote the strengthening of collaboration and networking between the relevant institutions nationwide. The GOJ will also promote measures to deal with the transfer of rights for digital content.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

- iii) In FY 2004, in order to strengthen and improve the nationwide collaborative organizations of University Intellectual Property Headquarters and TLOs, the GOJ will continue to promote collaboration with technical licensing organizations. overseas in

addition to activities mentioned in i) and ii).

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

#### **8) Encouraging students to participate in intellectual property-related activities at universities**

In FY 2004, the GOJ will continue to encourage students to participate in intellectual property-related activities at universities, in addition to personnel in charge of such activities at companies and universities.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

#### **9) Encouraging universities to disclose information on intellectual property-related activities**

By the end of FY 2004, the GOJ will encourage universities to regularly disclose information on their intellectual property-related activities, including intellectual property rights in their possession, achievements such as the number of licenses and of patent applications filed, recruitment of personnel from the private sector at Intellectual Property Headquarters, and intellectual property policy.

(Ministry of Education, Culture, Sports, Science and Technology)

### **(6) Clarifying the Rules on Intellectual Property**

#### **1) Setting the principle of consolidated management by individual organizations while giving due consideration to the mobility of researchers**

i) Many universities and public research institutes have recently established a system of consolidated management by individual organizations in respect to the attribution of inventions, etc. For universities and public research institutes where such a system has not yet been established, the GOJ will encourage these organizations to ensure that inventions, etc. are attributed to the organizations in principle and to establish a system of consolidated management by individual organizations as soon as possible in FY 2004 so that they can use intellectual property efficiently. In addition, regarding the

items to be defined and transferred as inventions, such as materials used in research and other activities (microorganisms, biological resources such as laboratory animals and plants, and samples of chemical compounds and materials), software, databases, and digital contents, the GOJ will encourage universities and public research institutes to clarify rules for handling such materials so as to make the inventions created at universities and public research institutes the property of the organizations in principle.

With respect to the copyrights for software, digital content, etc., the GOJ will encourage universities and public research institutes to clarify the rules for handling such creations in light of the idea of an employee's work and to make clear whether or not copyrights are open to society free of charge.

- ii) Many universities and public research institutes have just established a provision to the effect that researchers shall report research results to organizations to which they belong (University Intellectual Property Headquarters, etc.) if any patentable results are obtained. For universities and public research institutes which have not yet established such a provision, the GOJ will encourage them to establish such a provision as early as FY 2004. In addition, although inventions created by graduate students and undergraduate students are generally considered to be the property of those graduate students and undergraduate students, it is desirable that such students report to universities the inventions which have been created by them using university facilities or the inventions that are considered to be joint inventions of professors and themselves due to the strong connection between education and research by a supervisory professor. After the establishment of such a provision, the GOJ will encourage universities and public research institutes to develop rules to ensure that the rights over inventions for which they have no intention to file patent applications will be returned to the researchers who created the inventions.
- iii) As early as possible in FY 2004, the GOJ will encourage universities and public research institutes to clarify rules between the organization and researchers in order to enable researchers to continue their research and receive appropriate returns even if they have changed the organizations to which they belong.  
As for handling inventions and other research results created by researchers who belong to universities or public research institutes that continue to own the IP created

by its researchers even if the researchers have changed their organizations, it is desirable that such inventions shall be handled in accordance with the regulations of the organization to which the researchers belonged at the time of creation of the relevant inventions.

In this regard, the GOJ will encourage universities and public research institutes to take flexible measures while extensively considering contract points and other possible means, in order to ensure that researchers' inventions, as the rights for the inventions belong to the universities or public research institutes for which the researchers were previously employed, work against researchers' continuing research at the universities or public research institutes to which they transferred or against industry-academic collaborative projects.

Moreover, in case researchers participate in a research project, to which universities or public research institutes allocate special budgets, or in an industry-academic collaborative research project, it is important for organizations to which such researchers transferred to take flexible measures, such as confirming research results (including results regarding the method of research) of relevant researchers before their transfer and obtaining confirmation from organizations to which relevant researchers previously belonged with respect to confidentiality and applications filed in a certain period after the transfer of the researchers.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **2) Supporting the development of rules for industry-academic-government collaboration and securing flexibility in concluding contracts**

i) In order for universities and public research institutes to promote their own strategies for the exploitation of intellectual property and the implementation of joint research and contract research, in FY 2004, the GOJ will continue to encourage such institutions to clarify policies and rules for implementing and handling joint research and contract research with private companies as well as to develop and disclose their own contract formats and operation manuals. These policies and rules include:

- Rules for handling trade secrets and other confidential information
- Rules concerning the attribution of intellectual property rights that are the

results of joint research

- Policies for the assignment and licensing of rights to private companies
- Rules for handling rights in cases where intellectual property is created in cooperation with researchers of other domestic or foreign universities

Furthermore, the GOJ will provide necessary information regarding industry-academic-government joint research agreements, including various guidelines and specific examples with respect to contract points pertaining to the implementation and the handling of joint research and contract research with private companies, and regarding universities which will not commercialize inventions and private companies which promote putting research to practical use in business.

By the end of FY 2004, the GOJ will encourage individual universities to implement appropriate security measures for the handling of trade secrets based on the guidelines that were prepared for university officials and professors as well as graduate students and undergraduate students in consideration of the characteristics of universities. Moreover, the GOJ will encourage universities to publicly inform others of the fact that the rules for handling the attribution of intellectual property rights within universities differ between professors/officials and graduate students/undergraduate students.

- ii) By the end of FY 2004, the GOJ will make available for public reference, model cases organized in FY 2003 regarding the conflict of interests that researchers will experience in the course of promoting industry-academic-government collaboration, and thereby encourage universities and public research institutes to establish a policy for dealing with such conflict of interests. In order to enable researchers to deal with the conflict of interests in light of the various forms of industry-academic-government collaboration and the characteristics of research fields, the GOJ will also prepare and disclose to the public reference cases with sufficient attention to the problems that conflict of interests may cause not only for individual researchers but also for organizations.
- iii) In FY 2004, in light of the establishment of University Intellectual Property Headquarters at many universities, the GOJ will continue to secure flexibility in concluding contracts, so that universities and public research institutes will be able to conclude contracts on joint or contract research based on discussions between companies and universities about the handling of intellectual property rights and other

matters.

- iv) By the end of FY 2004, the GOJ will encourage industry to increase its understanding of the position of universities and public research institutes, such as the fact that they do not always make research results available to the private sector for utilization in business, and to be flexible in concluding contracts.
- v) By the end of FY 2004, in order to increase both parties' understanding of the specific way to promote industry-academic collaboration and establish a better environment, the GOJ will encourage both parties to further enrich conversations between themselves.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

#### **(7) Promoting University Start-ups**

- i) Based on the fact that University Intellectual Property Headquarters were developed at many universities and intellectual property policy was established at individual universities, by the end of FY 2004, the GOJ will encourage universities and public research institutes to adopt flexible handling that enables rights to be transferred or licenses to be granted at the request of researchers who intend to start businesses, while giving due consideration to conflicts of interest, in order to promote business startups using inventions created at universities and institutes.
- ii) For the purpose of steadily promoting the corporatization and commercialization of research results made at universities and institutes, in FY 2004, the GOJ will continue to improve and strengthen support for the creation and business development of university start-ups and provide support for university start-ups and other companies in carrying out empirical testing and practical application research through the matching of industries and universities. Furthermore, the GOJ will promote the transfer of research results made at universities by trusting companies with the development of such research results that are made at universities but are difficult to corporatize. In addition, considering that university start-ups have difficulty in securing human resources with the necessary management knowledge, the GOJ will dispatch specialists such as lawyers and certified accountants to them, and will also improve the support

environment by creating a network of supporters of university start-ups.

iii) By the end of FY 2004, in order to widely disseminate excellent research results made at universities and public research institutes and return them to society smoothly, the GOJ will arrange opportunities for persons concerned at universities and public research institutes and those in industries to gather at one place and aim at a nationwide matching of industries and universities.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

#### **(8) Allowing National Universities to Acquire Stocks as Compensation for Licensing**

By the end of FY 2004, in order to promote the transfer of technology possessed by national universities, the GOJ will allow national universities to acquire stocks as compensation for licensing.

(Council for Science and Technology Policy, and Ministry of Education, Culture, Sports, Science and Technology)

#### **(9) The Balance between Smooth Research Activities and Protection of Intellectual Property**

##### **1) Realizing the balance between free exchange of opinions among researchers and patent protection**

With the aim of solving the problem of inventions lacking novelty due to a free exchange of opinions among researchers, in FY 2004, universities and public research institutes will continue to promulgate to R&D sites that inventions will never lack novelty due to the exchange of opinions under conditions of confidentiality, by making full use of explanatory material, which was distributed to R&D sites in FY 2003, regarding unpatentable inventions which were publicly known. .

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **2) Ensuring the smooth use of patented inventions in research**

### **i) Organizing and disseminating ideas about experimentation and research**

By the end of FY 2004, the GOJ will inform R&D sites of ideas about experimentation and research to which patent rights do not extend and measures to ensure the smooth use of patented inventions in cases of experimentation and research to which patent rights do extend, such as the use of licensing for research purposes, guidelines for encouraging such licensing, and the preparation of model contracts. In doing so, the GOJ will give sufficient consideration so as not to prevent universities and public research institutes from conducting research freely.

### **ii) Formulating and publicizing contract guidelines for patented inventions financed by the national treasury**

By the end of 2004, the GOJ will promptly formulate and publicize guidelines for concluding contracts between the state and universities/public research institutes concerning the results of research obtained at universities and public research institutes, which was financed by the national treasury. .

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **3) Ensuring the smooth use of research materials**

### **i) In FY 2004, the GOJ will continue to make efforts to further promulgate among universities and public research institutes the conditions regarding the transfer of research materials and the rules for simple transfer procedures in order to ensure the smooth use of tangible materials in research activities.**

### **ii) In FY 2004, the GOJ will continue to clarify the ownership of intellectual property, including know-how that is transformed into tangible materials at universities and public research institutes, as well as the necessary management of such materials, while referring to the “Guidelines for the Management of Trade Secrets.”**

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **3. Promoting the Creation of High-Quality Intellectual Property**

By establishing a fundamental system for sufficiently rewarding researchers who create basic inventions, the GOJ will motivate researchers and provide them with greater incentive to create high-quality intellectual property. The GOJ will also encourage universities, public research institutes and companies to shift the emphasis in their patent strategy from quantity to quality and motivate them to obtain basic patents.

#### **(1) Preparing a Collection of Reference Examples Regarding Procedure for Deciding a Reasonable Remuneration for an Employee's Invention**

For an employee's invention, a bill to expedite patent examination, including an amendment of the provision regarding employees' inventions under the Patent Law, was submitted to the ordinary session of the Diet in FY 2004. If the bill is enacted, the GOJ will promptly prepare a collection of examples that is helpful to set up procedures for deciding reasonable remuneration between individual companies and inventors.

If the bill is enacted, the GOJ will constantly monitor its implementation status and changes in the rise of employment mobility after its enactment, and will conduct, if necessary, deliberations based on the verification of a desirable system.

(Ministry of Economy, Trade and Industry)

#### **(2) Reviewing the Exceptions to the Lack of Novelty of Invention**

With respect to the exceptions to the lack of novelty of invention that are designed to prevent inventions from lacking novelty due to disclosure in presentation, publication, or meetings, the GOJ will examine the extension of the grace period for the exceptions and promptly consider relaxing or abolishing the requirement of inventions being made public in a written form at a workshop held by an academic society designated by the Commissioner of the Japan Patent Office to widely recognize inventions made public at workshops before the corresponding patent applications have been filed as exceptions to the lack of novelty of invention, while taking into account the trend in discussions on the international harmonization of patent systems. The GOJ will draw a conclusion by the end of FY 2004.

Until the conclusion of the review is drawn, the GOJ will examine measures to prevent the novelty of invention from lacking due to a presentation of papers (master's thesis,

doctoral thesis, etc.), including interests and losses concerning such measures within present law.

In addition, the GOJ will inform researchers and other persons concerned that this provision is merely an exception and also inform universities that they have to contrive ways to promote the results of research at their institutions, such as hosting presentations of research results and securing an agreement of confidentiality from those individuals attending the presentation .

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

### **(3) Promoting the Objectives and Contents of the Internal Priority System**

At universities and public research institutes, basic and fundamental inventions are often created, and they are likely to develop into inventions of improvement based on additional tests and secondary research activities. In order to ensure that the internal priority system that is effective in protecting all of these inventions without exception is understood and utilized, the GOJ will continue to promote the objectives and contents of the system in FY 2004.

(Ministry of Economy, Trade and Industry)

### **(4) Encouraging the Use of Laboratory Notebooks**

i) Universities and public research institutes are steadily promoting laboratory notebooks.

In order to encourage the positive use of laboratory notebooks that contribute to the clear identification of inventors as well as to the clear proof of results of joint research, in FY 2004, the GOJ will continue to organize and publish important points regarding the significance of laboratory notebooks and how to use and manage such notebooks.

ii) In FY 2004, the GOJ will continue to encourage universities and public research institutes to promote the use of laboratory notebooks by providing training and education programs regarding how to use and manage such notebooks.

iii) In FY 2004, the GOJ will continue to encourage companies to introduce laboratory notebooks by issuing laboratory notebooks in the training programs for companies and raising the awareness of such notebooks.

iv) In FY 2004, the GOJ will continue to consider the possibility of utilizing electronic

media as a substitute for laboratory notebooks and consider the problems that would arise from such utilization.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

**(5) Awarding Remarkable Activities Performed in Industry-Academic-Government Collaboration**

In FY 2004, the GOJ will continue to select successful cases from industry-academic-government collaboration activities and provide opportunities to publicize the details or factors of success. The GOJ will also enhance the systems for rewarding individuals, groups and organizations achieving remarkable results.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunication, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

**(6) Enforcing the Japanese Bayh-Dole System**

**1) Ensuring the enforcement of the Japanese Bayh-Dole system**

Although Article 30 of the Law on Special Measures for Industrial Revitalization (referred to as the “Japanese Bayh-Dole system”), which provides that intellectual property rights obtained in R&D projects sponsored by the national government or special public corporations belong to those that actually carried out the R&D projects under contract, is applied to about 90% of all cases, the GOJ will continue to ensure the complete enforcement of the system in FY 2004.

(Council for Science and Technology Policy, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

**2) Expanding the utilization of the Japanese Bayh-Dole system**

Regarding the attribution of intellectual property not only at universities and public research institutions but also in industry, a bill was submitted to ensure that intellectual property rights for products that are created in content development projects for government use (content within the scope of culture or entertainment) belong to the

persons who actually carried out the projects under contract. Taking this into consideration, in FY 2004 and beyond, the GOJ will ensure that intellectual property rights also belong to the persons who actually carried out projects under contract regarding software development projects for government use, and will submit related bills to the Diet.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **(7) Reforming Awareness in Industry**

### **i) Strengthening the ability to discern in business executives**

In FY 2004, the GOJ will continue to encourage business executives to improve their ability to exploit intellectual property by strengthening their ability to appreciate the value of research results achieved at universities and public research institutes, or in other words, their discerning ability. Furthermore, in order for business executives and personnel in charge of intellectual property affairs to properly understand the intellectual property-related activities that are carried out at universities and strategically protect and exploit the intellectual property of research results, the GOJ will take measures to increase awareness of intellectual property, such as holding seminars and symposiums regarding intellectual property strategy for business executives and personnel in charge of intellectual property affairs and exchanging opinions between companies and the ministries and agencies concerned.

### **ii) Clearly assigning contact sections**

In light of “the Recommendations for the Establishment of Industry-Academic-Government Collaboration” prepared by the Ministry of Education, Culture, Sports, Science and Technology, in FY 2004, the GOJ will continue to encourage industry to clearly assign contact sections for industry-academic-government collaboration in individual companies for the purpose of ensuring smooth and efficient negotiations between universities/research institutes and companies.

### **iii) Encouraging companies to position industry-academic-government collaboration in R&D strategy**

By the end of FY 2004, the GOJ will encourage industry to actively position itself to collaborate with universities and public research institutes in corporate management strategy and to willingly disclose activities based on industry-academic-government collaboration and the performance of such activities.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

#### **(8) Promoting the Creation of Attractive Designs**

- i) In order to create an environment in which the strategic creation of designs will be promoted and to increase the understanding of and interest in excellent designs among the general public, the GOJ established “Design Month” and Design and Business Forum in FY 2003. In FY 2004, the GOJ will continue to hold seminars, symposiums and other events as part of those projects.
- ii) In order to support the development of human resources who will create attractive designs, in FY 2004, the GOJ will continue to improve educational content provided by technical schools and other schools, develop curriculum and teaching materials necessary for the development of design management personnel, and conduct educational experiments.
- iii) In order to disclose and provide design-related information possessed by the JPO, the GOJ will prepare organized and standardized data by the end of FY 2004.
- iv) In order to develop useful design information and make it broadly available for the purpose of encouraging the creation of attractive designs, in FY 2004, the GOJ will continue to develop basic information concerning human property, including the measurement of the human body.

(Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

## **Chapter 2 Protection**

### **I. Strengthening the Protection of Intellectual Property**

In order to secure incentives for the creation of intellectual property and to utilize intellectual property effectively, its proper protection is indispensable, and the related systems and frameworks must be further developed. Therefore, the Government of Japan (GOJ) will strive to establish the foundation for the sufficient protection of intellectual property by appropriately protecting any new intellectual property, while monitoring the trend in the global harmonization of IP-related systems and in the progress made in technological innovation, as well as by developing frameworks for improving and expediting right obtainment procedures and legal procedures.

#### **1. Expeditious Examination of patent applications**

Amidst economic globalization and intensive international competition, the request for the early establishment of rights has been increasing more than ever before. The early establishment of rights extends the contribution of R&D investment to profits through the elimination of overlapping researches and the revitalization of competition in domestic technical development, thereby contributing to the increasing global competitiveness of Japanese companies. In addition, the early obtainment of rights for inventions enables the leaders who actively work on R&D to maintain their superiority with creative, high value-added products, and it also contributes to strengthening competitiveness of SME/venture companies that have innovative technology.

On the other hand, looking at the actual status of patent examination, the number of applications waiting to be examined has been increasing year by year. The number now totals approximately 520,000, and the waiting period for patent examination reached 26 months (at the end of 2003). Unless appropriate measures are taken, the number of applications waiting to be examined is expected to increase up to approximately 800,000 because of the change of the examination request period.

Therefore, the GOJ will implement comprehensive measures to clear away applications waiting to be examined, aiming to achieve the end goal of completely eliminating the waiting period for patent examination.

## **(1) Achieving Expeditious and Accurate Patent Examination at the Highest Global Standard**

As for expediting a patent examination, the proposed Law for the Promotion of Expeditious Patent Examination was submitted to the ordinary session of the Diet in 2004. If the bill is enacted, the GOJ will take the following measures to promote expediting patent examinations.

- i) In order to steadily achieve an expeditious patent examination, the GOJ will establish the following five-year interim goal and ten-year long-term goal regarding the waiting period for patent examination. Holding the waiting period for patent examinations to less than 30 months in 2008 (interim goal), even when the number of applications waiting to be examined expands to 800,000 and the waiting period for patent examinations reaches a peak, and achieving a reduction of the waiting period to 11 months, which will be the highest global standard, in 2013 (long-term goal).
- ii) In order to achieve the interim/long-term goals mentioned above, the GOJ will steadily implement the following measures in FY 2004 and beyond.
  - a) Efforts concerning applications and requests for examination
    - Promoting the utilization of the system of withdrawal/abandonment of applications (system of partial return of examination request fees)
    - Promoting the utilization of specified, registered search organizations
    - Promoting the utilization of the utility model system
    - Cooperating with companies ranking high in terms of the number of applications filed
  - b) Enriching the personnel system of the Japan Patent Office
    - Securing a sufficient number of examiners who are continuously necessary and fixed-term examiners (See note below) who are necessary for the period of the interim goal
    - Utilizing assistants with expertise

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Note: The GOJ increased fixed-term examiners by 98 in FY 2004.

- c) Increasing examination efficiency
    - Expanding outsourcing of prior art search to registered search organizations
    - Shifting to outsourcing methods with high examination efficiency
    - Sharing and analyzing examination information by using information technology
  - d) Establishing the foundation necessary for expediting patent examination
    - Strengthening the training system for examiners
    - Developing prior art search personnel
    - Improving information services, including the provision of patent information, etc., to the public
- iii) The Ministry of Economy, Trade and Industry will formulate an implementation plan for every fiscal year to achieve the interim/long-term goals mentioned above, and report to the Intellectual Property Strategy Headquarters and make public the achievement status every fiscal year.
- iv) The Intellectual Property Strategy Headquarters will carry out comprehensive and multifaceted verification of the report mentioned above and will take necessary measures, such as providing information to persons concerned, inside and outside of the government, and requesting the cooperation of such persons, as appropriate.

(Ministry of Economy, Trade and Industry)

## **(2) Developing and Utilizing Prior Art Search Organizations**

- i) Amidst calls for the further enhancement of efficiency and quality of search operations aimed at achieving expeditious and accurate patent examination, a proposed Law for the Promotion of Expeditious Patent Examination was submitted to the ordinary session of the Diet in 2004. The objective of the proposed law is to enable not only public-interest corporations but also others to participate in the outsourcing by the Japan Patent Office of prior art search, which is necessary for patent examination. If the proposed law is enacted, from FY 2004, the GOJ will actively promote the participation of private search organizations in order to multiply the number of registered search organizations and expand search operations both quantitatively and qualitatively. In such case, in FY 2004, the GOJ will also establish a system to develop prior art search personnel at the National Center for Industrial Property Information and Training in cooperation with relevant

organizations, in order to support private organizations in newly becoming registered search organizations.

- ii) In FY 2004, The GOJ will continue to further enhance efficiency and quality by promoting a shift to a method with high examination efficiency (face-to-face explanation) in the outsourcing of prior art search utilizing registered search organizations. In addition, the GOJ will discuss the utilization of information technology in outsourcing operations in FY 2004.
- iii) If applicants try to file requests for examination after evaluating the possibility of obtaining patent rights, applicants can file requests for examination more appropriately, which will also contribute to the search operations of the Japan Patent Office. Therefore, a proposed Law for the Promotion of Expeditious Patent Examination was submitted to the ordinary session of the Diet in 2004. The objective of the proposed law is to introduce a system in which the examination request fee will be reduced if an applicant submits a prior art search report issued by a specified registered search organization at the time of filing an examination request. If the proposed law is enacted, from FY 2005, the GOJ will promote the provision of prior art search results by applicants.

(Ministry of Economy, Trade and Industry)

### **(3) Promoting Structural Reform of the Patent Application/Examination Request**

- i) In FY 2004, the GOJ will continue to request the cooperation of business executives and personnel in charge of intellectual property affairs, especially the business executives of companies ranking high in terms of the number of applications filed, in improving patent application/examination request systems, including the screening of requests for examination in order to raise the patent registration rate, the withdrawal of applications for which obtainment of the patent right is no longer necessary, and the appropriate utilization of the utility model system.
- ii) A system to return part of the examination request fees if applicants withdraw or abandon their applications during the waiting period for examination was established through amendment of the Patent Law in 2003. In addition, in 2004, a proposed Law for the Promotion of Expeditious Patent Examination was submitted to the ordinary session of the Diet. The objective of the proposed law is to introduce a system in which the examination request fee will be reduced if an applicant submits a prior art search report

issued by a specified, registered search organization at the time of filing a request for an examination. If the proposed law is enacted, the GOJ will disseminate the system from FY 2004.

- iii) Since patent attorneys play a vital role in assuring the proper obtainment of rights and high-quality specifications, the GOJ will, in FY 2004 and beyond, promote the advertising of support measures for SMEs provided by patent attorneys in terms of the patent system, guidance for prior art search by patent attorneys, and the disclosure and provision of information useful for applicants' selecting patent attorneys, in light of the roles to be played by patent attorneys for the purpose of achieving expeditious and accurate examinations, which were organized by the Intellectual Property Policy Committee of the Industrial Structure Council in FY 2003, with the understanding and cooperation of the Japan Patent Attorneys Association.
- iv) In FY 2004, the GOJ will continue to provide information necessary for companies to improve their filing of patent applications and requests for examination, such as the number of applications by technical field and the rate of patented applications.

(Ministry of Economy, Trade and Industry)

#### **(4) Creating the Environment for Prior Art Search**

- i) In FY 2004, the GOJ will provide services of the Industrial Property Digital Library with improved access provided by a more sophisticated server. The GOJ will also continue to make efforts to improve the functions of the Industrial Property Digital Library and enrich the information which is provided.
- ii) In order to strengthen the information service functions necessary to expedite patent examination, in FY 2004, the GOJ will make efforts to disseminate Industrial Property Digital Library services using dedicated lines, which are available at reference rooms at the nationwide National Center for Industrial Property Information (National Center for Industrial Property Information and Training in the case where the proposed Law for the Promotion of Expeditious Patent Examination is enacted) so that the services are effectively utilized.
- iii) In order to promote the active utilization of patent information and other information by corporate intellectual property departments versed in patent information, universities, research institutes, and SMEs with technical capabilities, the GOJ will consider specific

measures to create an environment that enables highly functional and high-speed prior art search by using F-term data and other information possessed by the Japan Patent Office in FY 2004, aiming to create such an environment in FY 2005.

- iv) In order to contribute to improving and creating an environment for prior art search, a proposed Law for the Promotion of Expeditious Patent Examination that admits the issuance of official gazettes via the Internet was submitted to the ordinary session of the Diet in 2004. If the proposed law is enacted, the GOJ will promote detailed consideration of the issuing methods in FY 2004, with the aim of realizing the issuance of official gazettes via the Internet in FY 2005.
- v) In FY 2003, the GOJ provided bibliographic data stored in the database (CSDB) used for examining computer-related applications possessed by the Japan Patent Office, in order to promote the implementation of a sufficient prior art search at every stage of R&D, filing patent applications and examination requests. From FY 2004, the GOJ will make efforts to obtain permission to use original documents and abstracts from copyright holders and provide them at the Industrial Property Digital Library upon obtaining such permission.

(Ministry of Economy, Trade and Industry)

## **2. Promoting Flexible Patent Examination according to Applicant Needs**

### **(1) Ensuring Flexible Examination Timing according to Needs**

- i) In FY 2004, the GOJ will continue to further disseminate the accelerated examination system, which preferentially examines applications filed by universities, TLOs and SMEs, overseas-related applications, and applications of inventions soon to be commercialized, and it will utilize the system to properly deal with applications that need to be patented promptly.
- ii) In order to grant patent rights for applications relating to international standards and applications on inventions that will take time to be commercialized at the appropriate time, the GOJ will review the divisional application system and also continue to consider the amendment system, which is closely related to the divisional application system, in light of the global harmonization of patent systems, the reduction of

examination burden, fairness in handling applicants, and the status of new operations under the legal amendment concerning unity of invention. The GOJ will draw a conclusion in FY 2004.

(Ministry of Economy, Trade and Industry)

## **(2) Improving Communication with Applicants**

- i) The GOJ will improve communication with applicants by providing them with information regarding the examination schedule, including the applications scheduled to be examined and the date of the examination, and by continuously promoting the circuit offices for patent examination and appeals for local SMEs and venture companies, which lack the opportunity to directly exchange opinions with examiners.
- ii) In FY 2004, the GOJ will continue to disseminate the consolidated examination program for relevant applications, which is a system to examine patent applications in related technical fields as a whole, and encourage utilization of the system in order for companies to strategically obtain patents.

(Ministry of Economy, Trade and Industry)

## **(3) Strengthening Examination Capability with a Focus on the Field of Cutting-Edge Technologies and International Applications**

- i) In FY 2004, the GOJ will continue to strengthen examination capability with a focus on applications in the field of cutting-edge technology and international applications, by taking such measures as tripling the number of examiners in the life-science field compared with the number at the beginning of FY 2003.
- ii) In FY 2004, the GOJ will continue to increase dispatches of examiners and trial examiners to academic conferences and implement more training for them in order to cope with examination and appeals/trials on cutting-edge technologies, such as state-of-the-art bio-medical technologies, and to promote international cooperation in examination.

(Ministry of Economy, Trade and Industry)

## **(4) Improving the Convenience of Users, Including the Promotion of Electronic Payment Means for Fees**

- i) In order to enable the public to file applications and inspect various documents related to industrial property rights via the Internet by the end of FY 2005, the GOJ will promote system design and development in FY 2004.
- ii) In order to enable the public to pay application fees and other fees via the Internet by the end of FY 2005, the GOJ will promote system design and development in FY 2004. In FY 2004, the GOJ will also continue to promote further digitization by considering desirable payment means for fees, including automatic debit transfer from a bank account and the use of credit cards.

(Ministry of Finance, and Ministry of Economy, Trade and Industry)

### **3. Strengthening Intellectual Property Protection Systems**

#### **(1) Studying the Desirable Way of Providing Patent Protection for Medical Treatment**

- i) While giving sufficient consideration so as not to have a bad influence on medical activities that should be equally performed under trustful relationships between patients and medical practitioners, the GOJ will set up a forum for extensively discussing the treatment of medical activities under the Patent Law, from the viewpoint of driving the progress of useful and safe medical technologies that will contribute to raising the level of citizens' health care, such as allowing patients to receive more advanced medical treatment. The GOJ will draw a conclusion early in FY 2004.

(Council for Science and Technology Policy, Ministry of Health, Labor and Welfare, and  
Ministry of Economy, Trade and Industry)

- ii) In FY 2004 and beyond, with the aim of promoting further progress in the latest frontiers of life sciences and their medical applications, the GOJ will study the desirable patent protection for inventions using human embryonic stem cells (ES cells), embryonic germ cells (EG cells), etc. from the viewpoints of bioethics, science and technology policies, and medical policies.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports,  
Science and Technology, Ministry of Health, Labor and Welfare, and Ministry of  
Economy, Trade and Industry)

## **(2) Promoting Utilization of the Utility Model System**

A proposed Law for the Promotion of Expeditious Patent Examination was submitted to the ordinary session of the Diet in 2004. The proposed law includes a review of the utility model system and extends the term of protection to 10 years, making it possible to file patent applications based on utility model registrations. If the proposed law is enacted, the GOJ will disseminate and promote the use of the amended utility model system from FY 2004.

(Ministry of Economy, Trade and Industry)

## **(3) Upgrading the Design System in order to Enhance Design Protection**

In FY 2003, the GOJ studied the desirable protection of designs of operational screens (icons, etc.) used on computer networks. In FY 2004, the GOJ will extensively consider desirable ways for an overall design protection system to develop an environment for providing products of higher value through the creation of attractive designs, and will draw a conclusion by FY 2005.

(Ministry of Economy, Trade and Industry)

## **(4) Upgrading the Trademark System in order to Enhance Brand Protection**

In addition to consideration at the Trademark System Subcommittee of the Industrial Structure Council in FY 2003 about a desirable trademark system that flexibly corresponds to the expansion of branding strategy, the GOJ will, in FY 2004, continue to consider concrete measures for developing an environment for providing products and services of higher value by utilizing attractive brands, as well as a desirable trademark protection system, and will draw a conclusion by FY 2005.

(Ministry of Economy, Trade and Industry)

## **(5) Considering a System to Protect Local Brands**

In FY 2004, the GOJ will consider a desirable system to protect local brands for agricultural, forestry and fishery products and other products from the viewpoint of increasing competitiveness of goods and products, revitalizing the local area and protecting consumers. In this regard, the influence of the system on goods and products whose names were generalized or were firmly used in another area is also considered..

(Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

## **(6) Strengthening the Protection of Trade Secrets**

### **1) Strengthening the protection of trade secrets and preventing the leakage of technology**

- i) In order to promote corporate efforts to manage trade secrets and prevent the leakage of technology, the GOJ will consider applying JIS standards to in-house management described in “Guidelines for the Management of Trade Secrets” and “Guidelines for the Management of the Leakage of Technology” on the assumption of the self-declaration of the conformity system. The GOJ will draw a conclusion by the end of FY 2005.
- ii) In FY 2004, the GOJ will further ensure the protection of trade secrets and the prevention of leakage of technology in contracts for national R&D projects and various guidelines of public research institutes, and will also encourage universities to manage trade secrets to the appropriate extent while securing academic freedom and the freedom of research. In doing so, the GOJ will also consider the utilization of the above-mentioned JIS by public research institutes as well as private research institutes, as appropriate.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **2) Managing and protecting die drawings and related IP**

- i) In FY 2004, the GOJ will continue to conduct a follow up survey related to the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors, which was amended to expand the scope of die transactions, as well as the “Guidelines on the Prevention of Unintended Leakage of Die Drawings and Die Processing Data,” which provides for the management and protection of intellectual property contained in die drawings, etc., in order to understand the actual transaction situation. In addition, the GOJ will disseminate to both die manufacturers and users the above guidelines and the amended Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors.
- ii) In FY 2004, the GOJ will continue to encourage die manufacturers to make independent

efforts to manage and protect intellectual property, by disseminating the “confidential mark” sealed on die drawings, etc. and the sample “basic transaction contract,” which were prepared by the Japan Die & Mold Industry Association.

(Ministry of Economy, Trade and Industry)

### **3) Considering the reinforcement of the protection of pharmaceutical test data**

From the viewpoint of ensuring the quality, effectiveness, and safety of a new drug after it has been placed on the market, the test data to be submitted for obtaining approval for a new drug from the Ministry of Health, Labor and Welfare is subject to a re-examination period of six years, which effectively protects the data from being used later for filing an application for equivalent drugs (generics) in a simplified manner. By the end of FY 2005, the GOJ will consider strengthening the protection of such data in order to protect intellectual property and increase the incentive for the development of new drugs, including the possibility of making the term of protection 10 years.

(Ministry of Health, Labor and Welfare, and Ministry of Economy, Trade and Industry)

### **(7) Strengthening Database Protection**

The GOJ will consider specific measures that are necessary to prevent third parties from illegally reproducing or misappropriating data in the database that is not protected by copyright due to lack of creativity, despite the considerable labor and cost used to develop it, while taking into consideration the situations in the United States and Europe, and will draw a conclusion by the end of FY 2004.

(Ministry of Economy, Trade and Industry)

### **(8) Strengthening the Protection of New Varieties of Plants**

i) In April 2004, the GOJ set up a study group consisting of individuals with experience or good academic standing. The study group started to discuss the extension of the effects of the plant breeder’s rights to processed goods made from harvested materials of the registered varieties as well as the term of breeder’s rights and the desirable scope of exemption to a plant breeder’s right that permits farmers to use protected varieties for propagating purposes on their holdings. In FY 2004 and beyond, the GOJ will consider the need for legal amendments, while giving consideration to progress in the

development of plant variety identification technology for processed goods and to the global trends as well as to the conclusion drawn by the study group, and will draw a conclusion by the end of FY 2005.

- ii) In FY 2003, the GOJ carried out the development of DNA analysis technologies for identifying the plant variety to be used for the harvested material and/or processed goods made from the material at independent administrative agencies and other organizations, which are under the jurisdiction of the Ministry of Agriculture, Forestry and Fisheries. In FY 2004, the GOJ will continue to promote the development of such DNA analysis technologies in order to make it easier to determine infringing products.
- iii) In FY 2003, the National Center for Seeds and Seedlings started conducting plant variety similarity tests (comparative cultivation) for supporting the determination of infringement against a plant breeder's right at the request of holders of the plant breeder's right. In FY 2004, the center will continue to conduct such tests and also strengthen the implementation system of plant variety similarity tests by DNA analysis.

(Ministry of Agriculture, Forestry and Fisheries)

## **(9) Strengthening the Damage Compensation System**

In light of the quality of intellectual property rights in that they are easily infringed and that the owners of the intellectual property rights cannot prevent infringement beforehand, the GOJ will extensively consider measures for strengthening the system of damage compensation for intellectual property and will draw a conclusion by the end of FY 2004, in order to properly remedy the owners of the intellectual property rights and to disallow infringers from easily benefiting from acts of infringement. In particular, regarding infringement of rights via the Internet, the GOJ will continue, in FY 2004, to consider the review of the system of damage compensation that is under discussion at the Council for Cultural Affairs, while taking into account that it is difficult to prove the number of infringement cases and the amount of damage caused by infringement, with the aim of reducing the burden of proof.

(Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

#### **(10) Reviewing the Penalties for the Infringements of Intellectual Property Rights**

In order to increase deterrents against the infringement of intellectual property rights, the GOJ will consider the necessity of increasing the criminal penalties, while giving consideration to the balance between the respective intellectual property laws and other economic laws, and will draw a conclusion by the end of FY 2004.

(Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

### **4. Strengthening the Dispute Settlement Functions**

#### **(1) Expectations of the Intellectual Property High Court (tentative name)**

In order to improve and strengthen a specialized processing system of intellectual property related cases at the court level, the GOJ tried to concentrate intellectual property lawsuits at the Tokyo/Osaka District Courts and the Tokyo High Court and introduced the expert committee system in accordance with the Code of Civil Procedure amended in 2003. Furthermore, a bill to establish an Intellectual Property High Court was submitted to the ordinary session of the Diet in 2004 in order to lay out the framework for exclusively handling intellectual property lawsuits both in name and reality. In addition, a bill to amend the Court Organization Law was submitted to the ordinary session of the Diet in 2004 in order to expand and clarify the authorities of judicial research officials. If these bills are enacted, the Intellectual Property High Court is expected to realize further appropriate and prompt judgment in response to expectations from various sectors, including the demand that court operations meet the actual needs of the economy and society, by utilizing experts versed in intellectual property and technology.

#### **(2) Expanding Procedures for Collecting Evidence**

i) In order to strengthen the procedures for collecting evidence in intellectual property-related lawsuits, a bill to amend the Court Organization Law was submitted to the ordinary session of the Diet in 2004 for the purpose of introducing provisions for protective order, unopened proceedings regarding the obligation to produce documents, and requirements and procedures for the suspension of disclosure in cases involving

trade secrets. If the bill is enacted, the GOJ will disseminate these procedures in FY 2004 for their utilization.

(Judicial Reform Headquarters, Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

ii) From FY 2004, the GOJ will study the need of industry for the protection of trade secrets in criminal proceedings, while taking into account the principle of disclosure in court proceedings under the Constitution of Japan.

(Ministry of Economy, Trade and Industry)

### **(3) Achieving Reasonable Resolution of Disputes over Infringements of Patent**

#### **Rights**

With the aim of establishing a system to effectively resolve disputes over the infringements of patent rights and the effectiveness of patent rights, a bill to amend the Court Organization Law was submitted to the ordinary session of the Diet in 2004. If the bill is enacted, the GOJ will take the following measures from FY 2004 for smooth operations of the system:

i) The GOJ will improve the adjustment process between infringement lawsuits and trials for the invalidation of patents, etc. by enabling the collegiate court to obtain necessary materials on defense against the invalidation of patents in relevant infringement lawsuits and by requesting parties involved in the trials to willingly provide information about relevant infringement lawsuits, in order to facilitate coordination between infringement lawsuits and trials for the invalidation of patents, etc.

ii) The GOJ will place priority on the trials for invalidation and trials for the correction of patents, which are requested, while relevant infringement lawsuits are pending.

(Ministry of Justice, and Ministry of Economy, Trade and Industry)

### **(4) Reinforcement of Alternative Dispute Resolution (ADR)**

For the purpose of providing a variety of dispute resolution methods concerning intellectual property, the GOJ will request the parties concerned, including the Japan Federation of Bar Associations and the Japan Patent Attorneys Association, to have discussions about the fields in which ADR can be utilized, such as the valuation of intellectual property, testimony on patents, and dispute resolution related to technical

standards, with the objective of reinforcing and revitalizing the functions of ADR organizations, and to take necessary measures by FY 2004. The GOJ will also draw a conclusion on appropriate role-sharing between the JPO's Hantei system (advisory opinion on the technical scope of a patent) and ADR organizations by FY 2005, based on the study of a desirable ADR conducted in the course of the justice system reform.

(Ministry of Justice, and Ministry of Economy, Trade and Industry)

## **5. Promoting the International Protection of and Cooperation on Intellectual Property**

### **(1) Promoting Efforts to Establish a Global Patent System**

#### **1) Promoting global cooperation in patent examination**

The GOJ will drive cooperation in patent examination with the national patent offices of other countries in order to reduce the procedural burden on applicants filing patent applications with multiple countries, reducing the workload on national patent offices and achieving mutual recognition of patent laws and patent examination guidelines through international harmonization. To this end, in FY 2004, the GOJ will continue to further promote projects by mutually utilizing prior-art-search results and examination results in addition to examiner exchange among the trilateral patent offices of Japan, the United States, and Europe, as well as among other developed countries. In addition, the GOJ will promote further utilization of the PCT system and the accelerated examination system for applications filed by Japanese applicants to acquire rights overseas, and promptly transmit information on examination results to the world.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

#### **2) Aiming to achieve the mutual recognition of patents among the trilateral patent offices of Japan, the United States, and Europe**

Aiming to achieve mutual recognition among the trilateral patent offices of Japan, the United States, and Europe, which have 80% of the total number of patent applications filed in the world in total, as the first step in establishing the global patent system, Japan will, from FY 2004, take the initiative in the working group of the trilateral patent offices and hold discussions with the United States and Europe to prepare the roadmap for

harmonizing systems and practices and establishing infrastructures that contribute to such mutual recognition.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

### **3) Promoting the reform of the Patent Cooperation Treaty (PCT)**

In FY 2004, the GOJ will continue to promote the establishment of a system that will facilitate the international acquisition of rights by vigorously committing to discussions aimed at improving the convenience of users and further utilizing prior art searches and preliminary examinations conducted by international search authorities and international preliminary examination authorities in the discussions on PCT reform in the World Intellectual Property Organization (WIPO).

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

### **4) Facilitating the acquisition of rights in developing countries**

In FY 2004, with the objective of facilitating the acquisition of rights overseas by Japanese and ensuring sufficient protection of those rights, the GOJ will continue to strategically promote developing countries' joining of the PCT as well as developing countries' institutional or operational adoption of the modified substantive examination (MSE) system, which is a system of patenting applications based on the search/examination results of Japan in cases in which the applications have been patented in Japan, through bilateral and regional frameworks. The GOJ will also continue to promote its cooperation in human resources development and computerization through such activities as a dispatch of experts, acceptance of trainees, holding of local seminars, and implementation of technical cooperation projects, in order to contribute to developing patent law systems and improving operations of the systems in developing countries.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

### **5) Promoting international harmonization of patent systems**

i) In FY 2004, the GOJ will continue to engage vigorously in the discussions on the Substantive Patent Law Treaty in WIPO and promote debates aimed at achieving the international harmonization of the patent systems, including discussions about having the United States fully introduce an 18-month-publication, review of the first-to-invent

system, and the global adoption of a unified grace period.

ii) In FY 2004, with the objective of facilitating the international acquisition of rights, the GOJ will continue to promote discussions for making international rules in WIPO and other opportunities, encouraging countries to adopt a system that allows original language applications and correction of translations based on application documents written in the original language, while considering the interests of third parties.

iii) Since it is desirable to increase the availability of the system of the prior user's right while reflecting the actual conditions of corporate activities, the GOJ will, by the end of FY 2004, study and consider the scope of a prior user's right, and systems in various countries, including notarization systems, as well as the actual conditions of their use, in light of their effect on Japanese industry.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

## **6) Establishing international networks for exchanging information on patent examination**

i) By the end of FY 2004, the GOJ will conduct system development to promptly establish an examination information network that enables the mutual utilization of information related to prior-art-search/examination results, with the aim of sending out the JPO's examination results overseas and enhancing cooperation in examination among the trilateral patent offices of Japan, the United States, and Europe.

ii) By the end of FY 2004, the GOJ will add the function of providing detailed examination information translated into English by using machine translation for the Asian Industrial Property Information Network, in order to promote cooperation in examination for developing countries.

iii) In FY 2004, the GOJ will continue to further reinforce dictionaries for machine translation from Japanese to English and promote the utilization of Japanese-English machine translation in the industry by disclosing to outsiders the dictionaries possessed by the Japan Patent Office, in order to ensure that the JPO's examination information is effectively utilized in examinations conducted in other countries as well as to contribute to expediting the acquisition of rights overseas by Japanese applicants and reducing the burden of translation.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

## **(2) Promoting the International Harmonization of Copyright Systems**

i) In FY 2004, in order to protect copyrights appropriately in response to digitization and networking, the GOJ will continue to make active contributions to discussions for the early adoption of the new treaties on audiovisual performances and broadcasting organizations (“Treaty on the Protection of Broadcasting Organizations (tentative name)” and “Treaty on Audiovisual Performances (tentative name)”) that are currently being deliberated in WIPO.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Foreign Affairs, and Ministry of Education, Culture, Sports, Science and Technology)

ii) In FY 2004, the GOJ will continue to approach other countries, mainly Asian nations, to join at an early date the “WIPO Copyright Treaty (WCT)” and the “WIPO Performances and Phonograms Treaty (WPPT)” that were adopted in 1996, through various opportunities such as negotiations on bilateral agreements, Free Trade Agreements (FTA), or Economic Partnership Agreements (EPA).

(Ministry of Foreign Affairs, and Ministry of Education, Culture, Sports, Science and Technology)

iii) In FY 2004, the GOJ will continue to provide training and hold seminars for the government officials and staff of collective management societies in developing countries and dispatch experts in the copyright system and the collective management system to such countries, with the cooperation of WIPO, in order to provide support for the dissemination and improvement of the copyright system in developing countries.

(Ministry of Foreign Affairs, and Ministry of Education, Culture, Sports, Science and Technology)

## **(3) Promoting Cooperation in Examination for the Global Protection of Designs**

With the objective of internationally protecting the designs created in Japan, in FY 2004, the GOJ will continue to provide Asian nations with cooperation in examination through provision of information about the JPO’s design examination results and cooperation in developing relevant protection systems through a dispatch of design experts and acceptance of trainees.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

#### **(4) Promoting International Trademark Protection and Cooperation in Protection**

##### **1) Promoting the use of the international trademark registration system**

Since the international trademark registration system based on the Madrid Protocol facilitates the international acquisition of trademark rights, the GOJ will, in FY 2004, continue to approach the non-members in the Asia region to join the Protocol through bilateral and regional frameworks, and promote the use of the system by Japanese applicants.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

##### **2) Promoting cooperation in human resources development in developing countries**

In FY 2004, the GOJ will continue to extend cooperation in the areas of human resources development and utilizing IT through a dispatch of experts, acceptance of trainees, holding of local seminars, and implementation of technical cooperation projects, in order to contribute to developing trademark law systems and improving their operations in developing countries.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

##### **3) Promoting the international harmonization of the trademark system**

- i) In FY 2004, the GOJ will continue to engage vigorously in discussions on the amendment of the Trademark Law Treaty in WIPO and promote such discussions so as to further improve the trademark system for the convenience of users.
- ii) In FY 2004, the GOJ will continue to further promote the standardization of indications of designated goods/services among the trilateral patent offices of Japan, the United States, and Europe, in order to reduce procedural burdens on applicants who acquire rights overseas and the workload on national patent offices.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

#### **(5) Promoting Cooperation in Examination and the Development of Systems Related to the Protection of Rights on New Plant Varieties**

- i) With the objective of achieving prompt and precise protection of rights in the Asian region, in FY 2004, the GOJ will continue to implement regular discussions with examiners in China, the Republic of Korea, and other countries to promote cooperation in examination. In addition, the GOJ will review the examination standards to harmonize examination processes and also consider the future introduction of the mutual recognition system.
- ii) In FY 2004, with the objective of enhancing the development of systems for protecting rights on new plant varieties in the Asian region, the GOJ will continue to provide assistance for developing such systems and conduct training for developing experts through the International Union for the Protection of New Varieties of Plants (UPOV). In addition, the GOJ will promote the establishment and improvement of such systems through various opportunities such as negotiations for Free Trade Agreements (FTA) or Economic Partnership Agreements (EPA).

(Ministry of Foreign Affairs, and Ministry of Agriculture, Forestry and Fisheries)

#### **(6) Promoting the Development of International Rules on Dispute Settlement**

With the objective of clarifying international rules on intellectual property enforcement and dispute settlement across national borders pertaining to Internet-related incidents etc., the GOJ will continue to actively engage in discussions concerning the international jurisdiction of lawsuits related to the validity or infringement of intellectual property rights in FY 2004.

(Ministry of Justice, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

#### **(7) Utilizing Free Trade Agreements (FTA), Economic Partnership Agreements (EPA) and Other Agreements**

In FY 2004, the GOJ will also actively encourage negotiating countries to develop the intellectual property system and ensure the efficient enforcement of intellectual property rights through negotiations on bilateral and multilateral agreements, including Free Trade Agreements, Economic Partnership Agreements, and investment agreements, so as to achieve intellectual property protection beyond the level provided in the TRIPS Agreement, which meets the request of the Japanese industry.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

**(8) Sending out the English Translations of Intellectual Property-Related Laws to the World**

In FY 2004 and beyond, the GOJ will promote the global distribution of accurate and unified English translations of Japanese intellectual property-related laws to the world in cooperation with the ministries and agencies concerned and relevant organizations, with the aim of making these laws understood and easy to utilize throughout the world.

(Judicial Reform Headquarters, Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **II. Measures Against Counterfeits and Pirated Copies**

In overseas markets, including the Chinese market, the number of Japanese companies damaged by counterfeits and pirated copies has been increasing and all types of business have been affected. The numbers of products which infringe not only trademarks but also designs, patents, and seeds and seedlings have been increasing, and the technical advance and large-scale distribution of counterfeits have been progressing. Counterfeits and pirated copies spread throughout the world from the country or region where they are manufactured. In particular, the connection between counterfeits/pirated copies and criminal organizations/terrorist groups has been pointed out in recent years. Therefore, the problem of counterfeits and pirated copies is to be tackled with the cooperation of all countries around the world. In addition, since the number of counterfeits and pirated copies being stopped at Customs has been rapidly increasing in Japan in recent years, there is strong concern about the flow of counterfeits and pirated copies into the Japanese domestic market.

The problem with counterfeits and pirated copies is that they cheat right holders out of potential profits and diminish the incentive to create new intellectual property, as well as decrease consumer trust in corporate brands, thereby hindering consumer benefits. In addition, counterfeits and pirated copies remarkably inhibit fair competition among companies in the global market.

In aiming to make Japan an “intellectual property-based nation,” both public and private sectors are strongly required to take powerful measures to protect Japanese companies against damage from counterfeits and pirated copies, not only in Japan but also overseas.

### **1. Strengthening Measures in Overseas Markets**

Damage from counterfeits and pirated copies in overseas markets has been spreading all over the world from Asia along with the progress of technical advances and large-scale distribution. Although Japanese companies are making efforts to protect their own profits in countries and regions where infringements have been exposed, it is difficult to ask the authorities in such countries and regions to regulate infringements or to improve systems through such private sector efforts alone. Especially for SMEs, the procedural, personnel,

and cost burdens are excessive, and they are thus actually helpless when faced with infringements. Therefore, the appropriate government support corresponding to the actual damage is strongly requested.

In particular, there has recently been concern about involvement by criminal organizations in the distribution of counterfeits and pirated copies. Moreover, it has been pointed out that unfair profits from selling counterfeits and pirated copies have become a financial source of terrorist groups. Therefore, the problem of counterfeits and pirated copies is to be tackled based on cooperation among all countries around the world.

In addition, from the viewpoint of maintaining global competition and strengthening the industrial competitiveness of Japan, the problem of counterfeits and pirated copies should not only be considered an issue of intellectual property protection but also be recognized as a global trade issue, and measures against the problem should be strengthened.

## **(1) Strengthening Measures against Countries and Regions Where Infringements Have Been Exposed**

### **1) Supporting measures against counterfeits and pirated copies taken by companies and organizations**

- i) Positioning measures against counterfeits and pirated copies as a key diplomatic measure of Japan, the GOJ will make efforts to strengthen systems by establishing the Intellectual Property Protection Office (tentative name) within the Economic Affairs Bureau of the Ministry of Foreign Affairs by the end of FY 2004 and offer thorough instructions on how to cope with infringements by preparing and distributing to all Overseas Establishments the “Manual to Cope with Intellectual Property Infringements.” In addition, by the end of FY 2004, Overseas Establishments will actively conduct support activities, such as understanding actual damage incurred by individual Japanese companies, following up measures against damage taken by the regulatory authorities, making a request to the regulatory authorities at the initiative of ambassadors, and clarifying the section that is in charge .

(Ministry of Foreign Affairs)

- ii) From FY 2004, Overseas Establishments and the Japan External Trade Organization (JETRO) will provide specific support, such as giving advice about procedures and measures to be taken, introducing search companies, and instructing companies

about the acquisition and enforcement of rights overseas.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

iii) In FY 2004, the GOJ will continue to gather know-how and related information, including measures to be taken when incurring damage from counterfeits and pirated copies, and to gather and distribute examples of such cases, which are needed for Japanese companies to enforce their rights in infringing countries by taking action such as instituting lawsuits; and the GOJ will distribute compiled material to companies.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

iv) In FY 2004, the GOJ will continue to support the overseas activities of the International Intellectual Property Protection Forum, the Organization for Promotion of Overseas Distribution of Contents, the Anti-Counterfeiting Association, and other private organizations in order to assist Japanese companies' efforts overseas against counterfeits and pirated copies.

(National Police Agency, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

v) In FY 2004 and beyond, the GOJ will support the introduction of a unified mark for overseas exports, which is being considered at the initiative of the Organization for Promotion of Overseas Distribution of Contents and the Anti-Counterfeiting Association, in order to facilitate efforts to expose copyright infringements.

(National Police Agency, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

vi) In FY 2004 and beyond, the GOJ will encourage private industrial organizations to establish an international arbitration/conciliation organization, in order to resolve international disputes over counterfeits and pirated copies effectively.

(Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

## **2) Making specific requests to countries and regions where infringements have been exposed**

i) In FY 2004, the GOJ will continue to strongly request, on the ministerial level and various other levels, that countries and regions where infringements have been exposed, such as Asian countries (including China), improve specific systems and strengthen regulations effectively. This includes a reduction of burden on right holders in Customs regulations and rigorous regulations against repeat offenses.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) In order to eradicate counterfeits and pirated copies overseas, it is important for Japan to produce a climate that emphasizes intellectual property and to become a country that does not produce counterfeits and pirated copies for itself. Therefore, from FY 2004, the GOJ will strengthen cooperation with authorities and organizations that work on measures in countries and regions where infringements have been exposed. The GOJ will also work on support for awareness-raising activities so that the general public in countries and regions where infringements have been exposed can recognize counterfeits and pirated copies as social ills.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **3) Conducting survey on infringement situation**

By the end of FY 2004, the GOJ will develop necessary systems, including the enactment of laws, for the foundation of activities overseas, as mentioned above, and to make sure that measures against counterfeits and pirated copies are effective. The following items are included.

### **a) Regular survey**

The GOJ will conduct surveys on a regular basis about the actual damage from counterfeits and pirated copies in countries and regions where infringements have been exposed, problems in the legal system of such countries and regions, and the effectiveness of enforcement.

### **b) Survey based on right holder's claim**

The GOJ will conduct an official inquiry into right holder claims within a specified period of time if it receives a claim from a right holder incurring damage due to unfair treatment by a foreign government.

c) Negotiations, etc. based on survey results

In case the GOJ determines, as a result of the aforementioned surveys, that the government of a country or region where a relevant infringement has been exposed has problems in dealing with the infringement case, the GOJ will request that the relevant government alleviate the problem through bilateral consultations and other opportunities. In addition, if the legal system of such country has problems under the WTO Agreement, the GOJ will try to settle the problem by using the WTO Dispute Settlement Procedures.

d) Preparation and disclosure of reports

The GOJ will prepare and disclose reports on the measures against counterfeits and pirated copies taken by other countries, on the basis of regular surveys and surveys based on a right holder's claim.

(Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **(2) Utilizing Bilateral Framework**

- i) In FY 2004, the GOJ will continue to conduct active negotiations in order to incorporate not only a provision for the establishment of an intellectual property-related legal system but also a provision for ensuring effective enforcement of the system into bilateral/multilateral agreements with Asian countries, such as free trade agreements (FTA), economic partnership agreements (EPA), investment agreements, and customs mutual assistance agreements.

(Ministry of Foreign Affairs, and other ministries and agencies concerned)

- ii) From FY 2004, the GOJ will take strategic and detailed measures, including requesting that other countries strengthen regulations and improve systems by presenting actual damage incurred by Japanese companies, in bilateral consultations.

(Ministry of Foreign Affairs, and other ministries and agencies concerned)

## **(3) Strengthening Cooperation with the United States and Europe**

From FY 2004, in order to be more effective in approaching and generating results in

countries and regions where infringements have been exposed, the GOJ will develop cooperation with the United States and EU (European countries) by actively utilizing regular consultations and individual consultations between the leaders or ministers of Japan and the United States and the EU so that they can take collaborative measures against such countries and regions.

(Ministry of Foreign Affairs, and other ministries and agencies concerned)

#### **(4) Utilizing Multilateral Framework**

i) Taking into consideration the situation that the problem of counterfeits and pirated copies did not remain in a specific country but has spread throughout the world and that a linkage between the problem and criminal groups/terrorist groups has been pointed out, the GOJ will recognize the problem as a “global trade issue” from FY 2004. To that end, the GOJ will actively take up the problem of counterfeits and pirated copies at the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the Asia-Pacific Economic Cooperation (APEC), the Asia-Europe Meeting (ASEM), the G8 Summit, and other international organizations and forums dealing with trade issues and intellectual property issues, by advocating treaties and ministerial declarations to prevent the proliferation of counterfeits and pirated copies, and will vigorously carry out activities to resolve the problem.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) In FY 2004, the GOJ will continue to strongly request Asian countries and regions to regulate counterfeits and pirated copies by actively utilizing the World Trade Organization’s (WTO) Transitional Review Mechanism (TRM) for China, the WTO review of the implementing legislation for the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and the WTO Trade Policy Review Mechanism (TPRM).

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

iii) In FY 2004, the GOJ will continue to take up the issue of enforcement against counterfeits and pirated copies as a main topic on the agenda in the WIPO and make active efforts to have the WIPO members share the common recognition that the regulation of counterfeits and pirated copies is a problem that must be addressed through the united efforts of WIPO members.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

iv) Promotion of intellectual property right protection was incorporated in the summit declaration and the ministerial declaration at the APEC in October 2003, and the establishment of intellectual property right (IPR) service centers and the “Comprehensive Strategy on IPR Protection,” which were proposed by Japan, were approved. In FY 2004, the GOJ will steadily promote the Comprehensive Strategy on IPR Protection at the APEC, establish an intellectual property right service center in Japan by the end of FY 2004, and actively work on other countries and regions to establish such centers at an early date.

(Ministry of Foreign Affairs, and Ministry of Economy, Trade and Industry)

v) In FY 2004, the GOJ will continue to actively engage in activities in the field of intellectual property rights under the ASEM Trade Facilitation Action Plan, and conduct new activities in which Asian countries and European countries cooperate to protect intellectual property.

(Ministry of Foreign Affairs, and other ministries and agencies concerned)

#### **(5) Supporting Asian Nations to Increase Their Capacity to Take Measures against Counterfeits and Pirated Copies**

i) Taking into account that the appropriate protection of intellectual property rights is essential for the expansion of trade investment and economic development in developing countries, in FY 2004, the GOJ will support developing countries in developing their intellectual property systems and strengthening the enforcement thereof according to the needs and priorities under individual aid projects, on the basis of the ODA Charter decided in August 2003.

(Ministry of Foreign Affairs, and other ministries and agencies concerned)

ii) Based on the current efforts for building capacities, including holding various seminars for foreign governments, in FY 2004, the GOJ will more effectively implement capacity-building activities for the protection of intellectual property rights, which are implemented by the ministries and agencies concerned for the government officials and private organizations/companies in Asian countries that take active measures against counterfeits and pirated copies, under cooperation among the ministries and agencies concerned and in collaboration with Japanese companies and relevant organizations such as JETRO.

(National Police Agency, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

## **2. Strengthening Regulations at the Border**

### **2-1. Strengthening Regulations of Cargoes for which Determination on Infringement Is Difficult**

Products infringing patent rights, which were produced in countries/regions where infringements have been exposed, are flowing into Japan, and border regulations must be urgently strengthened for products infringing patent rights, etc. The GOJ has been steadily promoting the establishment of a system to regulate such products at the border. For example, the amendment of the Customs Tariff Law in 2004 created a system in which if Customs finds a cargo suspected of infringing a right, it will notify the relevant right holder of information about the exporter and importer of the cargo.

However, the GOJ needs to establish a system to effectively seize products that infringe patent rights based on overhaul inspection, the opinions of the parties concerned, and the involvement of experts, while giving due consideration so as not to damage the legitimate interests of right holders and importers. Such considerations are necessary because it can be difficult in many cases to determine infringement just by the appearance of a product and because importers sometimes bring forward counterarguments in terms of legal/technical problems.

As for methods of enforcing border regulations, Customs is required to carry out regulations with simple and prompt procedures. Furthermore, it is important for Customs to be able to seize an importer's products, which are identical to a product that was

previously identified as an infringing product, in a simple and prompt manner.

**(1) Establishing a System for Specialized, Simple, and Prompt Determination of Infringement and Seizure of Products Infringing Patent Rights based on the Claims of Parties Concerned**

Products infringing patent rights, etc. that are seized at the border are wide-ranging, including those that are determinable from their appearance and those that require specialized determination of infringement based on the claims of the parties concerned. In addition, speed is an important factor in the measures taken against counterfeits and pirated copies, and especially for SMEs, a concise procedure and low-cost burden are virtually indispensable. Therefore, the GOJ will consider the following procedures for determining infringement and develop systems by amending the Customs Tariff Law and other related laws as needed, in order to ensure that right holders can use various procedures according to their needs and the nature of infringement.

a) Determination of infringement by the Customs Director

The Customs Director determines infringement based on the appearance of a product suspected of infringing or by utilizing the system for asking the Japan Patent Office for assistance or by DNA analysis.

b) Determination of infringement by conducting an overhaul inspection of samples

In order to facilitate the proof of infringement by right holders, right holders receive samples from Customs and conduct an overhaul inspection under given conditions. For cargoes for which infringement cannot be determined from their appearance, Customs also actively conducts an overhaul inspection at the discretion of the Customs Director.

c) Determination of infringement by utilizing outside experts

The Customs Director determines infringement by utilizing outside experts, such as attorneys at law and patent attorneys, to judge legal/technical issues that are necessary to the determination of infringement.

d) Determination of infringement by utilizing technology-judging organizations

The Customs Director determines infringement by utilizing technology-judging organizations consisting of experts to judge technical issues that are necessary to the determination of infringement.

e) Determination of infringement by utilizing a preliminary injunction issued by the court

A preliminary injunction issued by the court is utilized. Taking into consideration the necessity of a prompt remedy at the border, the court is expected to take action in the proceeding so as to ensure that a preliminary injunction is issued promptly. If the court issues a preliminary injunction during the period of the infringement-finding procedure by Customs, the Customs Director will find infringement based on determination of the infringement in the order. Further consideration is required in terms of legal relationships (propriety of legal binding) between the preliminary injunction and the finding of infringement.

f) Retention of cargoes for which an application for preliminary injunction has been filed but has not been issued

If a right holder has filed an application for preliminary injunction with the court, Customs does not allow the suspected cargo to pass customs for a certain period of time.

In regard to the idea of the determination of infringement by a deliberative organization within Customs, there is a need for simple and prompt processing by an administrative organization, but on the other hand, there are some opinions pointing out problems such as the overlap with judicial proceedings and cost-effectiveness. Therefore, further careful considerations are required based on the status of border regulations for products that infringe patents.

(Ministry of Justice, Ministry of Finance, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

## **(2) Seizing the Import of Identical Products Regardless of the Relevant Importer**

From the viewpoint of preventing the circumvention of measures to seize the infringing products and of securing the effectiveness of such measures, it is necessary to seize products suspected of being identical to relevant infringing products if any such products are to be imported after the relevant product was determined as an infringing product. Although it is even now systematically possible to stop the import of such products, regardless of importers, based on Customs determining the product to be

identical to an infringing product or judging the existence of licenses, the GOJ will improve the system by the end of FY 2004 to make the system simple and prompt.

(Ministry of Finance)

### **(3) Utilizing Alternative Dispute Resolution (ADR) Organizations**

In consideration of the diversity of patent infringement cases, the GOJ will consider desirable responses to be made by Customs in cases where both parties concerned, the right holder and the importer, utilize an alternative dispute resolution (ADR) organization, such as the Japan Intellectual Property Arbitration Center, and draw a conclusion by the end of FY 2004.

(Ministry of Finance)

## **2-2. Strengthening the Regulations of Products Infringing Trademark Rights**

Due to Customs' efforts, the number of products infringing intellectual property rights, such as fake brand products, that are seized by Customs has recently been significantly increasing. However, despite the efforts of Customs, massive counterfeits and pirated copies are flowing into Japan through various forms of distribution. In order to overcome such a situation and keep out fake brand products and other counterfeits at the border, it is necessary to strengthen border regulations drastically through the improvement of the legal system and other measures.

### **(1) Strengthening Regulations according to the Forms of Distributing Counterfeits**

#### **1) Strengthening the regulations of counterfeits and pirated copies at Customs**

Taking into account the current situation in which imports, under the guise of parallel imports or private imports or private small-lot cargoes, is one of the reasons for the deluge of fake brand products and pirated copies in Japan, the GOJ will, in FY 2004, continue to promote the strengthening of cooperation between Customs and right holders, the reinforcement of inspection equipment and the information system at Customs, the securing of a necessary number of Customs officials, and the improvement of the capabilities of Customs officials, in order to further strengthen the regulations against

such kinds of imports.

(Ministry of Finance)

## **2) Strengthening regulations against evasion of the law by removing marks**

In order to prevent evasion of the law, specifically, the clearing of customs by removing marks attached to products infringing trademark rights, by the end of FY 2004, the GOJ will consider related laws, such as the Trademark Law, the Unfair Competition Prevention Law, and the Customs Tariff Law, and develop the system by amending laws as needed, in compliance with the purport of the provision of Article 46 of the TRIPS Agreement, thereby strengthening regulations at Customs.

(Ministry of Finance, and Ministry of Economy, Trade and Industry)

## **3) Strengthening regulations against evasion of the law by removing components and parts**

In order to prevent evasion of the law, specifically, clearing through Customs by removing parts of products infringing design rights at the Customs Office, by the end of FY 2004, the GOJ will consider related laws, such as the Design Law, the Unfair Competition Prevention Law, and the Customs Tariff Law, and develop the system by amending laws as needed, thereby strengthening regulations at Customs.

(Ministry of Finance, and Ministry of Economy, Trade and Industry)

## **4) Strengthening the regulations of products that imitate configuration**

By the end of FY 2004, the GOJ will consider the Unfair Competition Prevention Law and the Customs Tariff Law, etc. and develop a system, by amending laws as needed, which strengthens regulations at Customs against the import of products that imitate configuration, products that bring about confusion with a well-known indication, and products that abuse a famous indication. In doing so, the GOJ will establish a system to facilitate determination of infringement at Customs for smooth operations.

(Ministry of Finance, and Ministry of Economy, Trade and Industry)

## **(2) Strengthening the Regulations of Private Import, etc.**

The GOJ will make it clear to the public that counterfeits are harmful to society. By the

end of FY 2004, the GOJ will also consider the prohibition of possessing a fake brand product for personal use with the knowledge that the product is a fake brand, ban the import of the product at Customs, and develop the most effective system, by amending the Trademark Law and other related laws as needed, to prevent a deluge of counterfeits.

(Ministry of Finance, and Ministry of Economy, Trade and Industry)

### **3. Strengthening Domestic Regulations**

The trade of massive fake brand products on Internet auction sites and the infringement of copyrights of movies and music by using file-swapping software are rampant, and the trade of products that use one's portrait without authorization is becoming a serious problem in Japan. Taking such situations into consideration, it is necessary to further strengthen domestic regulations.

In addition, in order to prevent counterfeits and pirated copies from being manufactured overseas, it is necessary to strengthen domestic measures including the improvement of the legal system to prevent the leakage of know-how, etc.

#### **(1) Strengthening the Regulations of Infringements on the Internet**

i) Taking into consideration the seriousness of the trade of massive counterfeits and pirated copies via Internet auction sites and the problem of copyright infringement by using file-swapping software or equipment to circumvent technical protections, the GOJ will, by the end of FY 2004, consider a wide range of regulatory strategies, including the following items, and develop the system by amending laws as needed, in order to strengthen the regulations which oppose such infringements.

a) Strategies for strengthening regulations, such as identification of persons who put counterfeit articles up for auction by the administrator of Internet auction sites, and strategies for facilitating the deletion from the site of auctioned articles that infringe rights

(National Police Agency, Ministry of Public Management, Home Affairs, Posts and Telecommunications, and Ministry of Economy, Trade and Industry)

b) Strategies for strengthening regulations under the Trademark Law, the Design Law, etc.

(Ministry of Economy, Trade and Industry)

c) Strategies for strengthening the regulations which oppose copyright infringements using file-swapping software

(Ministry of Education, Culture, Sports, Science and Technology)

d) Strategies for strengthening regulations and crime-deterrent measures under the Antique Dealings Law

(National Police Agency)

e) Strategies for strengthening the regulations of indications, which cause confusion among consumers, under the Specific Commercial Transaction Law

(Ministry of Economy, Trade and Industry)

ii) In FY 2004 and beyond, the GOJ will further strengthen regulations by police of the trade of counterfeits and pirated copies via auction sites and the unlicensed uploading of movie files (making them transmittable). In addition, Customs will actively regulate the import of counterfeits and pirated copies that are ordered via auction sites.

(National Police Agency, and Ministry of Finance)

iii) In FY 2004, the GOJ will continue to support the utilization of the system to constantly and automatically monitor illegal content on the Internet.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, and Ministry of Economy, Trade and Industry)

## **(2) Strengthening Protection against the Imitation of the Configurations of Products**

i) By the end of FY 2004, the GOJ will examine whether or not imitations of the inner structure of products should be considered as products that imitate configuration under the Unfair Competition Prevention Law, consider the period in which imitations of the configuration of products are prohibited, and develop the system by amending the Unfair Competition Prevention Law as needed.

(Ministry of Economy, Trade and Industry)

ii) From FY 2005, if counterfeits are exposed for a design under the application process, the examination of the design will be started immediately, and notification of the results of the first examination will be made within one month unless there are unforeseen problems in the application process.

(Ministry of Economy, Trade and Industry)

### **(3) Regulating Goods that Use Portraits, etc. without Authorization**

In order to regulate the trade of goods that use the portraits and names of entertainers and athletes, the GOJ will, by the end of FY 2004, consider subjecting such trade to protection under the Unfair Competition Prevention Law or introducing criminal penalty in light of actual damage and develop the system by amending the laws as needed.

(Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

### **(4) Preventing the Leakage of Know-How, etc.**

i) In FY 2004, the GOJ will continue to take steps to thoroughly inform SMEs and others of specific measures that companies should implement to prevent the leakage of know-how, design drawings, etc. overseas, such as those in the “Guidelines for the Prevention of Leakage of Technology.”

(Ministry of Economy, Trade and Industry)

ii) In FY 2004, the GOJ will also consider the exposure of trade secrets overseas in light of actual damage and strengthen measures as needed, in order to prevent the overseas leakage of know-how, etc. through engineers.

(Ministry of Economy, Trade and Industry)

### **(5) Strengthening Regulations by Police**

i) In FY 2004, the GOJ will continue to precisely clarify the actual status of criminal organizations that enjoy illicit gains through illegal sales of counterfeits and pirated copies and to strengthen regulations against such organizations, in order to cut off the supply routes of counterfeits and pirated copies. In addition, the GOJ will promote the activities of police a keeping in mind the connection between IP-related crimes and the fund-raising activities of international terrorist groups.

(National Police Agency)

ii) In FY 2004, the GOJ will continue to strengthen regulations of such crimes as sales of counterfeits and pirated copies on the street in addition to strengthening the regulations opposed to infringements on the Internet (page 74).

(National Police Agency)

iii) In FY 2004, the GOJ will continue to strengthen the ties between industry organizations such as the Anti-Counterfeiting Association and the police authorities to implement effective regulations based on highly accurate information.

(National Police Agency)

#### **4. Strengthening Support and Awareness-Raising for SMEs and Venture Companies**

The problems of counterfeits and pirated copies are not only an issue of vital importance for companies but also force them to bear excessive personnel and cost burden in taking measures against the problems. Since it is extremely difficult for SMEs to deal with the problem, the GOJ should provide active support for SMEs so that they can take sufficient action against the problem of counterfeits and pirated copies.

In addition, in order to eradicate counterfeits and pirated copies, from a long-term perspective, it is most important that each and every national is aware that counterfeits and pirated copies are harmful to society. Therefore, the GOJ should improve public education and public awareness for this purpose.

##### **(1) Supporting Measures Taken by SMEs and Venture Companies**

Taking into consideration that SMEs and venture companies have great difficulties in the personnel and cost aspects of taking measures against counterfeits and pirated copies, from FY 2004, the GOJ will strengthen specific support for SMEs and venture companies, including consultations and subsidies for the procedures for acquiring rights, such as filing foreign applications and translation, a survey on actual damages in foreign countries, negotiations with and requests to public security/administrative authorities, and activities related to the enforcement of rights such as the filing lawsuits. The GOJ will also further strongly promote strategies such as providing SMEs with information about the legal system of foreign countries and their operations, actual damages from counterfeits and pirated copies, and measures against them.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications,  
Ministry of Education, Culture, Sports, Science and Technology, Ministry of  
Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and  
Industry)

## **(2) Strengthening Public Awareness-Raising Activities**

In order to eradicate counterfeits and pirated copies, in FY 2004, the GOJ will continue to promote awareness-raising activities for the public, i.e. consumers, so that the general public becomes aware that counterfeits and pirated copies are harmful to society. The GOJ will also promote education and the learning of appropriate consumer behavior through school education.

(National Police Agency, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

## **5. Reinforcing the Frameworks against Counterfeits and Pirated Copies in the Public and Private Sectors**

A wide variety of ministries and agencies are involved in the government measures against counterfeits and pirated copies, and each ministry and agency is taking measures on its own. Therefore, for companies incurring damage, it is not clear with which ministry or agency they should consult. In addition, the sharing of information about actual damage among ministries and agencies concerned and government activities in a united effort are insufficient under the present circumstances. Strong cooperation among ministries and agencies concerned across boundaries and a framework that is very convenient for companies are essential for the entire nation to promote measures in overseas foreign markets and border and domestic regulations in terms of the problem of counterfeits and pirated copies.

In addition, as with the government, relevant organizations are required to strengthen cooperation with foreign organizations as well as domestic organizations, and are also required to implement effective measures against counterfeits and pirated copies jointly with the government.

### **(1) Establishing a Framework of Collaboration within the Government**

- i) Regarding measures in the overseas markets and border and domestic regulations, the GOJ will make the Ministry of Economy, Trade and Industry serve as an integrated

section for consultation services so that the ministries and agencies concerned can work on the following measures in a united effort. In addition, the GOJ will establish a directors' meeting of the ministries and agencies concerned (tentative name) as soon as possible in FY 2004, in order to establish comprehensive cooperation in taking measures against counterfeits and pirated copies.

- a) Establishing an integrated office for consultation services and strengthening cooperation

In order to promptly respond to consultations by right holders and companies, the GOJ will establish an integrated office for consultation services of the government within the Ministry of Economy, Trade and Industry, and also create a framework in which the ministries and agencies concerned cooperate with each other in a united effort.

- b) Sharing information among the ministries and agencies concerned

The GOJ will establish a database so that the ministries and agencies concerned can share information about counterfeits and pirated copies.

- c) Utilizing information by the regulatory authorities

The police and Customs utilize information about the manufacturing and distribution of counterfeits and pirated copies in foreign markets to prevent counterfeits, etc. from entering the domestic market and eliminate them from inside of Japan.

- d) Reflecting on the government policy

The GOJ will formulate and implement policies for measures against counterfeits and pirated copies, based on various kinds of information collected and analyzed both at home and overseas, and also feed back the results thereof to persons concerned.

- e) Adjusting policies among the ministries and agencies concerned and implementing them comprehensively

In improving laws and systems, which are related to measures in overseas markets and borders and domestic regulations, and in strengthening regulations and operations, the ministries and agencies concerned make arrangements with each other for effective and efficient implementation and implement such laws and systems comprehensively in close cooperation.

(National Police Agency, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

ii) From FY 2004, the GOJ will support the establishment of a framework in which the chambers of commerce and industry and patent attorney associations establish a network at the initiative of JETRO in order to receive and respond to inquiries from companies, not only in Tokyo but also in local areas and overseas, and to provide services including giving advice on the acquisition of rights and counterfeit measures, introducing local patent attorneys, attorneys at law and search organizations, providing consultations for individual cases, communicating with the ministries and agencies concerned, and making requests to the government authorities of countries where infringement cases have been exposed.

(Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

iii) From FY 2004, the GOJ will promote information exchange and cooperation between the police and Customs through the Liaison Conference on Information about Measures against Counterfeits and Pirated Copies, in order to ensure further effective enforcement of both border regulations and domestic regulations.

(National Police Agency and Ministry of Finance)

## **(2) Strengthening Cooperation with the Authorities in Countries and Regions Where Infringements Have Been Exposed**

In FY 2004, the GOJ will continue to promote the conclusion of mutual assistance agreements and to promote regular consultations between authorities in Japan and those in countries and regions where infringements have been exposed in addition to daily information exchange, in order to specifically strengthen cooperation with the authorities (government office granting rights, police authorities, and customs authorities) in such countries and regions.

(National Police Agency, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy,

**(3) Strengthening Public-Private and Private-Private Cooperation**

- i) In FY 2004, the GOJ will continue to strengthen public-private cooperation through the implementation of public-private joint missions, in order to conduct negotiations with and approach the authorities in countries and regions where infringements have been exposed.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

- ii) From FY 2004, the GOJ will actively encourage the strengthening of cooperation between organizations to cope with counterfeits and pirated copies in foreign countries, such as the QBPC (Quality Brands Protection Committee) and BSA (Business Software Alliance), and domestic organizations related to measures against counterfeits and pirated copies, as well as strengthening cooperation among relevant domestic organizations.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

**(4) Reinforcing the Frameworks against Counterfeits and Pirated Copies in Private Companies**

- i) In FY 2004, the GOJ will continue to hold seminars for companies, etc. concerning measures against counterfeits and pirated copies in major cities, including Tokyo and Osaka, in close cooperation among the ministries and agencies concerned, with the aim of sharing information about the importance of measures against counterfeits and pirated copies and the necessity of a stronger in-house framework.

(National Police Agency, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

- ii) In FY 2004, the GOJ will continue to encourage major industrial associations to enhance and strengthen their organizations by establishing a committee on measures against counterfeits and pirated copies and taking other measures, and the GOJ will also encourage Japanese companies to strengthen the framework for measures against

counterfeits and pirated copies at overseas business locations.

(Ministry of Economy, Trade and Industry, and Ministry of Education, Culture, Sports,  
Science and Technology)

## **6. Handling Measures against Counterfeits and Pirated Copies in an Intensive Manner**

In consideration of the urgency of the problem of counterfeits and pirated copies, the GOJ will handle measures against counterfeits and pirated copies in an intensive manner in FY 2004. For example, the GOJ will deal with the enactment and amendment of laws concerning the aforementioned measures in a package bill.

(Ministries and agencies concerned)

## Chapter 3 Exploitation

Even though outstanding results are produced from intellectual creation activities and such results are properly protected, it will be a “waste of treasures,” and the revitalization of the economy will not be achieved, if these results are not utilized effectively. However, in Japan, there are a number of patents that are not in use. It has also been indicated that R&D investments in the private sector do not always contribute to economic growth. In order to make Japan an “intellectual property-based nation,” owners of intellectual property, including private companies, are expected to exploit such assets in their business activities to the maximum extent, and it is also necessary for the GOJ to develop the business environment to this end.

In such light, by taking the following measures, the GOJ will support companies in promoting the strategic exploitation of intellectual property and develop the necessary environments for such exploitation of intellectual property. The GOJ will also support companies in carrying out the international standardization of activities for the purpose of increasing the value of their technologies to the maximum extent.

### **1. Support for the Strategic Exploitation of Intellectual Property**

#### **(1) Promoting Management Strategy Emphasizing Intellectual Property for Private Companies**

- i) Some companies have started to consider intellectual property as a “source of competitiveness that will produce benefits in the future” and place it at the core of their management strategy, taking a progressive approach to dealing with business strategy, R&D strategy and intellectual property strategy in unison when planning management strategy. In order to further promote such an approach, in FY 2004, the GOJ will continue to encourage companies to increase awareness of the “Guidelines for Obtaining and Managing Intellectual Property,” “Guidelines for the Management of Trade Secrets” and “Guidelines for the Prevention of Leakage of Technology” (published by the Ministry of Economy, Trade and Industry in January and March 2003) and formulate management strategy under these guidelines. Furthermore, in formulating company strategies focusing on intellectual property, due consideration

should be given to the independence of companies.

(Ministry of Economy, Trade and Industry)

- ii) For the purpose of encouraging companies to manage their trade secrets and prevent the exposure of their technologies, the GOJ will initiate discussion with the aim of standardizing organizational management, which is described in the “Guidelines for the Management of Trade Secrets” and the “Guidelines for the Prevention of Leakage of Technology, as the Japanese Industrial Standards (JIS), under the principle of self-declaration of compliance, and draw a conclusion by the end of FY 2005.

(Ministry of Economy, Trade and Industry)

## **(2) Promoting Disclosure of Information on Intellectual Property**

In order for the securities markets to properly evaluate how individual companies recognize intellectual property in connection with their businesses and for individual companies that strategically carry out “IP-based management” to have close dialogues with investors via the securities markets, the GOJ will take the following measures to encourage companies to voluntarily disclose information on intellectual property. However, whether or not to disclose information should be decided by individual companies according to their own discretion.

- i) For the purpose of promoting dialogue between the companies that have patent/technology information and the securities markets, in FY 2004, the GOJ will take support measures to increase awareness so that more than 100 companies will prepare “intellectual property reports” according to the “Guidelines for Disclosure of Intellectual Property Information” prepared and published by the Ministry of Economy, Trade and Industry (published in January 2004). The GOJ will also aim to increase awareness among investors and the securities markets so that the “reports” prepared by individual companies will be broadly and precisely evaluated by investors.

(Ministry of Economy, Trade and Industry)

- ii) In FY 2004, the GOJ will start to consider how to describe the format for R&D/patent-related information on a voluntary basis in securities reports, including the possibility of using the aforementioned “intellectual property reports.”

(Financial Services Agency and Ministry of Economy, Trade and Industry)

### **(3) Formulating Intellectual Property Strategy Indicators**

When developing intellectual property strategies, it is effective for individual companies to clearly identify and utilize intellectual property strategy indicators to establish targets of their own accord and desire to achieve, rather than applying their strategy under uniform rules. Based on this recognition and in light of the results of the deliberation in FY 2003, the GOJ will, in FY 2004, aim at formulating indicators that will be helpful for individual companies in developing their own intellectual property strategies.

(Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **(4) Establishing a Method of Intellectual Property Evaluation**

i) By the end of FY 2004, the GOJ will consider and organize ideas about the ideal criteria for objectively evaluating intellectual property (quantitative analysis through conversion to the amount of money or qualitative analysis), with reference to evaluation methods applied by private rating firms and according to the characteristics of each type and transaction of intellectual property. The GOJ will also make efforts to establish a market for the assignment of patents and other intellectual property by organizing and disclosing example cases in which such property has been evaluated for mergers and acquisitions of companies, which are expected to increase in the future. In regard to the evaluation of intellectual property, the GOJ should secure flexibility by entrusting companies with intellectual property evaluation according to their independent judgment and ideas.

(Ministry of Economy, Trade and Industry)

ii) In FY 2004, the GOJ will start to consider an ideal method of evaluating intellectual property at universities, while making reference to the aforementioned criteria in i) above and obtaining the help of the private sector.

(Ministry of Education, Culture, Sports, Science and Technology)

### **(5) Utilizing Trust Systems to Promote the Management and Securitization of Intellectual Property**

A bill for the Trust Business Law was submitted to the ordinary diet session in FY 2004; the gist of the bill is to expand the scope of eligible trustees to include entities other than

financial institutions, such as approved TLOs, abolish the limitation of eligible property in trust business, and provide exceptional rules concerning trust within business groups. When the bill is passed, the GOJ will take the following measures to ensure the smooth use of intellectual property trusts.

i) In order to ensure that a trust will be smoothly used with respect to the right to obtain a patent before filing a patent application, in FY 2004 and beyond, the GOJ will consider ideal forms of patent registration and publication methods, while understanding the situation regarding the use of trusts for intellectual property.

(Ministry of Economy, Trade and Industry)

ii) For the purpose of enabling the parent company that serves as the trustee in a trust for the intellectual property management in a business group to use the intellectual property in the trust itself, in FY 2004 and beyond, the GOJ will consider the necessary measures, including the amendment of the Trust Law regarding the trustee's duty of loyalty, and draw a conclusion by the end of FY 2005.

(Ministry of Justice)

iii) Considering the status of the use of the trust system in the strategic management of intellectual property and financing, the GOJ will consider necessary measures in FY 2004 and beyond.

(Financial Services Agency and Ministry of Economy, Trade and Industry)

#### **(6) Diversifying Financing Methods Using Intellectual Property**

i) In FY 2004, the GOJ will continue efforts to diversify systems for financing with the use of intellectual property, including equity investments, project finance, and financing for SMEs.

(Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

ii) With the aim of encouraging holders of intellectual property rights to make new inventions or create new works, a new finance system has been established in which the Development Bank of Japan extends loans to special purpose companies, etc., engaging in transferring, assigning, or licensing intellectual property from the right holders to other businesses. In FY 2004, the GOJ will promote the use of this finance system.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

- iii) In order for businesses including SMEs and venture companies that regard intellectual property as an important element in their management strategies to raise funds smoothly with the use of their intellectual property, in FY 2004, the GOJ will continue to promote efforts by the Development Bank of Japan to extend loans secured by intellectual property and also actively encourage similar efforts in the private sector.

(Ministry of Finance and Ministry of Economy, Trade and Industry)

## **2. Support for International Standardization Activities**

### **(1) Reinforcing Strategic International Standardization Activities**

#### **1) Promoting R&D, obtainment of intellectual property rights, and standardization in collective, national R&D projects**

- i) With respect to R&D projects of which the results are expected to spread and which will have a broad influence on society in the future, in FY 2004, the GOJ will continue to work on a strategy or vision for the standardization at an early stage of such R&D projects and promote standardization activities for the projects which have achieved results.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

- ii) With respect to national R&D projects to be conducted while taking standardization strategies into account, the GOJ will clearly include not only strategies for obtaining intellectual property rights but also strategies for standardization of the implementation plans for such R&D projects. In FY 2004, the GOJ will start securing financial sources for standardization activities and carrying out such activities by effectively using the secured financial sources. The persons in charge of R&D projects should responsibly deal with these strategies regarding the obtainment of intellectual property rights and standardization and consult with experts who have knowledge of

intellectual property and standardization, if necessary.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

- iii) In FY 2004, universities and public research institutes will continue considering whether they should take standardization into account when they carry out R&D, according to their independent judgment and with the use of experts in this field. The GOJ will encourage universities and public research institutes to take measures toward standardization, such as proactively participating in activities for the international standardization of R&D results, while respecting their individual characteristics and independent judgment as well as aiming at diffusing R&D results.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **2) Reinforcing strategic international standardization activities through industry-academic-government cooperation**

- i) In FY 2004, the GOJ will continue to take measures to accelerate deliberations of domestic standards in order to strategically use domestic standards as a step toward international standards, with the aim of achieving international standardization in R&D projects by the national government or private companies. The GOJ will also reinforce the relationship between domestic standardization and international standardization. In FY 2004, the GOJ will take steady steps to accelerate the deliberation of the Japan Industrial Standards (JIS) which commenced in FY 2003.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

- ii) The GOJ will promote the international standardization of technologies created in Japan in a consistent and expeditious manner. To this end, the GOJ will interact with international standardization organizations such as the International Standardization

Organizations (ISO), the International Electrotechnical Commission (IEC) and the International Telecommunication Union (ITU) while considering the roles of individual organizations. Furthermore, in order to reinforce cooperation, in the information communication field in particular, between the Ministry of Public Management, Home Affairs, Posts and Telecommunications, the Ministry of Economy, Trade and Industry and other ministries and agencies concerned as well as to reinforce cooperation between industries, universities and the government in FY 2004, the GOJ will continue to promote exchange of information and opinions in a more consistent manner than previously. The GOJ will also make efforts to promote appropriate cooperation in trend survey/analysis on standardization activities abroad and domestic deliberations on international standardization.

In order to ensure that the human resources at universities, public research institutes and companies will enthusiastically and consistently participate in international standardization activities and be able to take charge of major secretariat works in such activities, the GOJ will continue reinforcing national strategic action in FY 2004.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

- iii) The GOJ will raise awareness of the importance of standardization activities, especially among the top executives of universities and companies. To this end, the GOJ will continue to hold seminars regarding the standardization of activities for executives and researchers at universities and companies in FY 2004.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

- iv) From the perspective of promoting strategic international standardization activities, in FY 2004, the GOJ will continue to take measures to reinforce cooperation with Asian countries, which have close economic relationships with Japan, in joint development of international standards through Japan-China-ROK meetings on standardization of information and communication technology, ASEAN Standards and Conformity

Cooperation Program, and the Pacific Area Standards Congress, etc.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **3) Creating a favorable environment for the development of human resources specializing in standardization**

In FY 2004, the GOJ will continue to establish environments to promote the development of human resources specializing in standardization at universities and other educational institutions. In this regard, the GOJ will encourage universities in particular to take voluntary measures to provide educational programs regarding standardization in courses for the development of human resources specializing in standardization that will directly lead to business, existing courses for the development of intellectual property experts, and Management of Technology (MOT) courses.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

### **4) Conducting research on standardization and spreading the research results across industries**

The GOJ will continue to conduct research on standardization including analysis of the economic effects of international standardization on industrial competitiveness, which started in FY 2003, and will spread the information obtained from the research across industries in FY 2004 and beyond.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **(2) Promoting International Standardization Activities in the Private Sector**

i) In order to establish Japanese technologies as international standards, it is absolutely

necessary for individual companies to take positive measures to establish their own technologies as international standards. To this end, in FY 2004 and beyond, the GOJ will encourage individual companies to establish general departments in charge of international standardization activities and develop cooperation between these departments and intellectual property departments, positively evaluate employees engaging in international standardization activities, and take strategic measures to submit proposals for international standardization.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

- ii) In FY 2004 and beyond, the GOJ will promote international standardization activities in the private sector while regarding it as the GOJ's important task to support industry in carrying out international standardization activities and taking appropriate support measures for international standardization activities by companies in strategically important fields.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

### **(3) Establishing Rules for Treating Intellectual Property Rights Relating to Technical Standards**

#### **1) Considering ways to respond to the exercise of rights for essential patents, which impedes the development and diffusion of technical standards**

- i) With respect to ways to prevent the right holders of patents that are essential for technical standards (essential patents) from impeding the development and diffusion of technical standards by exercising their rights against those who manufacture products according to the standards, it is important to consider this issue from various perspectives, such as the contents of patent policies of standardization organizations and the operation thereof, the existence of patent pools relating to technical standards and the types of such pools, and the process for exercising rights, etc. Therefore, the GOJ will consider the following measures to improve patent policies in order to prevent the exercise of rights, which obstruct the establishment of technical standards, as well as the applicability of the Patent Law (compulsory license) against the exercise of rights after the technical standards have been established..

a) The GOJ will further consider measures to improve patent policies in light of the results of the survey on specific needs of companies and the trend survey on international discussion, which were conducted in FY 2003, and will draw a conclusion by the end of FY 2004. Furthermore, based on the survey results, in FY 2004 and beyond, the GOJ will review the contents of patent policies of domestic standardization organizations and the operations thereof along with discussions at international standardization organizations.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

b) The GOJ will promote discussion at the Industrial Structure Council with respect to the applicability of the Patent Law (compulsory license), which started in FY 2003, while taking into account the specific needs of companies and trends in international discussion, and will draw a conclusion by the end of FY 2004.

(Ministry of Economy, Trade and Industry)

ii) In FY 2004 and beyond, the GOJ will consider the applicability of the Antitrust Law to cases where patentees who participate in joint standardization projects intentionally fail to reveal the existence of their own patent rights, but only after the technical standards involving their patents as essential elements are established, claim their patent rights and file lawsuits, thereby seriously impeding standardization, or where patentees intend to maintain their own monopoly through such act. The GOJ will consider this issue while taking into account the results of the interview survey conducted in FY 2003 targeting domestic companies and the overseas survey to be conducted in FY 2004.

(Japan Fair Trade Commission)

## **2) Promoting international discussion over technical standards and intellectual property rights**

i) In FY 2004 and beyond, the GOJ will promote international discussion concerning the measures to review the contents of patent policies of international standardization organizations and the operation thereof, by coming up with possible problems with technical standards and intellectual property rights and the direction for solving these problems through talks with the countries concerned, conferences at international

standardization organizations, and international conventions on technical standards.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

- ii) In FY 2004 and beyond, through talks with the countries concerned, the GOJ will promote international discussion concerning problems with technical standards and intellectual property rights mentioned in (3), 1), ii).

(Japan Fair Trade Commission)

### **3) Improving the environment for patent pools**

- i) A patent pool is a system that can promote competition through the exchange of technologies among patentees by enabling them to license their patents with one another, and it is also one of the effective means of making essential patents available to the general public. Therefore, the GOJ will develop the environment for patent pools from the following perspectives.

In order for patent pools to function smoothly, in FY 2004, the GOJ will start to consider systems and mechanisms with respect to measures against excessively high license fees, expert testimony on patents that are essential for technical standards, and the methods to evaluate such essential patents, while taking into account the specific needs of companies and the trend of international discussions, with the aim of identifying the direction to undertake. More specifically, with respect to expert testimony on essential patents and smooth evaluation, the GOJ should consider measures for the effective use of human resources specializing in patent evaluation, for the purpose of promoting the use of alternative dispute resolution (ADR), and for ensuring that companies participating in patent pools will be able to easily consult with third party experts such as lawyers and patent attorneys for such testimony.

(Council for Science and Technology Policy, Ministry of Public Management, Home Affairs, Posts and Telecommunications, and Ministry of Economy, Trade and Industry)

- ii) The formation and operation of patent pools, in which multiple right holders participate, is likely to raise the issue of the violation of the Antitrust Law. For this reason, in FY 2004 and beyond, the GOJ will consider the necessity to review the “Guidelines for Patent and Know-How Licensing Agreements under the

Antimonopoly Act” prepared by the Japan Fair Trade Commission, while taking into account the results of the interview survey conducted in FY 2003 targeting domestic companies and the overseas survey to be conducted in FY 2004.

(Japan Fair Trade Commission)

### **3. Developing Environments for Intellectual Property Exploitation**

#### **(1) Reinforcing the Stability of Intellectual Property License Contracts**

##### **1) Protection of the license of an intellectual property right in the case of the bankruptcy of a licensor**

In May 2004, the new Bankruptcy Law was enacted. The new law is intended to protect a licensee by restricting the bankruptcy administrator's right of rescission in cases in which a licensor in a license concerned contract regarding an intellectual property right has gone bankrupt, provided that the license is effective against a third party. The GOJ will also consider ways to protect licenses under the intellectual property laws, more specifically, the possibility of protecting a license in cases in which the license is not effective against a third party under the existing laws (e.g. unregistered non-exclusive license) as well as in cases in which the licensor has gone bankrupt or assigned his right to a third party, and will draw a conclusion by the end of FY 2004. With respect to copyright licenses, following the conclusion by the Copyright Section Meeting of the Cultural Council in FY 2003, the GOJ will consider developing a user protection system in the course of developing infrastructures for the rules of use in FY 2004 and beyond, while taking into account the results of the discussion on this issue concerning other intellectual property rights.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

##### **2) Improving the legal stability of open-source software licenses**

With the aim of further promoting smooth development of businesses that use open-source software, the GOJ will organize its ideas on the sharing of responsibility between vendors and users in the case of system architecture with the use of open-source software, and publish a conclusion by the end of FY 2004.

(Ministry of Economy, Trade and Industry)

## **(2) Promoting Businesses That Use Intellectual Property**

For the purpose of assisting companies, universities, and public research institutes in conducting intellectual property management and intellectual property strategies, in FY 2004, the GOJ will continue to develop infrastructures for the utilization of intellectual property by building networks for human resources and information for patent/technology licensing, hold international patent licensing seminars with the objective of developing experts in patent/technology licensing and networks thereof, and establish and disclose a database of intellectual property traders. Furthermore, in FY 2004, the GOJ will also continue to consider measures to promote intellectual property businesses such as patent information search, intellectual property evaluation, intellectual property accounting, patent mapping, intellectual property strategy planning, matching negotiation and licensing negotiation.

(Ministry of Economy, Trade and Industry)

## **(3) Introducing the System for Registering the Intention to Grant a License (License of Right)**

With the aim of promoting the exploitation and distribution of patents not in use, in FY 2004, the GOJ will continue to consider the possibility of introducing a system in which a patent holder may register his intention to grant a license for his patented invention to a third party.

(Ministry of Economy, Trade and Industry)

## **(4) Promoting the Smooth Use of Intellectual Property**

i) In order to promote the smooth use of intellectual property concerning upstream technology that is likely to be used for general purposes or few practical purposes (e.g. gene-related technology and research tools in the life science field), in FY 2004, the GOJ will continue to conduct research and study regarding the possibility of reviewing the Patent Law (e.g. limits of a patent right for the purposes of experiment or research, compulsory license) and to take measures to ensure the smooth conclusion of license contracts, taking into account the specific needs from companies

and the trend of international discussions. Furthermore, in FY 2004, the GOJ will continue to take prompt and strict measures against violations of the Antitrust Law particularly in the intellectual property field, including the abuse of rights, while making use of the intellectual property task force (the team specializing in intellectual property) and improving the regulatory system against such violations.

(Japan Fair Trade Commission, Ministry of Health, Labor and Welfare, and Ministry of Economy, Trade and Industry)

- ii) In order to ensure that the “arbitration system for copyright” will be used smoothly in cases in which copyright license contracts cannot be concluded when copyright owners are unknown, the GOJ will review the arbitration procedures and will develop and publish the manual for using the arbitration system by the end of FY 2004. While strengthening the protection of contents, it is also necessary to give consideration to the balance between the benefits of right holders and the benefits of the public. For the purpose of promoting the fair use of contents, which seems necessary for the entire society, the GOJ will consider ideal forms of “provisions to restrict rights” under the Copyright Law in FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

- iii) It is necessary to develop a system that enables the smooth distribution of R&D results as well as to properly manage such results. In light of this, in FY 2004 and beyond, the GOJ will continue its efforts to enhance the system for broadly collecting gene resources of plants, animals and microorganisms and relevant R&D results, evaluating the characteristics of and storing and providing such resources (e.g. the national bio-resource project, the gene bank project, the rice genome resource center, and biological genetic resource preservation facilities). Furthermore, in FY 2004, the GOJ will also continue its efforts to enhance the system for storing research materials that are important for the isolation and functional analysis of useful genes and for providing such materials to private companies.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **(5) Enhancing and Promoting the Use of Insurance for Intellectual Property**

In order for the smooth operation of for licensing activities on intellectual property

content business overseas and domestically, it is absolutely necessary to enhance insurance coverage of intellectual property. In light of this, in FY 2004, the GOJ will continue to promote the use of the “Intellectual Property Right License Insurance” provided by NEXI to cover risks arising from licensing activities overseas.

(Ministry of Economy, Trade and Industry)

#### **(6) Promoting the Transnational Use of Intellectual Property through Tax Treaties**

In March 2004, the new Japan-US Tax Treaty entered into force. The new treaty, which is intended to grant immunity from taxation for royalties for intellectual property and other intangible property at a source country, can be highly evaluated from the perspective of activating the use of intellectual property. In FY 2004 and beyond, upon occasions to amend tax treaties with other countries, the GOJ will carry out discussion basically following the purport of this new treaty while taking a comprehensive standpoint into account and aiming at concluding treaties as soon as possible.

(Ministry of Finance)

### **4. Supporting SMEs/Venture Companies and Local Areas**

Intellectual property is an essential factor of management for SMEs and venture companies to grow and develop while making use of innovative technologies. However, compared with large companies, local governments and SMEs/venture companies have yet to fully understand the importance of intellectual property strategies, and they do not have sufficient financial and human resources to be invested in intellectual property strategies. In order to reduce the gap among companies and local areas in this respect, the GOJ should promote support measures for SMEs and venture companies in various fields relating to the creation, protection, and exploitation of intellectual property as well as the development of human resources.

Local governments have started taking various measures relating to intellectual property with the aim of achieving regional development through the revitalization of SMEs, venture companies, and universities that operate in local areas. In order to promote such trend, it is also important to actively support regional development with the use of intellectual property.

## **(1) Supporting SMEs and Venture Companies**

### **1) Supporting SMEs and venture companies in obtaining intellectual property rights**

i) In FY 2004, as for the programs of patent fee reduction for SMEs, the GOJ will start to take measures to expand the scope of application by simplifying the procedures, reinforcing public relations, and improving consultation services for local SMEs.

(Ministry of Economy, Trade and Industry)

ii) For the purpose of encouraging SMEs and venture companies to obtain rights at home and abroad, in FY 2004, the GOJ will continue to provide SMEs and venture companies, through R&D and commercialization support programs, with more subsidies and consultation services for obtaining patents at home and abroad.

(Ministry of Economy, Trade and Industry)

iii) In FY 2004, the GOJ will start to provide young venture companies in the information and communication field that intend to start new businesses with the use of new technologies with subsidies for fees necessary for filing patent applications and consulting with patent attorneys and other professionals.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

iv) In order to ensure that SMEs and venture companies will be able to obtain rights effectively, in FY 2004, the GOJ will start to support prior art research by private research agencies in regard to patent applications for which requests for examination have yet to be filed.

(Ministry of Economy, Trade and Industry)

### **2) Supporting the expansion of business overseas**

When operating business overseas, it is necessary to obtain rights and take measures against counterfeits/pirated copies overseas, which can be prohibitively expensive. In light of this, in FY 2004 and beyond, the GOJ will drastically reinforce systems to provide SMEs and venture companies that have excellent technologies with support and consulting services for filing patent applications and taking measures against counterfeits and pirated copies, while taking care to avoid moral hazard.

(Ministry of Economy, Trade and Industry)

### **3) Considering measures for damage due to infringements**

In FY 2004, the GOJ will grasp the actual condition and consider necessary measures against problems relating to intellectual property, which are facing SMEs and venture companies, including the damage due to the infringements of intellectual property rights, and so on.

(Ministry of Economy, Trade and Industry)

### **4) Supporting the formulation of strategies**

i) In FY 2004, the GOJ will continue to dispatch intellectual property experts to SMEs and venture companies on a continuous and long-term basis in order to provide them with advice for their management, technical and patent-related problems as well as on how to obtain patents in a timely manner depending on the stage of development.

(Ministry of Economy, Trade and Industry)

ii) In FY 2004, the GOJ will start to dispatch intellectual property experts and consultants in order to support them in formulating intellectual property strategies. The GOJ will also create models for the strategic utilization of intellectual property and provide SMEs and venture companies with information on and examples of such utilization, by reinforcing cooperation between intellectual property experts and organizations supporting SMEs and venture companies.

(Ministry of Economy, Trade and Industry)

### **5) Supporting R&D and commercialization**

i) In FY 2004, for the purpose of improving the abilities of SMEs and venture companies in developing technology with the use of intellectual property owned by universities, etc., the GOJ will continue to aim at increasing matching funds for joint research and commercialization research and ensuring the flexible use of such funds.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

ii) In order to promote R&D by SMEs and venture companies and develop environments for the creation of intellectual property by them, by the end of FY 2004, the GOJ will consider and draw a conclusion on how to enable SMEs and venture companies to

easily use advanced research facilities and equipment, which have been used in national projects, after the completion of the projects.

(Ministry of Education, Culture, Sports, Science and Technology)

- iii) In order to support spin-off ventures that exploit intellectual property that is not in use, in FY 2004, the GOJ will continue to consider measures to smoothly supply intellectual property to such ventures.

(Ministry of Economy, Trade and Industry, Ministry of Justice)

## **6) Promoting the use of information on intellectual property**

- i) In order to provide SMEs and venture companies with more opportunities for matching their needs and resources with those of other companies and universities, etc. and to promote such matching smoothly, in FY 2004, the GOJ will continue to reinforce industry-academic-government collaboration and the development of networks of intellectual property experts for the purpose of supporting activities of SMEs and venture companies.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

- ii) In order to promote collaboration between SMEs/venture companies and universities, etc., in FY 2004, the GOJ will continue to enhance and improve the database of researchers, research results, and research projects at universities, etc. and promote the use thereof.

(Ministry of Education, Culture, Sports, Science and Technology)

## **7) Enhancing education and training in intellectual property**

- i) Aiming to enable SME managers to improve their knowledge of intellectual property and use it for their management strategies, in FY 2004, the GOJ will continue to provide lectures on intellectual property systems and intellectual property management and organize research projects on advanced examples of the use of intellectual property rights, through management strategy courses for SME managers and directors at the Institute for SMEs Management & Technology (ISMET).

(Ministry of Economy, Trade and Industry)

- ii) In order to increase the knowledge of researchers and engineers at SMEs and venture

companies regarding intellectual property, in FY 2004, the GOJ will start to promote independent efforts by universities, etc. in providing education and training programs on intellectual property.

(Ministry of Education, Culture, Sports, Science and Technology)

iii) In order to encourage SMEs and venture companies to file patent applications, in FY 2004, the GOJ will start to provide training programs on how to conduct prior art searches and prepare patent specifications for engineers at SMEs and venture companies.

(Ministry of Economy, Trade and Industry)

iv) In order to increase the ability of SMEs and venture companies to respond to infringements of patent rights, in FY 2004, the GOJ will start to provide training programs on how to handle patent disputes including simulation programs.

(Ministry of Economy, Trade and Industry)

## **(2) Developing Local Areas with the Use of Intellectual Property**

### **1) Encouraging local governments to design independent measures relating to intellectual property**

i) Along with the GOJ's efforts to make Japan an "intellectual property-based nation," local governments have also started efforts to achieve regional development with the use of intellectual property. In FY 2003, in some areas such as Hokkaido, Tokyo, Aichi, Osaka, and Fukuoka, local governments took positive measures to establish intellectual property strategy headquarters and design intellectual property policy outlines and implementation plans. For the purpose of enabling local governments to design independent measures for the creation, protection, and exploitation of intellectual property while making use of regional characteristics, in FY 2004, the GOJ will continue to encourage them to establish intellectual property strategy headquarters and to develop intellectual property policy outlines and so on.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Economy, Trade and Industry)

ii) In FY 2004, the GOJ will start to encourage local governments to share information for formulating intellectual property strategies and conduct joint research projects

through voluntary cooperation among them.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **2) Reinforcing consultation services on intellectual property in local areas**

i) For the purpose of supporting SMEs and venture companies in obtaining rights, in FY 2004, the GOJ will continue to establish “regional intellectual property strategy headquarters” in the Regional Bureaus of Economy, Trade and Industry. The GOJ will also enhance consultation services at regional agencies, regarding the intellectual property right systems as well as how to obtain industrial property rights and search patent information, and will provide expert advice on a case-by-case basis through developing collaboration within industrial clusters.

(Ministry of Economy, Trade and Industry)

ii) In order to develop an environment where SMEs and venture companies will be able to improve their understanding of intellectual property and use it strategically, in FY 2004, the GOJ will continue to support local governments in making efforts toward developing networks of human resources related to intellectual property including patent attorneys and attorneys at law who are engaging in support projects on intellectual property and other various support projects for SMEs and venture companies, as well as to unify the contact window for such support projects and clarify/improve the functions of consultation services related to intellectual property.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

iii) For the purpose of supporting the activities of SMEs/venture companies and universities in local areas, in FY 2004, the GOJ will start to encourage efforts by the Japan Patent Attorneys Association to develop patent attorneys who are well versed in advanced technical fields such as life science, expand the area of activities of patent attorneys, and provide training programs for patent attorneys in local areas.

(Ministry of Economy, Trade and Industry)

### **3) Reinforcing the industry-academic-government cooperation in local areas**

i) In FY 2004, the GOJ will continue to promote R&D and the commercialization of research results through industry-academic-government collaboration with the use of knowledge stored at local universities, under the initiative of local governments and depending on the research ability of individual local areas, while encouraging the use of experts such as patent attorneys and attorneys at law, thereby creating intellectual property that will result in the development of local industries and the creation of new businesses in local areas.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

ii) In FY 2004, under the initiative of local governments, the GOJ will continue to support efforts to concentrate R&D functions to form intellectual clusters, which will be able to achieve world-class technical innovation, mainly at local universities and public research institutes that have original R&D subjects and abilities, thereby creating intellectual property that will make local industries internationally competitive.

(Ministry of Education, Culture, Sports, Science and Technology)

iii) In order to develop unique research projects and commercialize research results in local areas, in FY 2004, the GOJ will start to reinforce efforts to discover intellectual property in local areas with the use of science and technology coordinators operating in local areas.

(Ministry of Education, Culture, Sports, Science and Technology)

iv) In order to support SMEs and venture companies in developing new technologies in local areas, the GOJ will consider how to enable SMEs and venture companies to smoothly use facilities and equipment at universities, etc., and will draw a conclusion by the end of FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

v) For the purpose of contributing to revitalizing SMEs and venture companies in local areas, in FY 2004, the GOJ will consider ways to utilize intellectual property headquarters at universities (Super Industry-Academic-Government Cooperation Headquarters) and TLOs (Super TLOs) and will improve the functions of such entities.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

- vi) In order to enable SMEs and venture companies that own intellectual property to smoothly engage in joint technical development projects with other companies including large companies, based on the Plan for Industrial Cluster, in FY 2004, the GOJ will continue to hold seminars and dispatch experts to SMEs and venture companies. The GOJ will also aim at increasing awareness of the Confidentiality Manual prepared in FY 2003 addressing ways to deal with intellectual property in joint research projects involving SMEs and venture companies.

(Ministry of Economy, Trade and Industry)

- vii) In order to use resources stored at universities in local areas to create new businesses and innovate product development in local industries, in FY 2004, the GOJ will consider measures to promote the development of product designs.

(Ministry of Economy, Trade and Industry)

## **Chapter 4 The Dramatic Expansion of Content Business**

Intellectual property contents (works such as movies, music, animation, and game software) created in Japan are highly acclaimed throughout the world, but we cannot say that the parties concerned have made concerted efforts to develop the content business under a common philosophy.

For this reason, although Japan's content business amounts to approximately 11 trillion yen in the entertainment field alone, it only amounts to 2% of the GDP, below the global average of 3%.

However, since the content business is operated on a large scale and involves various industrial fields, it is not only expected to drive the Japanese economy but also to play a significant role in improving the image of Japan abroad ("soft power"). Therefore, it is an important industry for designing the national strategy.

In order to achieve the growth and development of the content business in the future, we should accomplish tasks such as "further modernizing and streamlining the industry," "improving evaluation and social recognition of the leading figures in the industry and the importance of the industry itself," and "promoting expansion to overseas markets and new fields." In order for the Japanese content business to prevail in international competition and to improve understanding of Japan in foreign countries through the transmission of Japanese culture, it is necessary for the parties concerned to make concerted efforts to promote the following measures promptly and aggressively, while clearly positioning the development of the content business as a pillar of the national strategy.

To this end, while designating the next three years as the "intensive reform period," the GOJ will not postpone the reform but take active measures from the first year, so as to accomplish these tasks promptly.

### **1. Supporting the Modernization and Streamlining of the Industry**

#### **(1) Encouraging and Supporting Efforts to Improve the Quality and Transparency of Contract Practices**

- i) With respect to contracts concluded between content creators such as comic book

artists and content providers, the GOJ will encourage and support efforts to improve the quality and transparency of the contract practices based on mutual understanding among the parties concerned.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

- ii) In FY 2004, the GOJ will continue to promote complete compliance of broadcasting businesses with their self-imposed regulations (e.g. “National Association of Commercial Broadcasters in Japan Guidelines for Subcontracts for Production of Broadcasting Programs”) and follow up on the use of the “Model Contracts Concerning Subcontracts for Production of Broadcast Programs” arranged based on mutual understanding among the parties concerned in March 2004, which include the rule of deciding the treatment of copyrights under a contract through fair negotiation. Thus, the GOJ will encourage the parties concerned to make independent efforts to improve fairness and transparency in the production framework.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

- iii) With the aim of clarifying the ownership of copyrights and ensuring that various types of contract practices applicable to the diverse secondary uses of copyrighted works will be established, the GOJ will encourage the use of the “Model Contracts for Animation” established in 2002 and conduct research on examples of advanced types of contracts in foreign countries.

(Ministry of Economy, Trade and Industry)

- iv) With respect to subcontracts for the production of contents, in FY 2004 and beyond, the GOJ will, if necessary, carry out a documentary survey on the Act against Delays in the Payment of Subcontract Proceeds, etc. to Subcontractors regarding the issues of the ownership and treatment of copyrights, and will encourage the parties concerned to make independent efforts to improve the quality and transparency of trade practices.

(Japan Fair Trade Commission, Ministry of Public Management, Home Affairs, Posts and Telecommunication, and Ministry of Economy, Trade and Industry)

- v) In FY 2004, for the purpose of identifying the box-office proceeds more clearly, the GOJ will continue to take measures to facilitate the introduction of the simple POS system for managing ticket agency services, through empirical experiments using real

movie theaters.

(Ministry of Economy, Trade and Industry)

**(2) Encouraging the Use of Experts in Management, Legal Affairs, and Financial Affairs, etc.**

- i) In FY 2004, the GOJ will start to support the use of persons who have expertise in legal affairs, financial affairs, and sales, etc. as well as management ability relating to content business.

(Ministry of Economy, Trade and Industry)

- ii) In FY 2004, the GOJ will start to encourage and support the exchange between legal professionals and businesses/content creators through use of the “Entertainment Lawyers Network,” etc.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

**(3) Reinforcing Competition Policy through Strict Application of the Antimonopoly Act, etc.**

- i) The GOJ will endeavor to increase the awareness of the Guidelines for Transactions on Services revised in March 2004 and the Act against Delays in Payment of Subcontract Proceeds, etc. to Subcontractors revised in 2003, and will carry out a documentary survey targeting parental (?) entrepreneurs and subcontractors engaging in content production by the end of FY 2004.

(Japan Fair Trade Commission and Ministry of Economy, Trade and Industry)

- ii) In order to promptly detect violation of the Antimonopoly act in the content industry, the GOJ will improve the framework of an intellectual property task force (the team specializing in intellectual property) by securing necessary investigators, with the aim of enhancing the activities of the Japan Fair Trade Commission in conducting research and gathering information.

(Japan Fair Trade Commission)

- iii) In FY 2004, the GOJ will continue to take measures to improve consultation services concerning the Antimonopoly Act and the Act against Delays in the Payment of Subcontract Proceeds, etc. to the Subcontractor and to strictly and promptly apply the

Acts against violations thereof.

(Japan Fair Trade Commission and Ministry of Economy, Trade and Industry)

#### **(4) Encouraging Flexible Expansion of Business through Flexible Pricing, etc.**

In FY 2004, for the purpose of increasing consumer benefits, the GOJ will continue to promote efforts by entrepreneurs in expanding the publication and distribution of copyrighted works whose price is at the discretion of the retailers of contents such as books, magazines, music CDs, etc. and in diversifying the pricing.

(Japan Fair Trade Commission, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

## **2. Diversifying Financing Means**

### **(1) Enhancing the “Completion Guarantee System”**

With the aim of promoting the use of financing under the “completion guarantee system,” by the end of FY 2004, the GOJ will encourage the financial institutions concerned to take necessary measures and will examine problems that will become obvious in the course of enforcing the system.

(Ministry of Public Management, Home Affairs, Posts and Telecommunication, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

### **(2) Evaluating the Result of the Deregulation of “movie funds” under the Commodity Fund Law**

For the purpose of ensuring smooth financing for the production of movies, etc., the personnel requirement for establishing a fund was relaxed in March 2004. In order to promote financing through the use of commodity funds, the GOJ will evaluate the result of the deregulation and consider reviewing the fund system based on the evaluation by the end of FY 2004.

(Financial Services Agency and Ministry of Economy, Trade and Industry)

### **(3) Promoting the Establishment of Evaluation and Disclosure Methods**

## **Applicable to Contents**

In order to promote the production of and investment in contents such as movies, in FY 2004, the GOJ will continue to consider environmental development through the establishment of evaluation methods and the systematization of disclosure methods applicable to contents, while making reference to equivalent systems in foreign countries. (Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

## **3. Providing Incentives to Promote Production of and Investment in Contents**

By the end of FY 2004, the GOJ will consider providing incentives to promote production of and investment in contents.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **4. Reinforcing the Development of Human Resources**

### **(1) Developing “content-related human resources” (human resources engaging in content-related affairs such as content producers and creators)**

i) In FY 2004, with the aim of developing “content-related human resources,” the GOJ will provide more support for professional schools (including law schools), etc. in making independent efforts (to establish necessary organizations) and will encourage these schools to cooperate with overseas institutes in human resource development. The GOJ will also implement environmental development for enhancing education at universities by promoting cooperation between universities and industries.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

ii) In order to ensure that young producers and creators with excellent talent and skills will be able to experience advanced trends abroad and improve their abilities, in FY 2004, the GOJ will continue to support them in study and training overseas.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of

Economy, Trade and Industry)

iii) For the purpose of increasing motivation and abilities in Japanese creators, etc., in FY 2004, the GOJ will continue to invite successful content producers and creators, who play an active role in the world, to seminars and symposium.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

iv) Under the dramatic diffusion of broadband networks, in order to ensure that excellent producers and creators who produce high-quality digital content will be able to improve their abilities and skills, in FY 2004, the GOJ will provide support for the development of human resources.

(Ministry of Education, Culture, Sports, Science and Technology)

v) In FY 2004, in order to develop human resources equipped with “functions as producers,” the ability to coordinate the entire process of content production from financing to the obtaining of rights and the securing of purchasers, the GOJ will continue to use and evaluate the “Producer Training Curriculum” developed in 2003 by the Ministry of Economy, Trade and Industry, in cooperation with educational institutions.

(Ministry of Economy, Trade and Industry)

vi) In FY 2004, in order to improve the skills of content creators, the GOJ will develop a skill map, which systematically indicates the skills necessary for content creators, and prepare educational materials for creators to improve their skills, thereby supporting efforts to advance human resource development.

(Ministry of Economy, Trade and Industry)

vii) In FY 2004, the GOJ will continue to carry out research and studies on the effective use of digital editing facilities to produce visual works such as movies and to carry out the measures to develop necessary human resources.

(Ministry of Education, Culture, Sports, Science and Technology)

## **(2) Supporting Programs for Developing Human Resources**

i) In FY 2004, in regard to training programs concerned with information and telecommunication, the GOJ will continue to support training programs for improving

professional knowledge and skills to produce contents such as broadcasted programs.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

- ii) In order to effectively use the programs for the development of human resources that were prepared in 2003 to ensure a smooth matching of the supply of human resources from educational institutions with the need for human resources in the content industry, the GOJ will support efforts to establish coordinating organizations in FY 2004.

(Ministry of Economy, Trade and Industry)

- iii) In FY 2004, the GOJ will support practical training programs carried out at production sites by film associations and schools in cooperation with production sites, thereby developing professionals with a high level of expertise.

(Ministry of Education, Culture, Sports, Science and Technology)

### **(3) Supporting the Establishment of an Organization for the Development of the Audiovisual Industry**

In FY 2004, the GOJ will support the establishment of a private organization, similar to the American Film Institute (AFI: US) and the Film Council (UK), which will promote projects to provide aid for the production of films for the purpose of developing the entire film industry while building a cooperative relationship with universities and other educational institutions by providing support for universities, etc.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

## **5. Improving the Level of Contents-Related Technology**

### **(1) Promoting R&D on Media Art**

- i) Designating R&D resulting in the creation of advanced scientific technology, which will help to raise the level of media art, as one of the new research fields for FY 2004 at the Japan Science and Technology Agency, the GOJ will promote relevant efforts in FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

ii) For the purpose of promoting the development of original technology that is practical and highly innovative, the GOJ will designate technology for publicizing and exhibiting cultural property as one of the research targets at the Japan Science and Technology Agency and promote relevant efforts in FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

## **(2) Promoting the digitalization of contents**

By the end of FY 2004, the GOJ will comprehensively consider issues for promoting the diffusion of digital cinema (ideal technical standards, equipment to be introduced, etc.), including the establishment of the “Digital Cinema Promotion Forum (provisional name)” consisting of experts from industries, universities, and the government, while making reference to the actions taken in Europe and the United States.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

## **(3) Carrying out R&D on Necessary Technology Infrastructure to Establish Digital Archives**

By the end of FY 2004, the GOJ will start R&D to establish the software technology infrastructure necessary for electronically storing and using intellectual property (so-called digital archiving) in the fields of education, culture, and art.

(Ministry of Education, Culture, Sports, Science and Technology)

## **(4) Supporting R&D on Hi-Vision Technology**

In FY 2004, for the purpose of raising the level of audiovisual technology, the GOJ will continue to support R&D on technology relating to high-resolution images and will promote the diffusion of hi-vision technology abroad.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

## **6. Discovering and Honoring Talented Persons**

### **(1) Discovering talented persons**

In FY 2004, with the aim of increasing the population of “content-related human resources” in Japan by discovering “hidden treasures,” persons with exceptional talent, and of providing novel and excellent content, the GOJ will continue to support efforts to organize various competitions for movies, music, animation, and so on.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

### **(2) Honoring Persons with Outstanding Achievements**

In FY 2004, with the aim of improving social recognition of human resources engaging in the content business and attracting talented people to this field, the GOJ will broadly support efforts to honor persons with outstanding achievements.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

## **7. Enhancing Education and Raising Awareness**

### **(1) Raising Awareness among Children**

In FY 2004, in order to ensure that children will be able to enjoy attractive and wonderful contents, the GOJ will encourage schools, etc. to make independent efforts to provide children with opportunities to see movies and plays.

(Ministry of Education, Culture, Sports, Science and Technology)

### **(2) Improving the Rules and Morals Concerning Content**

In light of the indispensability of content in people’s lives, the GOJ will, with the aim of improving the recognition of rules and morals concerning the production and use of content, continue efforts to enhance educational programs concerning copyrights and increase awareness of this issue in FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

### **(3) Enhancing the Film Center of the National Museum of Modern Art, Tokyo**

For the purpose of further promoting environmental development for the production of film content, the GOJ will continue to consider improving the film center's functions to store and show film content and giving the center additional functions such as developing human resources and supporting content production, drawing a conclusion by the end of FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

### **(4) Promoting the Development and Distribution of Content on Cultural Heritage**

In FY 2004, the GOJ will continue to promote the "Plan for Online Access to Cultural Heritage," in order to ensure that tangible and intangible precious cultural heritage will be available to the public with the use of information and communication technology, and will take measures to develop systems to promote the utilization of such heritage.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Education, Culture, Sports, Science and Technology)

## **8. Encouraging the Expansion of Business Overseas and Strengthening Measures against Pirated Copies**

### **(1) Supporting the Expansion of Business Overseas through the Japan External Trade Organization (JETRO), the Nippon Export and Investment Insurance (NEXI), etc.**

i) In FY 2004, the GOJ will continue to provide support for the Organization for the Promotion of Overseas Distribution of Content and also support the production of subtitles necessary for showing content at overseas exhibitions and overseas film festivals, thereby supporting the expansion of the Japanese content industry to overseas markets.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

ii) In FY 2004, the GOJ will continue to reinforce the function of public agencies to collect information through the foreign market survey conducted by JETRO and to provide necessary information by preparing handbooks that contain the matters to be

noted (judicial precedents and regulations) when companies dealing with contents such as movies, broadcast programs, animation, music, and game software conduct business overseas.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

iii) In order to promote the expansion of the content business overseas from various perspectives, by the end of FY 2004, the GOJ will implement model programs to diversify overseas distribution channels with the use of various media, mainly in the film content field.

(Ministry of Economy, Trade and Industry)

iv) In order to operate the content business overseas, it is absolutely necessary to enhance insurance covering intellectual property. In light of this, in FY 2004, the GOJ will continue to promote the use of “Intellectual Property Right License Insurance” provided by NEXI to cover risks arising from licensing activities overseas. In FY 2004, the GOJ will also start to consider an ideal insurance scheme to cover part of the litigation costs (including legal fees) incurred by the parties in lawsuits.

(Ministry of Economy, Trade and Industry)

## **(2) Drastically Reinforcing the Tokyo International Film Festival**

In order to ensure that the Tokyo International Film Festival will be highly evaluated around the world, comparable to the three other famous international film festivals, the GOJ will, in FY 2004, provide support to enable the marketing of films at the festival and also support projects to show local movies and to hold symposiums and other various events relating to movies intensively during the period of the festival as well as to hold events relating to other contents such as games and music, thereby reinforcing the festival significantly.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

## **(3) Strengthening Publication of Content Made in Japan Through International Exchange**

i) For the purpose of bringing about an economic ripple effect from the production of foreign movies in Japan and encouraging business expansion into overseas markets, in FY 2004, the GOJ will promote the conclusion of agreements to produce movies jointly with foreign countries and encourage international exchange (mutual support for film festivals and support for educational programs for people in the film industry through personnel exchange), and will implement an international exchange of creators, thereby encouraging the production of movies through international collaboration.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

ii) For the purpose of preventing valuable material of comic books/animation from being dispersed and securing a place to provide information for visitors from abroad in a centralized manner, by the end of FY 2004, the GOJ will consider ideal ways to collect and store materials relating to comic books/animation.

(Ministry of Education, Culture, Sports, Science and Technology)

iii) In order to improve the image of Japan by utilizing the content made in Japan, in FY 2004, the GOJ will continue to support projects to publish Japanese content overseas through the Japan Foundation, ODA, etc.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

#### **(4) Holding a Workshop between Japan and the EU**

In order to achieve further development of the content business and improve the quality thereof through international exchange, in FY 2004, the GOJ will hold a workshop between Japan and the EU on the development of the content business.

(Ministry of Foreign Affairs and other ministries and agencies concerned)

#### **(5) Strengthening Regulations of Pirated Copies through All Channels**

See Chapter 2: “Protection Field II. Measures Against Counterfeits and Pirated Copies”

## **9. Promoting Business Operations with the Use of Broadband Networks**

### **(1) Carrying out the Development of and Empirical Experiments for Intermediate Systems with the Use of Digital Technology**

In order to establish, with the use of digital imaging technology, new local channels for showing content in regions where there are not sufficient facilities for such display, in FY 2004, the GOJ will continue to conduct empirical experiments to show films at local public facilities thorough intermediation between film distributors and film venues, and will take measures to put such systems into practical use by FY 2005.

(Ministry of Economy, Trade and Industry)

### **(2) Forming Content Distribution Markets**

In order for content creators to select from various distribution channels to provide their own content, in FY 2004, the GOJ will conduct research on advanced overseas examples, with the aim of forming distribution markets where parties with the “ability to discern” function as brokers and price makers for content.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

### **(3) Developing Systems for the Distribution of Content**

i) In order to ensure that parties who intend to use rights related to content will be able to search for such rights in an expeditious and simple way, in FY 2004, the GOJ will continue to promote the development and empirical experiments of the scheme for copyright clearance. In particular, by the end of FY 2004, the GOJ will make efforts to establish a database on the rights and details of image content for which various rights are complexly involved.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

ii) For the purpose of ensuring safe and effective management through the collective management of information of rights related to movies and other film materials, in FY 2004, the GOJ will continue to support efforts by groups of right holders and industry

groups to grant content IDs and to organize information of rights related to content.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

iii) In the ubiquitous network society where content is available anywhere and is distributed by various means via digital broadcasting and the Internet, in FY 2004, the GOJ will continue to promote R&D and empirical experiments of content distribution technology to ensure the smooth use of content via broadband networks, by developing a user-friendly user interface environment in which any person can use content that he/she wants by simple operation.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

iv) In order to ensure that right holders and owners/managers of content will be able to provide content on broadband networks without anxiety, in FY 2004, the GOJ will continue to promote the standardization of functions of “safe dedicated terminals” (terminal devices).

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

v) In order to promote the creation of works and the smooth distribution thereof, in FY 2004, the GOJ will conduct research on a standard form of copyright contract mainly applicable to contracts concluded between individuals, while giving consideration to the diversity of contract details, and will develop a system for preparing a standard copyright contract, making the form available to the public via the Internet.

(Ministry of Education, Culture, Sports, Science and Technology)

vi) In order to make it possible to show movies in facilities other than movie theaters, such as public cultural facilities and community halls with the use of simple and laborsaving means to show movies, the GOJ will continue to promote efforts to digitize movies in FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

vii) In order for right holders to comprehensively manage and operate the distribution process at all stages from distributing, certifying and charging for content to sharing profits and controlling illegal content, in FY 2004, the GOJ will continue to support

the development of a “content management and distribution system” that combines various technologies.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

viii) Considering the necessity to develop content that is suitable for the characteristics of new distribution media such as broadband networks and digital television systems, in FY 2004, the GOJ will continue to promote independent efforts by businesses to conduct R&D on innovative technology and will implement the development of and empirical experiments on technology for content distribution via broadband networks, including a copyright management system, distribution technology for large-volume content, and technology for appropriate content distribution between individuals, with the aim of putting such technology into practice by the end of FY 2005.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

ix) Toward the age of ubiquitous computing, in FY 2004 and beyond, the GOJ will aim at establishing a content distribution mechanism in which rights related to content will be appropriately protected while assuring usability and that content will be made available through various means of distribution and for various uses; for example, downloading content at home and enjoying it on cellular phones.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

x) In order to make it possible to show various film works in a broader area, in FY 2004 and beyond, the GOJ will establish the Japan Film Information System on the Internet as a place to provide film information and encourage interaction with film producers and film venues, with the aim of supporting the publication of film works broadly at home and abroad through this system and enabling film venues and film festival organizers to use this system when selecting film works to be shown in film events and festivals.

(Ministry of Education, Culture, Sports, Science and Technology)

#### **(4) Supporting the Development of Business Models**

In FY 2004, the GOJ will continue to promote the development and empirical experiments of a scheme for copyright clearance and technology for content distribution

via broadband networks and to support efforts to develop new business models that combine technology for protecting and managing content with systems for concluding contracts in network environments.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

#### **(5) Promoting the Establishment of Consensus between Parties Concerned with the Use of Content**

i) In order to ensure that content such as movies and broadcast programs will be used effectively by means of distribution via the Internet, in FY 2004, the GOJ will continue to encourage discussion among the parties concerned, including the right holders, and consider, if necessary, developing legal and technical environments in light of international trends.

Also in order to ensure that this content will be effectively used in broadcasting via telecommunication services with the use of broadband networks, in FY 2004, the GOJ will continue to encourage discussion among the parties concerned, including the right holders, and consider the position of such use of content under the Copyright Law in light of international trends.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

ii) In order to avoid the disturbance of business operations through new distribution channels, the GOJ will consider procedures for settling disputes in cases in which a consensus has not been not built regarding the details of contracts; more specifically, the GOJ will consider flexible combinations of various means, including the establishment of places of discussion/coordination and the mediation and arbitration systems, and will draw a conclusion by the end of FY 2004.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

iii) In order to ensure that the “arbitration system for copyright” will be used smoothly in cases where copyright license contracts cannot be concluded when copyright owners

are unknown, the GOJ will review the arbitration procedures and will develop and publish the manual for using the arbitration system by the end of FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

#### **(6) Promoting the Effective Use of Existing Contents**

i) With the aim of building a framework for promoting the conclusion of contracts on the secondary use of broadcast programs that have already been aired, the GOJ will continue to promote discussion among the parties concerned, including broadcasting associations, performers associations, and record producers associations, drawing a conclusion as soon as possible by the end of FY 2004. The GOJ will also promote discussion among the parties concerned in FY 2004 and beyond in order to obtain specific resolutions.

(Ministry of Education, Culture, Sports, Science and Technology)

ii) In FY 2004, the GOJ will also continue to promote discussion at workshops among the parties concerned with the aim of building the framework for promoting the conclusion of contracts on the secondary use of broadcast programs that have already been aired.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

iii) For the purpose of promoting effective secondary use of existing educational programs, in FY 2003, the GOJ specified problems and conducted research on this issue. In FY 2004, while identifying the demand for and actual use of such programs in the educational field and taking the utilization of NPOs into account, the GOJ will continue to consider how businesses should retain their programs. Accordingly, the GOJ will take necessary measures by FY 2005.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Education, Culture, Sports, Science and Technology)

#### **(7) Encouraging and Supporting Independent Efforts for the Sound Development of Youth**

i) In light of the opinion that some contents have an adverse effect on the entire society, including young people, and for the purpose of promoting the diffusion of sound content, in FY 2004, the GOJ will support independent efforts by the industry to

protect young people from harmful content and to conduct quantitative research on the effects of some contents on people's bodies.

(National Police Agency, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

- ii) In FY 2004, in order to contribute to the sound development of youth, the GOJ will continue to support independent efforts by the industries concerned to prevent the theft of comic books, CDs, game software, etc.

(National Police Agency and other ministries and agencies concerned )

## **(8) Promoting Development and Diffusion of Systems for Using Contents without Anxiety**

- i) With the aim of promoting the diffusion of the system by which right holders "declare their intentions" in advance about the scope of contents to be available to users, in FY 2004, the GOJ will continue efforts to diffuse a "free use mark" that indicates such intention. Furthermore, after comprehensively examining whether the use of this mark has been established and the progress in similar efforts made by other associations, in FY 2004 and beyond, the GOJ will consider, as appropriate, a standard "system of declaration of intention" by which right holders will be able to indicate their various intentions in details.

(Ministry of Education, Culture, Sports, Science and Technology)

- ii) In order for users to easily choose safe contents, in FY 2004, the GOJ will continue to consider establishing a mark system by which users can easily judge the safety of contents in advance, and it will draw a conclusion by FY 2005.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

## **(9) Establishing a Foundation to Return Profits to Right Holders**

### **1) Providing substantial technical protection for right holders**

In order to promote the practical application of technologies for substantially protecting rights and properly returning profits to right holders, in FY 2004, the GOJ will continue to promote the development and diffusion of technologies such as digital watermarks, digital rights management (DRM), and charging systems, and support the standardization

of metadata formats necessary for achieving safe and diverse types of distribution.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **2) Reinforcing Legal Protection**

i) Limitation on the non-profit, free or unpaid showing of film content that is exceptionally permitted without the consent of right holders

The GOJ will continue to consider permitting the “showing of videos to the public” only at places such as “schools,” while properly returning profits to right holders of such contents, and in FY 2004 and beyond, the GOJ will submit a bill to the Diet to amend the Copyright Law.

(Ministry of Education, Culture, Sports, Science and Technology)

ii) Compensation system for private recording

In light of the present situation in which various devices and media for digital audio or video recording are commercially used, such as personal computers with the function to copy music CDs and CDs with technically protective means, the parties concerned are discussing the review of the compensation system for private recording to make it more suitable for the actual situation. Following the conclusion of such discussion, the GOJ will amend the system if necessary in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

iii) Term of protection under copyright

The term of protection for movies under copyright has been extended from 50 years to 70 years after the making public of the work, and the parties concerned are discussing the ideal term of protection for works other than movies. Following the conclusion of such discussion, the GOJ will submit a bill to the Diet to amend the Copyright Law if necessary in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

iv) Desirable way of distributing used products such as game software

In light of the opinion that used products, such as game software, that are broadly traded by dealers have an impact on the market for new products immediately after release, the parties concerned are discussing a desirable way of returning profits to right holders. Following the conclusion of such discussion, the GOJ will consider this matter, while taking consumer interests into account, and will take necessary measures

in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

v) “Right for edition” of publications

The parties concerned are discussing the appropriateness of granting publishers the right to claim remuneration for copies of publications. Following the conclusion of such discussion, the GOJ will submit a bill to the Diet to amend the Copyright Law, if necessary, in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology)

vi) Measures for preventing” the phonograms banned to be sold in Japan” from flowing back to Japan

A bill to amend the Copyright Law has been submitted to the ordinary Diet session in 2004 in order to prevent ”the phonograms banned to be sold in Japan” from flowing back to Japan . When the bill is passed, the GOJ will enforce the amended law smoothly, and within a certain period of time after the amended law enters into force, the GOJ will take measures, if necessary, based on research on the actual condition of circulation and other circumstances.

(Ministry of Education, Culture, Sports, Science and Technology)

vii) Strengthening the regulations of infringements on the Internet

See Chapter 2: “Protection Field II. Measures Against Counterfeits and Pirated Copies”

viii) Regulations of products made by illegally using portraits, etc.

See Chapter 2: “Protection Field II. Measures Against Counterfeits and Pirated Copies”

## **(10) Expanding the Scope of Application of Legal Regulations concerning the Avoidance of Technical Protective Means**

For the purpose of assuring the effectiveness of technical means of protection, in FY 2004 and beyond, the GOJ will continue to consider the necessity of taking legislative measures to introduce criminal punishments for the avoidance of access control and regulations services for avoiding access control (e.g. providing the public with specific information such as serial numbers that can be used to remove or avoid technical protection means) and airwave receivers that do not recognize copy-control signals,

while taking into account the impact of such regulations on the future development of access control technology.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Justice, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

#### **(11) Simplifying the Provisions of the Copyright Law**

Along with the progress of “information technology,” including the wide use of personal computers and the Internet, everybody needs knowledge of copyrights. Accordingly, in order to make the provisions of the Copyright Law more easily understandable to the public, the GOJ will continue to consider the possibility of simplifying the style of the provisions separately from the possibility of expanding or narrowing the scope of right, through the “integration of rights,” etc. and will draw a conclusion by the end of FY 2005.

(Ministry of Education, Culture, Sports, Science and Technology)

#### **(12) Giving Consideration to the Balance between Benefits of Right Holders and Benefits of the Public**

While strengthening the protection of contents, it is also necessary to give consideration to the balance between the benefits of right holders and the benefits of the public. For the purpose of promoting the fair use of contents, which seems necessary for the whole of society, the GOJ will consider ideal forms of “provisions to restrict rights” under the Copyright Law in FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology)

#### **(13) Considering a Legal System Suitable for the Digital Age**

In light of the present situation in which various methods of using content as well as recording devices and media are emerging along with the progress in information technology, such as the diffusion of music distribution services and the commercialization of CDs equipped with technical protection means, in FY 2004, the GOJ will start to consider a legal system suitable for the digital age that will further advance in the future.

(Ministry of Education, Culture, Sports, Science and Technology and other ministries and

agencies concerned)

#### **(14) Promoting the International Harmonization of Copyright Systems**

See Chapter 2: “Protection Field II. Measures Against Counterfeits and Pirated Copies”

#### **(15) Developing a Favorable Environment for the Activities of Performers**

i) In order to ensure that performers who do not belong to production firms will be able to engage in performing activities in a safe and secure manner, the GOJ will consider ideal accident/disaster compensation for performers, as well as the promotion of performance contracts in writing to be concluded in the absence of employment contracts, and will take necessary measures in FY 2004 and beyond.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Health, Labor and Welfare)

ii) In FY 2004, the GOJ will continue to discuss means for diversifying the time in which children may give performances in plays, etc.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Health, Labor and Welfare )

### **10. Reinforcing the Storage and Publication of Attractive Content in Local Areas**

#### **(1) Promoting the Production and Use of Content in Local Areas**

i) In order to promote efforts to produce and distribute digital content in local areas, in FY 2004, the GOJ will support the development of cable television systems to produce and broadcast video programs in local areas and will also identify and analyze tasks in relation to the role of the cable television industry in establishing archives of local film content, considering necessary support. Furthermore, in FY 2004, while collecting and analyzing advanced examples on a national basis, the GOJ will consider encouraging the independent production of programs in cooperation with local governments and building a support system among the administration, industries concerned, and local governments.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

ii) While promoting the enhancement of digital archives of traditions and cultures and the use of digital networks in local areas, in FY 2004, the GOJ will continue to consider how to promote the production and distribution of digital content in local areas.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

iii) In FY 2004, the GOJ will continue to establish archives of useful digital information, including web information that exists in a form in which it is easily scattered and lost, and build and conduct empirical experiments of technology and systems for promoting the use of such information.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

iv) A bill for the Law Concerning the Promotion of the Creation, Protection, and Exploitation of Content has been submitted to the ordinary Diet session in 2004 in order to introduce a system in which, in the case of subcontracting the production of content, rights related to content will not be transferred from the subcontractors under certain conditions for the purpose of promoting the effective use of contents (the “Bayh-Dole system for contents”). When the bill is passed, the GOJ will notify the local governments of this system by the end of FY 2004 so that the local governments will be able to apply this system independently.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications)

## **(2) Supporting the Film Production Activities by Film Commissions**

i) In order to ensure smooth procedures to conduct location shooting when producing films, by the end of FY 2004, the GOJ will ask the administrative authorities concerned to improve their understanding of film production and the smooth use of roads and public facilities, while considering the demands from film commissions, and to use the special zone system. Furthermore, in FY 2004, the GOJ will consider an ideal way of securing and using large-scale location facilities and shooting studios in local areas.

(Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

ii) In order to stimulate the creation of Japanese films and contribute to the development

of local cultures, in FY 2004, the GOJ will build on the Internet a database of information necessary for location shooting, which is collected from local film commissions, with the aim of enabling the parties engaging in shooting films to conduct shooting smoothly at various sites.

(Ministry of Education, Culture, Sports, Science and Technology)

### **(3) Supporting the Enhancement of Large-Scale Cinema Complexes**

In order to make it possible to enhance large-scale cinema complexes qualitatively and quantitatively according to the circumstances and needs of local areas, the GOJ will consider necessary measures including the introduction of digital cinemas in FY2004.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

### **(4) Encouraging and Supporting Efforts for “Content Strategies” in Local Areas**

i) In order to make useful contents in local areas available to the general public, in FY 2004, the GOJ will continue to promote efforts to establish intellectual property headquarters in local governments and support systems for honoring excellent digital contents made in local areas.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

ii) In FY 2004, for the purpose of revitalizing the local economy through the effective use of attractive contents in local areas, the GOJ will encourage local governments to make independent efforts to design and implement strategies for developing communities by making use of such contents.

(Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

## **11. Making a Roadmap for the Reform**

In order to accomplish the reform effectively in the next three years, the GOJ will immediately make the roadmap for the reform and promote efforts by the ministries and

agencies concerned. The GOJ will review the progress in accomplishing the goals every year.

(Japan Fair Trade Commission, National Police Agency, Financial Services Agency, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labor and Welfare, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **12. Appropriately Applying the Law Concerning Promotion of Creation, Protection, and Exploitation of Content**

A bill for the Law Concerning Promotion of Creation, Protection, and Exploitation of Content was submitted to the ordinary Diet session in 2004. When the bill is passed, the GOJ will appropriately apply the law.

(Other ministries and agencies concerned)

## **Chapter 5 Developing Human Resources and Improving Public Awareness**

It is people who support all forms of a system. Thus, in order to achieve the goal of making Japan into an “ intellectual property-based nation,” it is an urgent task not only to develop those who will lead in the creation of intellectual property but also to increase and develop experts who will provide advanced, specialized services, such as obtaining rights for those who created the intellectual property, settling disputes, and concluding intellectual property licensing agreements.

Therefore, the GOJ will implement the measures below to increase the number of attorneys at law, patent attorneys, and other experts who are well-established in intellectual property and have competence to compete internationally. In addition, with the objective of developing highly competent intellectual property experts, the GOJ will promote intellectual property education that is rich both in terms of quality and quantity, and advance development of “human resources with combined areas of expertise,” who are well-acquainted with knowledge of multiple fields, such as law, technology, and business management. Furthermore, the GOJ will aim to develop a large number of scholars and researchers who are well versed in intellectual property affairs in order to promote intellectual property education.

In addition, the GOJ will respectively provide detailed education on intellectual property to researchers, students at elementary, junior and high schools, university students, and adults, in order to increase public understanding of intellectual property.

### **1. Promoting the Development of Human Resources Related to Intellectual Property and Education/Research/Training on Intellectual Property**

#### **(1) Developing Experts**

- 1) Dramatically increasing the number and raising the quality of attorneys at law and patent attorneys in order to develop attorneys at law and patent attorneys who are well versed in intellectual property and have international competitiveness**

i) In FY 2004, the GOJ will continue to aim at increasing the number of attorneys at law, who are well versed in intellectual property, in the process of dramatically increasing the overall number of legal professionals.

(Office for Promotion of Justice System Reform, Ministry of Justice)

ii) A large number of attorneys at law voluntarily participate in training programs on intellectual property laws. In FY 2004, the GOJ will continue to expect more attorneys at law to improve their knowledge and skills in dealing with intellectual property affairs through independent efforts to improve themselves by participating in training programs and lectures on intellectual property. In FY 2004, the GOJ will also promote increasing the awareness of attorneys and improving the environment so that attorneys at law will be able to directly deal with intellectual property affairs as in-house lawyers of companies.

(Ministry of Justice and other ministries and agencies concerned)

iii) Since FY 2003, patent attorneys acting as counsels have started to acquire professional certification through the examination for “counsels in intellectual property” under the current system. In FY 2004 and beyond, the GOJ will consider the active utilization of patent attorneys, including the possibility of allowing them to independently undertake the trials of specific intellectual property right infringement lawsuits, while also giving consideration to the actual operation status of the system and the actual activities of attorneys at law and patent attorneys.

(Office for Promotion of Justice System Reform, Ministry of Justice, and Ministry of Economy, Trade and Industry)

iv) With the aim of enhancing the quantity and quality of patent attorneys, in FY 2004, the GOJ will immediately start to consider a desirable patent attorney examination and devise measures for guaranteeing the practical abilities of those who passed the examination, while also taking into account the relationship with the professional schools specializing in intellectual property, etc.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

v) In FY 2004, while taking into account the discussion at the Industrial Structure Council about the development of human resources for patent attorneys, the GOJ will continue to consider desirable training programs for patent attorneys and for patent attorneys

acting as counsels, which utilize professional schools specializing in intellectual property and so forth, in order to develop many patent attorneys with a high level of expertise and international capabilities. Furthermore, in FY 2004, the National Center for Industrial Property Information (the National Center for Industrial Property Information and Training if the Law for the Promotion of Expeditious Patent Examination is enacted) will organize debates and training programs for patent attorneys, attorneys at law, and company employees in intellectual property departments, addressing examination guidelines and ideal descriptions of patent claims. (Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

vi) In FY 2004 and beyond, the GOJ will survey the relationship between the attorney-client privilege in the United States and the operations of Japanese patent attorneys with the cooperation of the Japan Patent Attorneys Association (JPAA), and it will consider future measures including the possibility of responding to situations by related laws.

(Ministry of Economy, Trade and Industry)

vii) In FY 2004, the GOJ will start to consider ideal ways of developing and using human resources based on the understanding of the present situation and the future needs for intellectual property experts, including patent attorneys.

(Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

## **2) Including intellectual property laws in optional subjects for the national bar examination**

In light of the importance of intellectual property laws and the availability of subjects related to intellectual property laws at all of the 68 law schools that were established in FY 2004, the GOJ will immediately examine the possibility of including intellectual property laws as optional subjects for the new national bar examination that will start in FY 2006, and draw a conclusion as soon as possible in FY 2004. The GOJ will also consider a desirable way of selecting IP-related questions to place in the examination so as to avoid significant inequality depending on the subject being tested.

(Office for Promotion of Justice System Reform, Ministry of Justice)

### **3) Achieving linkage between education at law schools and the national bar examination**

In order to develop legal professionals who are well versed in intellectual property in law schools, the GOJ will continue to secure organic linkage between the educational curriculum at law schools and the national bar examination in FY 2004 and beyond.

(Office for Promotion of Justice System Reform, Ministry of Justice, and Ministry of Education, Culture, Sports, Science and Technology)

### **4) Promptly and Properly Developing Patent Examination Experts**

i) Due to the necessity of properly developing fixed-term examiners, who will be employed in bulk in the future, in a shorter period of time than usual, in FY 2004, the GOJ will take immediate measures to establish systems to enhance training programs, including the use of external human resources, such as persons who have engaged in patent examination/trials.

(Ministry of Economy, Trade and Industry)

ii) In light of the urgent need to develop human resources in charge of conducting prior art searches (searchers) for the purpose of ensuring the smooth outsourcing of the searches from the JPO to registered search agencies, in FY 2004, the GOJ will immediately begin development on a system for fostering searchers.

(Ministry of Economy, Trade and Industry)

### **5) Utilizing Postdoctorals as Intellectual Property Experts**

Some postdoctorals who are well versed in science and technology may play roles as excellent intellectual property experts if they acquire sufficient knowledge of intellectual property. In FY 2004, the GOJ will consider supporting such postdoctorals in acquiring knowledge and skills relating to intellectual property.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and other ministries and agencies concerned)

### **6) Utilizing Fixed-Term Examiners**

Regarding fixed-term examiners as valuable human resources with experience in

engaging in patent examination, in FY 2004 and beyond, the GOJ will specify measures to utilize such examiners, whose term has expired as intellectual property experts, in supporting SMEs and other IP support activities.

(Ministry of Economy, Trade and Industry)

## **(2) Promoting the Establishment of Graduate Courses, Undergraduate Courses and Subjects on Intellectual Property and Making Intellectual Property Education Attractive**

### **1) Improving the environment for intellectual property education, such as establishing an evening law school**

i) In FY 2004, the GOJ will continue to encourage schools' efforts to facilitate adult education and the participation of practitioners as instructors, including the establishment of evening/holiday law graduate school courses and other evening classes at law schools, management of technology (MOT) programs, professional schools specializing in intellectual property, and undergraduate departments and faculties on intellectual property. The GOJ will also encourage proper evaluation of such efforts by schools depending on their characteristics.

(Council for Science and Technology Policy and Ministry of Education, Culture, Sports, Science and Technology)

ii) In FY 2004, the GOJ will implement necessary measures for reducing the economic burden on students at law schools, professional schools specializing in intellectual property, and professional schools of MOT.

(Ministry of Education, Culture, Sports, Science and Technology and other ministries and agencies concerned)

iii) In FY 2004, the GOJ will continue to encourage schools to introduce the joint-degree program in order to increase the number of people with expertise in both humanities and sciences, such as technology, law and business management, who are required in the intellectual property field, and people who have comprehensive understanding of the respective courses of law schools, professional schools specializing in intellectual property, and professional schools of MOT.

(Ministry of Education, Culture, Sports, Science and Technology)

iv) In FY 2004, the GOJ will continue to encourage the active utilization of people in the

private sector, who are well versed in the intellectual property field and who have rich knowledge and experience of R&D, business management, and business startups, as instructors at law schools, professional schools specializing in intellectual property, professional schools of MOT, and undergraduate departments and faculties on intellectual property.

(Council for Science and Technology Policy and Ministry of Education, Culture, Sports, Science and Technology)

- v) The GOJ will actively promote educational programs in intellectual property outside college campuses through internships, by enabling university students and postgraduate students to gain experience in dealing with intellectual property affairs at intellectual property departments in companies or patent firms. To this end, in FY 2004, the GOJ will consider specific measures to provide incentives to universities for implementing such off-campus education while taking the actual circumstances of individual universities into account.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

## **2) Promoting intellectual property education in all levels of education, including law schools, professional schools specializing in intellectual property, and MOT programs**

### **a) Promoting intellectual education at universities and graduate schools**

In FY 2004, the GOJ will continue to support the intellectual property field when implementing various programs to provide financial aid to excellent efforts selected under the principle of competition. In this respect, the GOJ will promote excellent efforts by national, public, and private law schools that provide intellectual property education, professional schools specializing in intellectual property, and MOT programs, thereby enhancing intellectual property education at higher educational institutions.

(Ministry of Education, Culture, Sports, Science and Technology and other ministries and agencies concerned)

### **b) Promoting intellectual education at law schools**

- i) In FY 2004, the GOJ will continue to choose full-time instructors at law schools with a focus on practical experience, not only educational experience in law faculty.  
(Ministry of Education, Culture, Sports, Science and Technology)
- ii) In FY 2004, with regard to review of the establishment of universities, the GOJ will continue to respect the original and creative subject varieties and credit requirements proposed by individual universities, including the schools of science and engineering, in order to enable the establishment of law schools specializing in intellectual property  
(Ministry of Education, Culture, Sports, Science and Technology)
- iii) In FY 2004, the GOJ will continue to encourage the autonomous efforts of the respective law schools, such as giving consideration to those with bachelor of science degrees in the entrance examination in their screening policy or allowing their students to take technology-related subjects at other graduate schools.  
(Office for Promotion of Justice System Reform and Ministry of Education, Culture, Sports, Science and Technology)
- iv) In FY 2004, the GOJ will conduct a survey and analysis on the screening of applicants for admission to law schools and notify law schools of the analysis results so as to encourage independent efforts by law schools.  
(Ministry of Education, Culture, Sports, Science and Technology)
- v) In FY 2004, the GOJ will encourage cooperation between law schools and science schools in order to enable students with talent in law to acquire technical talent and play a role as intellectual property experts.  
(Ministry of Education, Culture, Sports, Science and Technology)
- vi) All of the 68 law schools that were established in FY 2004 provide educational programs in intellectual property laws. In FY 2004 and beyond, the GOJ will encourage law schools to make independent efforts to further enhance educational programs on intellectual property laws. Furthermore, the GOJ will also encourage law schools to make independent efforts to upgrade the education of intellectual property experts by also referring to the U.S. LLM.  
(Ministry of Education, Culture, Sports, Science and Technology)
- vii) In FY 2004, the GOJ will encourage law schools to make independent efforts to enable attorneys at law, patent attorneys, and other working people to take classes and conduct research on intellectual property laws with the objective of acquiring basic knowledge

on intellectual property and conducting further technical research on intellectual property.

(Ministry of Education, Culture, Sports, Science and Technology)

**c) Promoting MOT programs**

i) In FY 2004, the GOJ will continue to encourage the autonomous efforts of schools providing MOT programs to conduct practical education combining humanities and sciences by principally targeting graduates from universities of technology as well as engineers, in order to develop experts who can strategically manage the commercialization of science and technology and who have international skills.

(Council for Science and Technology Policy and Ministry of Education, Culture, Sports, Science and Technology)

ii) With the aim of increasing the number of students taking MOT programs from about 1,000 in FY 2003 to 10,000 per year by FY 2007, the GOJ will support the development of MOT educational programs in universities. In doing so, the GOJ will encourage the autonomous efforts of the universities to include the matters related to technological standardization and intellectual property management in the program.

(Council for Science and Technology Policy and Ministry of Economy, Trade and Industry)

**d) Promoting intellectual property education in professional schools specializing in intellectual property and so forth**

In FY 2004, the GOJ will continue to encourage the autonomous efforts of universities to establish professional schools specializing in intellectual property, etc., which develop intellectual property experts who can support intellectual property-related business from various perspectives, by providing education that covers practical affairs, business, intellectual property policies, and international aspects, not only directed at those becoming attorneys at law or patent agents, but also at those who want to become experts engaged in intellectual property affairs. In doing so, for the purpose of ensuring that those who have completed the courses at professional schools specializing in intellectual property will play an active role in various fields, the GOJ will provide universities, etc. with relevant information.

(Council for Science and Technology Policy and Ministry of Education, Culture, Sports, Science and Technology)

**e) Promoting intellectual property education in universities**

In FY 2004, the GOJ will continue to promote high-quality intellectual property education at undergraduate department/faculty levels with the objective of providing knowledge of intellectual property not only to highly professional people such as attorneys at law or patent attorneys, but also to people engaged in intellectual property affairs and researchers in companies and universities as well as developing intellectual property awareness among students with respect to the creation and respect of intellectual property.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

**f) Promoting Cooperation with Foreign Universities**

In light of the fact that globalization in issues concerning intellectual property is intensifying, in FY 2004, for the purpose of developing intellectual property experts who are well versed in intellectual property systems in foreign countries and capable of dealing with intellectual property affairs on a global basis, the GOJ will encourage universities to cooperate with foreign universities and utilize foreign experts in intellectual property, according to their own objectives and philosophies.

(Council for Science and Technology Policy and Ministry of Education, Culture, Sports, Science and Technology)

**(3) Establishing the Groundwork for Intellectual Property Education and Research**

**1) Promoting intellectual property education for students at elementary, junior and high schools and providing training to teachers**

With the objective of developing intellectual property awareness of the creation and respect of intellectual property from the early stages of elementary school, the GOJ will promote necessary educational programs for children. To this end, in FY 2004, with the aim of making children realize the importance of respecting intellectual property rights, such as patent rights and copyrights, the GOJ will continue to formulate intellectual

property educational programs on patent rights and copyrights. In addition, in order to support intellectual property education in schools, the GOJ will continue to implement educational projects related to intellectual property, such as creating and providing educational materials for elementary and secondary schools, providing training programs and educational guidebooks for teachers, and conducting R&D on concrete methods of intellectual property education in schools.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

## **2) Fostering instructors necessary for training programs in intellectual property**

In the future, there will be more demand for training programs for the purpose of developing human resources related to intellectual property in various fields, including universities and private companies. Therefore, in FY 2004, the GOJ will continue to foster instructors necessary for training programs on intellectual property by providing the latest practical information and intensive training programs.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, and Ministry of Economy, Trade and Industry)

## **3) Establishing methods for providing information on human resource development with the use of information technology**

The E-learning system, as a means to improve one's knowledge and skills anywhere at any time, is helpful in providing opportunities to participate in various training programs on intellectual property. Therefore, in FY 2004, the GOJ will start to introduce this system in training programs for JPO employees and then introduce it in human resource development in industries, governments, and universities.

(Council for Science and Technology Policy, Ministry of Economy, Trade and Industry)

## **4) Encouraging independent efforts of the private sector in evaluating the abilities of human resources related to intellectual property**

In FY 2004, with the aim of increasing motivation among human resources related to intellectual property and satisfying the demand for such human resources, the GOJ will encourage independent efforts of the private sector in evaluating the abilities of those who deal with intellectual property affairs and translators in this field, thereby contributing to

the development of human resources related to intellectual property.

(Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

**5) Actively supporting the establishment of networks for developing human resources related to intellectual property**

Since intellectual property-related work pertains to a wide range of fields, it is impossible for one person to become well versed in all fields of expertise. Therefore, in order to deal with a wide range of intellectual property-related work promptly and precisely, in FY 2004, the GOJ will consider measures to actively support the establishment of networks for developing human resources related to intellectual property.

(Council for Science and Technology Policy, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry, and other ministries and agencies concerned)

**6) Enhancing international research/training functions**

In FY 2004, the GOJ will continue to make efforts to enhance the intellectual property research/training functions under appropriate role-sharing between the public and private sectors in order to promote the development of human resources related to intellectual property in Asia and to increase the international competitiveness of Japanese practitioners.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

**7) Promoting comprehensive and interdisciplinary research on intellectual property**

Given that the information technology (IT) industry and the environment-related industry have developed with the progress of IT and environmental studies, the GOJ will promote comprehensive and interdisciplinary research on intellectual property based on various approaches including law, technology, and economics in FY 2004.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

**8) Utilizing intellectual property-related statistics**

In addition to promoting research under (7) above, in FY 2004, the GOJ will continue to broadly utilize the intellectual property-related statistics, which serve as the basis for planning and proposing intellectual property policies, so as to develop policies that meet diverse user needs.

(Ministry of Public Management, Home Affairs, Posts and Telecommunications and Ministry of Economy, Trade and Industry)

## **2. Increasing Public Awareness of Intellectual Property**

### **(1) Unifying the Use of “*Chiteki Zaisanken (Intellectual Property Rights)*” and “*Sangyo Zaisanken (Industrial Property Rights)*”**

Compared to laws that provide for the ownership of tangible articles, intellectual property laws deal specifically with information and are therefore coming to require independent legal systems. In order to disseminate this fact among the public, the GOJ will make every effort to replace the term *chiteki shoyuken* (literally meaning “intellectual ownership rights”) that is used in laws and treaties with the terms *chiteki zaisan* (intellectual property) and *chiteki zaisanken* (intellectual property rights). To achieve this, it will amend the Japanese translations of as many relevant laws, treaties and agreements as possible in FY 2004. Furthermore, with regard to treaties and agreements originally written in Japanese, the GOJ will replace the terms to the greatest extent when there are opportunities to amend those treaties and agreements.

In addition, the GOJ will use the terms *sangyo zaisan* (“industrial property” with “industry” in a broad sense) and *sangyo zaisanken* (industrial property rights) instead of the conventional *kogyo shoyuken* (literally meaning “industrial ownership rights” with “industry” in a narrower sense) to the greatest extent in FY 2004.

(Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Economy, Trade and Industry and other ministries and agencies concerned)

### **(2) Reinforcement of Awareness Activities**

- i) In FY 2003 and beyond, the GOJ will continue to enrich diffusion and awareness activities aimed at students at elementary, junior high, and high schools, university

students, adults in general, and IP practitioners by holding intellectual property seminars suitable for the participants' respective attributes, by using intellectual property experts in the private sector, and by conducting campaigns on a slogan selected from ideas submitted by the public.

(Ministry of Education, Culture, Sports, Science and Technology and Ministry of Economy, Trade and Industry)

- ii) In FY 2003 and beyond, the GOJ will carry out projects including the holding of copyright workshops (for the general public, officials in charge of administrative affairs in prefectural governments, and library staff) and the establishment of a system for answering various inquiries from diverse work fronts via the Internet.

(Ministry of Education, Culture, Sports, Science and Technology)



## Progress in Intellectual Property Policy in the Past Year

### 1. Creation

(1) Establishing university intellectual property headquarters	For the purpose of establishing frameworks to strategically promote the management and utilization of intellectual property at universities, in July 2003, the Ministry of Education, Culture, Sports, Science and Technology adopted 34 organizations for the “Project for the Establishment of University Intellectual Property Headquarters” and selected nine organizations for the “Program for Supporting the Function to Manage and Utilize Characteristic Intellectual Property.”															
(2) Establishing TLOs	With respect to technology licensing organizations (TLOs), five approved TLOs by the METI and the MEXT, and two authorized TLOs by a Ministry concerned were established in FY 2003, and an approved TLO and an authorized TLO were established so far in FY 2004; in total, there are 37 approved TLOs and 6 authorized TLOs.															
(3) Establishing rules including the principle of attributing intellectual property rights to universities	Following the incorporation of national universities in April 2004, various rules including the principle of attributing rights to universities are being established in order to ensure that individual national universities will carry out projects through the academia-industry collaboration and utilize research results achieved at universities based on their independent decisions.															
(4) Increase in the number of patent applications filed and the amount of royalties received by universities	<p>The number of patent applications and the royalty amounts received by universities through TLOs are increasing steadily.</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;">Number of patent applications</th> <th style="text-align: center;">Royalty amounts</th> </tr> </thead> <tbody> <tr> <td style="text-align: left;">FY2000</td> <td style="text-align: center;">618</td> <td style="text-align: center;">128 million yen</td> </tr> <tr> <td style="text-align: left;">FY2001</td> <td style="text-align: center;">1,145</td> <td style="text-align: center;">300 million yen</td> </tr> <tr> <td style="text-align: left;">FY2002</td> <td style="text-align: center;">1,335</td> <td style="text-align: center;">410 million yen</td> </tr> <tr> <td style="text-align: left;">FY2003</td> <td style="text-align: center;">1,679</td> <td style="text-align: center;">554 million yen</td> </tr> </tbody> </table>		Number of patent applications	Royalty amounts	FY2000	618	128 million yen	FY2001	1,145	300 million yen	FY2002	1,335	410 million yen	FY2003	1,679	554 million yen
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(5) Inauguration of the “Japan Association for University Intellectual Property and Technology Management”	In August 2003, the conventional “Japan TLO Association” was reorganized into the “Japan Association for University Intellectual Property and Technology Management” in order to ensure the participation of university intellectual property headquarters.															
(6) Employee’s invention	In February 2004, a bill for the “Law for Partial Amendment of															

	the Patent Law for the Promotion of Expeditious Patent Examination” was submitted to the Diet: the bill includes the revision of the provision of Section 35 of the Patent Law to stipulate that where the parties concerned decide the amount of remuneration for an employee’s invention in the contract, service regulations, etc., the amount of remuneration shall be respected unless it is unreasonable to pay the amount in light of the procedures, etc. for deciding the amount.
(7) Applying the Japanese Bayh-Dole system	<ul style="list-style-type: none"> <li>- The Japanese Bayh-Dole system was applied to 88% of the contracted research projects (in FY 2002). Efforts were made to further promote the application in FY 2003.</li> <li>- For the purpose of attributing intellectual property rights for contents for government use (in the fields of culture or entertainment) to the contractors, in May 2004, a bill for the “Law Concerning the Promotion of the Creation, Protection, and Exploitation of Contents” was submitted to the Diet.</li> </ul>

## 2. Protection

(1) Promoting expeditious patent examination	<p>In February 2004, a bill for the “Law for Partial Amendment of the Patent Law for the Promotion of Expeditious Patent Examination” was submitted to the Diet ,which contains such items as abolishing the requirement that research agencies engaging in prior art search must be public-interest corporations, reviewing the utility model system, and so on.</p> <p>The number of fixed-term examiners at the JPO was increased significantly (98 examiners were newly employed in FY 2004).</p>
(2) Tightening criminal punishments for copyright infringements	In March 2004, a bill for the “Law for Partial Amendment of the Copyright Law” was submitted to the Diet in order to raise the upper limit of the fine and the imprisonment term for copyright infringements and allow the imposition of both punishments.
(3) Establishing an intellectual property high court	For the purpose of developing a judiciary system specializing in dealing with intellectual property disputes, in March 2004, a bill for the “Law for the Establishment of Intellectual Property High Court” was submitted to the Diet in order to establish an intellectual property high court.
(4) Strengthening the dispute settlement functions	<p>In March 2004, a bill for the “Law for Partial Amendment of the Court Organization Law, etc.” was submitted to the Diet in order to strengthen the function to settle intellectual property-related lawsuits.</p> <ul style="list-style-type: none"> <li>- Expanding and clarifying the power of judicial research officers dealing with intellectual property cases</li> <li>- Strengthening protection of trade secrets and facilitating the proof of an infringement in the trial of intellectual property-related lawsuits</li> <li>- Coordinating the relationship between lawsuits over infringements of patent rights, etc. and JPO trials for invalidation of patents, etc.</li> </ul>
(5) Strengthening the measures against counterfeits and pirated	- In February 2004, a bill for the “Law for Partial Amendment of the Customs Tariff Law, etc.” was submitted to the Diet in order to introduce the system for notifying right holders of

copies	<p>information on importers of counterfeits/pirated copies. The amended law was enacted in March and entered into force in April 2004.</p> <ul style="list-style-type: none"> <li>- In August 2003, the Ministry of Foreign Affairs revised the Official Development Assistance Policy to provide that the GOJ would support developing countries in realizing sustainable growth through the appropriate protection of intellectual property rights.</li> <li>- The APEC Summit's Declaration and Ministerial Declaration made in October 2003 mentioned the protection of intellectual property rights. Upon making the declarations, the GOJ's proposal for the establishment of IPR service centers and the comprehensive strategy on intellectual property were approved.</li> </ul>
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### 3. Exploitation

(1) Improving the trust system by accepting intellectual property as eligible property in trust, etc.	A bill for the "Trust Business Law" was submitted to the Diet in March 2004 in order to accept property rights in general including intellectual property rights as eligible property in the trust business and allow the trust business to be conducted within a business group or by approved TLOs.
(2) Strengthening protection of licensees	The new "Bankruptcy Law" was enacted in May 2004 in order to exclude a license contract regarding intellectual property from the scope of application of Article 59 of the Bankruptcy Law (administrator's right to rescission) in cases where the license is effective against third parties.
(3) Amending the Japan-U.S. Tax Treaty	The amended Japan-U.S. Tax Treaty was ratified by the Diet and came into force in March 2004 in order to grant immunity from taxation for royalties for intellectual property and other intangible property at a source country (the amended treaty will become applicable in July 2004 to tax to be collected at source).
(4) Promoting disclosure of information on intellectual property	The "Guidelines for Disclosure of Intellectual Property Information" was published in January 2004 in order to encourage companies to disclose intellectual property information on a voluntary basis so that their efforts in intellectual property affairs would be evaluated appropriately by investors.
(5) Improving the accessibility to intellectual property-related information	In FY 2003, information services were enhanced by providing a design publication database in English and increasing accessibility to patent information stored at the JPO's Intellectual Property Digital Library (IPDL).
(6) Efforts by local governments	<p>After establishing intellectual property policy headquarters, local governments made efforts relating to intellectual property including the formulation of local intellectual property policies.</p> <ul style="list-style-type: none"> <li>- Intellectual Property Exploitation Strategy of Shimane Prefecture (March 2003)</li> <li>- Intellectual Property Strategy on Agricultural Products of Fukuoka Prefecture (March 2003)</li> <li>- Strategy of Tokyo for the Intellectual Property Exploitation by SMEs (August 2003)</li> <li>- Guidelines for the Intellectual Property Strategy of Osaka Prefecture (February 2004)</li> </ul>

	<ul style="list-style-type: none"> <li>- Intellectual Property Creation Plan of Aichi Prefecture (March 2004)</li> <li>- Intellectual Property Exploitation Promotion Plan of Osaka City (April 2004)</li> <li>- Intellectual Property Strategy Promotion Policy of Hokkaido Prefecture (tentative) (the formulation process has been ongoing since FY 2003)</li> </ul>
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#### 4. The Dramatic Expansion of Content Business

(1) Developing the content business	A member bill for the “Law Concerning the Promotion of the Creation, Protection, and Exploitation of Content” was submitted to the Diet in May 2004 in order to ensure that the national and local governments as well as other parties concerned would have a common philosophy for the promotion of the creation, protection, and exploitation of content and make concerted efforts to comprehensively and effectively carry out relevant measures.
(2) Taking measures to prevent “the phonograms banned to be sold in Japan” from flowing back to Japan and grant the right of lending books/magazines	For the purpose of actively promoting the diffusion of Japanese music culture overseas, a bill for the “Law for Partial Amendment of the Copyright Law” was submitted to the Diet in March 2004 in order to prevent music recordings from flowing back to Japan, despite the prohibition of sales in Japan, and grant the right of lending books/magazines so as to ensure that the Japanese publication culture will not decline but develop.
(3) Encouraging and supporting activities for the exchange between legal professionals and businesses/content creators	The “Entertainment Lawyers Network” was established in FY 2004 in order to promote activities for the exchange between legal professionals and businesses/content creators.
(4) Revising the guidelines under the Antitrust Law concerning abuse of dominant bargaining position in transactions on services (Guidelines for Transactions on Services)	For the purpose of ensuring fair trade in the content industry, in March 2004, it was clearly stipulated in the “Guidelines for Transactions on Services” prepared by the Japan Fair Trade Commission that a trustor who is in the dominant bargaining position shall be deemed to be in violation of the Antitrust Law in cases where the trustor in effect forces the trustee to assign the rights relating to the content to the trustor or restricts the trustee’s secondary use of the content.
(5) Establishing a new finance system for promoting the production of movies, etc.	In FY 2004, the Development Bank of Japan established a new finance system with the use of securitization of intellectual property such as content (“Support Project for the Effective Use of Intellectual Property”).
(6) Efforts by universities, etc. with respect to content	In March 2004, Tokyo University publicized the “Academia-Industry Cooperative Educational Program in Content Creation Science” (this program will start in the fall of 2004). The professional school specializing in the development of content-related experts was opened in April 2004.
(7) Promoting R&D for the creation of digital content and media art	In FY 2004, “Research and Development for the Creation of Digital Content” was designated as a research target under the budget for the promotion of science and technology. As a result of the screening, “Research on Standard Technology for Digital Cinema” was adopted (?) in May 2004.
(8) Promoting the	For the purpose of promoting the disclosure of cultural heritage, a

production and distribution of content on cultural heritage	precious national asset, in April 2004, the “Plan for Online Access to Cultural Heritage” was promoted by making cultural heritage accessible to the public online.
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## **5. Developing Human Resources and Improving Public Awareness**

(1) Establishing law schools	At all of the 68 law schools that were established in April 2004, educational programs in intellectual property laws are available.
(2) Increasing awareness of the Promotion Plan	Lectures on the Intellectual Property Promotion Plan were held at more than 100 sites in Japan, and about 20,000 people participated in the lectures.



## Glossary

Equity	Shareholder's interest (owner's capital) for which a shareholder is entitled to a dividend according to the profits over a certain period of time; the financial value of a property
Open software license	Licensing of open-source software, of which the source codes (program contents that are readable) are disclosed and made available for free reproduction and modification
Grace period	Period for applying exceptions to lack of novelty of inventions
Laboratory notebooks	Notebooks in which researchers and inventors record their own R&D activities themselves, which may serve as necessary evidential documents to prove the date of invention, the contents of the invention, inventor, etc.
Joint degree	A system that allows the obtainment of more than one academic degree during a certain period
Spin-off venture	Venture company that is established by a person who has left his company and started his business independently based on his own R&D results
Intellectual property policy	Basic policy formulated by each university, etc. with respect to the treatment of intellectual property
Discovery	The U.S. procedures for the opposing parties of a civil action to collect and require disclosure of information from each other out of court
Digital contents	Images, database, software, etc. produced with the use of a computer
Digital cinema	Carrying out the overall process from shooting to showing movies with the use of digital data instead of film
Bayh-Dole system	System for attributing intellectual property rights resulting from R&D funded by a national government to the entities that received the fund
Patent pool	Agreement between two or more patent owners to license one or more of their patents to one another or third parties
Film commission	Non-profit organization that is established under the leadership of a local government to promote location shooting
Project finance	Financing method for repaying the principal and interest of loans with profits from the operation of finished facilities
Post doctorals	Persons who have completed the doctoral course and continue to engage in research projects at research institutes belonging to universities, etc. Most of them are employed for a fixed term.
ASEM	Asia-Europe Meeting
ADR	Alternative Dispute Resolution
AFI	American Film Institute
APEC	Asia-Pacific Economic Cooperation
Attorney-client privilege	Right to confidentiality between an attorney and client in the United States
CSDB	JPO's Computer Software Database to be used for the examination of computer-related applications
DRM	Digital Rights Management
EG cell	Embryonic germ cell
EPA	Economic Partnership Agreement

ES cell	Embryonic stem cell
F-term	Technical classifications developed for computerized search in order to increase the efficiency of prior art searches for patent examination
FTA	Free Trade Agreement
IEC	International Electrotechnical Commission
IPDL	JPO's Intellectual Property Digital Library
ISO	International Standardization Organization
ITU	International Telecommunication Union
JETRO	Japan External Trade Organization
License of right	System for registering the intention of licensing
LLM	Master of Law
MOT	Management of Technology
NIH	National Institutes of Health
PCT	Patent Cooperation Treaty
RILO	Regional Information Liaison Office
TLO	Technology Licensing Organization
TPRM	Trade Policy Review Mechanism
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
UPOV	Union For The Protection of New Varieties of Plants
WCO	World Customs Organization
WCT	World Intellectual Property Organization Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	The World Intellectual Property Organization Phonograms and Performances Treaty
WTO	World Trade Organization