

No. 32  
November 2022

## IP Friends Connections

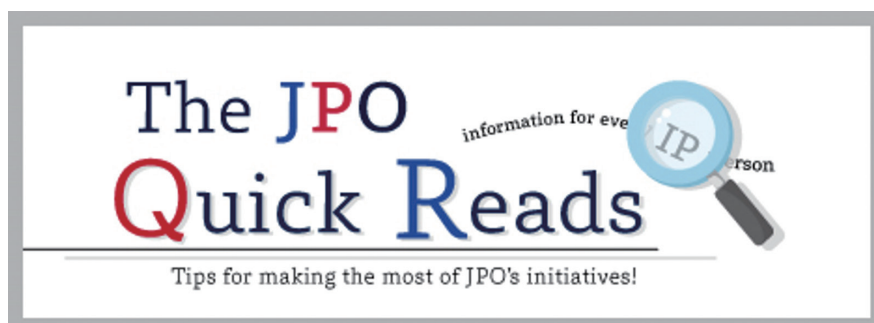
*This Magazine is published as part of the Intellectual Property Cooperation in Human Resource Development Program of the Japan Patent Office.*

*The aim of this Magazine is to follow up on training programs through the dissemination of information to IP Friends, those who have completed training courses of the above program.*

*We very much hope that the information in this publication related to intellectual property, and the comments from either IP Friends or lectures, will prove beneficial to you in your work.*

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In “the JPO Quick Reads”, the JPO introduces its initiatives and relevant information mainly in relation to patent examinations. Its weekly updates would help users to understand various JPO measures and to take advantage of using them. We also hope users feel welcome to the JPO service. We have received some good feedback from our users, through Twitter, saying that the JPO Quick Reads are informative and enlightening with frequent updates. The URL and some popular topics are as follows:

**[The JPO Quick Reads]**

<https://www.jpo.go.jp/e/news/quickreads/index.html>

**Reference: [JPO Official Twitter]**

The JPO provides information posted on the JPO English website, including topics of “the JPO Quick Reads”.

[https://twitter.com/JPO\\_JPN](https://twitter.com/JPO_JPN)

**[Popular topics]**

➤ Examiner Exchange (13 September 2022)

*Our Examiner Exchange Programs with overseas IP offices contribute to enhancing mutual understanding and trust building!*

The JPO has been implementing Examiner Exchange Programs in collaboration with IP offices abroad for more than twenty years. The Programs are basically arranged on bilateral basis, aimed at fostering trustful relationship and deepening mutual understanding between examiners working in the same technical field.

Conventionally, the participating examiners alternately visited their counterpart’s office and held case-based discussions about prior art search methods and examination practices. While the spread of COVID-19 made such face-to-face consultations difficult, we have recently resumed the Program in a different format, via video teleconferencing system.

The online contacts are designed to make the opportunities more fruitful to both parties, by dividing a

single implementation period into plural segments and setting an interval of one to two weeks in between. This approach allows examiners from both sides to get well-organized and fully address any inquiries made during the preceding segment.

In 2022, we had an online exchange with the European Patent Office (EPO), the oldest partner for this initiative, from January to February, and China National Intellectual Property Administration (CNIPA) from July to August, respectively.

➤ Special Prize from the Philippines (12 July 2022)

*The JPO has received a key partner award from the Intellectual Property Office of the Philippines.*

A commemorative ceremony was held in Manila early June to celebrate the 25th Silver Bright Anniversary of the Intellectual Property Office of the Philippines (IPOPHL). During the event, the JPO, which has been cooperating with the IPOPHL for many years, was presented with a special award as one of the key partners in providing support to enhance the IP system in the Philippines.

The cooperation between the two Offices includes offering IP training programs for human resources development, among others, by our Global Patent Academy (GPA), and the Patent Prosecution Highway (PPH), which has been fully implemented since March 2021.

➤ WIPO Assemblies 2022 (9 August 2022)

*JPO Commissioner and Deputy Commissioner have attended the WIPO Assemblies in Geneva!*

The 63rd Series of Meetings of the Assemblies of the Member States of WIPO were held at its headquarters in Geneva from July 14th through 22nd. At the opening session, JPO Commissioner Hamano delivered a General Statement from the floor on behalf of the Government of Japan.

Seizing this opportunity, our leaders pursued a vigorous schedule and met directly with the heads/senior officials of IP authorities from over 20 nations/regions. The results achieved by those talks include the exchange of a renewed memorandum of cooperation bilaterally with some counterparts toward further partnerships.

➤ Online Interviews with Examiners (20 September 2022)

*The availability of video conference interviews with examiners is growing!*

As addressed here previously (posted on 2 March 2021 and 25 May 2021), interviews with examiners are an effective examination tool to facilitate communication between applicants and examiners.

Over the last two years or so, interviews by video conferences have been positively utilized, due partly to our proactive approach to better communicating with the stakeholders even under the current pandemic. As for patent applications, the number of interviews conducted online in 2021 was 1,423, representing an increase of 40% from the previous year, and accounted for 84% of the overall annual interviews.

➤ Patent Examination Training Programs for Emerging Countries (6 September 2022)

*Our training programs for patent examiners in emerging economies remain on track, taking advantage of online communications.*

As previously introduced here a couple of times (posted on 24 August 2021 and 19 January 2021), our International Training Instructors (hereinafter, simply “Instructors”) of the Global Patent Academy (GPA) work vigorously to provide programs on examination practices for patent examiners in emerging countries.

Last year, a total of 21 Instructors offered trainings for cumulatively around 200 examiners from IP offices in ASEAN.

As for the current year, the GPA Instructors most recently engaged themselves in online training for Vietnam in July, while subsequent programs for other economies have been in preparation to be implemented by the end of the period.

➤ JPO Annual Report (30 August 2022)

*Let us outline some points to remark concerning the up-to-date statistics.*

Besides the “JPO Status Report” published every March in a double column format in both English and Japanese to introduce its initiatives along with the statistical information (posted here on 12 April 2022), we release “JPO Annual Report” in Japanese every July mainly for domestic stakeholders. It is compiled on a fiscal-year basis and provides, among other things, latest statistics on applications/registrations at home and abroad, and examinations and appeals/trials at the JPO. We made available to the public the most recent version (JPO Annual Report 2022) last month.

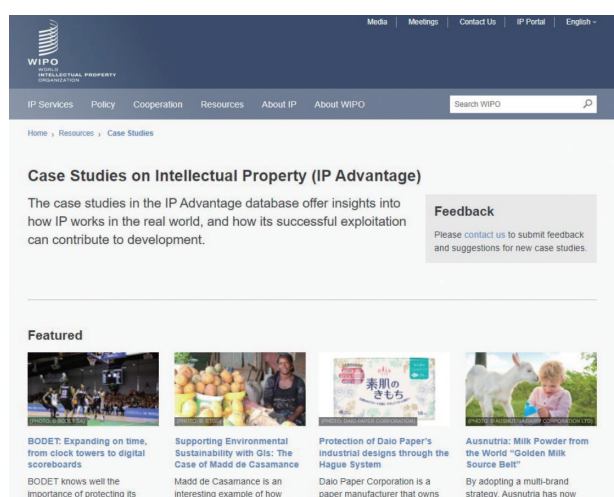
Some of the points worth noting in the updated Annual Report are:

- The number of patent filings and requests for patent examination increased from the previous year.
- Regarding patent applications from abroad, the number of filings from the United States and Europe as well as from China grew compared to the previous year. (Figure1)
- The number of First Actions (FAs) for trademark applications showed a large rise of 23.3% over the previous year under the strengthened and streamlined examination system.

## IP Advantage



World Intellectual Property Organization (WIPO)<sup>1</sup> promotes successful stories to illustrate how IP works in the real world, and how its successful exploitation can contribute to development. One of the platforms WIPO offers such insight is a database called IP Advantage<sup>2</sup>.



(IP Advantage Webpage)

IP Advantage is an initiative that was proposed by Japan at the Committee on Development and Intellectual Property (CDIP) in 2009 and has been implemented under the support of the Funds-In-Trust Japan Industrial Property Global<sup>3</sup>, a voluntary contribution from the Japanese government to WIPO. WIPO Japan Office contributes to the database in various ways; proposal of case studies, writing articles and promoting the database.

Since its launch in 2010, the database has gathered over 280 cases (as of September 2022) from various countries throughout the world. The types of intellectual property covered are not limited to industrial property rights such as patents, designs, and trademarks, but also include copyrights, geographical indications (GI), and trade secrets.

There are three available search functions of IP Advantage.

### 1. Simple search

You can narrow down articles by either of or two types of information: IP right type and Focus.

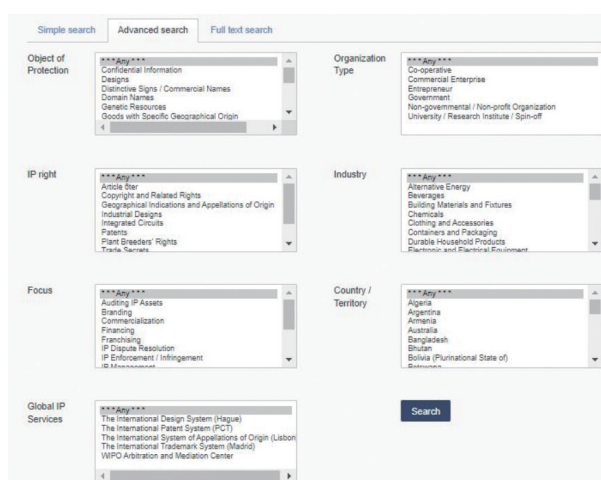
<sup>1</sup> <https://www.wipo.int/portal/en/>

<sup>2</sup> <https://www.wipo.int/ipadvantage/en/>

<sup>3</sup> [https://www.wipo.int/cooperation/en/funds\\_in\\_trust/japan\\_fitip\\_global/index.html](https://www.wipo.int/cooperation/en/funds_in_trust/japan_fitip_global/index.html)

## 2. Advanced search

In addition to the above two types of information in the Simple Search, search by Object of Protection, Global IP Services, Organization Type, and Country/Territory is available.



(Advanced search)

## 3. Full text search

This search allows for search by text from the full text of article titles and article texts.

Since 2021, WIPO Japan Office is strengthening its effort to add IP analysis in the case study of Japanese companies. Against the background of rapidly expanding globalized business environment and increasing relevance of intangible asset, the role of IP for companies and entrepreneurs can become more and more important. WIPO Japan Office will continue to offer valuable insight into how companies and entrepreneurs are leveraging IP and applying it in their business.

In addition to written articles, WIPO Japan Office has created videos related to successful cases of intellectual property utilization and IP strategies. Most recent video featured a Japanese SME, OPTiM<sup>4</sup>, a market leader in AI, IoT, and big data platform. Another video featured an “IP Terakoya” extracurricular activity at National Institute of Technology, Numazu College<sup>5</sup> and it was one of the items at the 2022 World IP Day in Japan. Those videos are also available on WIPO Japan Office’s Twitter.



(OPTiM)



(National Institute of Technology, Numazu College)

4 <https://www.wipo.int/ipadvantage/en/details.jsp?id=12449>

5 <https://www.wipo.int/about-wipo/en/offices/japan/outreach/index.html> (See section under Japan)

Examples of case studies are as follows;

- A Case study<sup>6</sup> of a Japanese company Suntory Holdings that manufactures alcoholic beverages and soft drinks and how it uses the Madrid System to expand its business.
- A case study<sup>7</sup> of a Thai professor who developed a sustainable medical mask for front-line workers and what future prospects lie for their business.
- A case study<sup>8</sup> of a young New Zealand woman who invented a safe method of splitting logs after seeing her mother injured while splitting firewood, and used a PCT application to expand the family business.



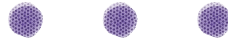
There are various forms of utilization of intellectual property, which is an intangible asset. In considering how to utilize intellectual property in business strategy, it is very useful to know the details of individual successful cases. WIPO Japan Office hopes that this IP Advantage database will serve as a reference for those around the world who is learning about intellectual property strategies.

6 [https://www.wipo.int/ipadvantage/en/articles/article\\_0263.html](https://www.wipo.int/ipadvantage/en/articles/article_0263.html)

7 [https://www.wipo.int/ipadvantage/en/articles/article\\_0271.html](https://www.wipo.int/ipadvantage/en/articles/article_0271.html)

8 <https://www.wipo.int/ipadvantage/en/details.jsp?id=11432>

## Articles from Former Trainees



### Intellectual Property Enforcement Practices in the E-commerce Industry in Vietnam

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The JPO/IPR Training Course for Practitioners Specializing in Patents  
(October 28 – December 13, 2021)

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## Introduction

The Fourth Industrial Revolution is taking place around the world with a boom in digital technology, creating great opportunities for business growth. Such revolution creates the strong development of e-commerce, which in tandem, generates many types of new violations.

According to the “Vietnam E-Business Index 2022” (a report issued by the Vietnam E-commerce Association (VECOM)), during the Covid-19 pandemic in 2021, the e-commerce industry kept its great expansion at a rate of **20 percent**, equal to the volume of **16 billion US dollars**<sup>1</sup>. Regarding e-commerce

<sup>1</sup> Summary of the Report, see <https://vecom.vn/bao-cai-chi-so-thuong-mai-dien-tu-viet-nam-2022>; for full text, see <https://drive.google.com/file/d/1OO3bKfhTkH0CIL7X8bzceihTWfjNHLNI/view> (only available in Vietnamese language, English version shall be published soon)

platforms in Vietnam, the three leading candidates are SHOPEE ([www.shopee.vn](http://www.shopee.vn)) ranking No. 487 on the Global Alexa Ranking, LAZADA ([www.lazada.vn](http://www.lazada.vn)) ranking No. 1,572 and TIKI ([www.tiki.vn](http://www.tiki.vn)) ranking No. 1,606.

During the great leap of the e-commerce industry, Intellectual Property Rights (IPR) became one of the most vulnerable objects with a high risk of being violated in various ways. In order to catch up with the development, the Vietnamese government authorities as well as the e-commerce platforms are gradually developing their own methods to fight against the IPR infringements.

## Intellectual property infringements in the Vietnamese e-commerce environment

In recent years, despite the continuous efforts from not only IPR owners but also the Vietnamese government authorities, smuggled goods, counterfeit goods, goods of unknown origin and other IPR infringing goods have been spreading on platforms by many sophisticated tricks of many “Sellers”<sup>2</sup>.

According to a forecast from the Ministry of Industry and Trade of Vietnam, during the next two to three years, the violations that occur in the e-commerce environment will account for **about 50-60%** of the total violations in the economy. As per the report from the Vietnam Directorate of Market Surveillance, by October 2021, the market management officers had inspected **about 2,500 violation cases**, and handled **over 2,300 cases** of administrative violations (including violation of e-commerce regulations and actions taking advantage of the e-commerce system by trading IPR infringing goods), with a result of more than 18 billion Vietnamese dong (equivalent to **about 776,000 US dollars**)<sup>3</sup> of compensation.

Thanks to technology development, it is now easier than ever for any individual, without any experience of trading online, to join the e-commerce market by establishing their own online store. When anyone can sell easily, counterfeit goods appear. Every day, Vietnamese consumers are being exposed to a wide range of counterfeit goods when they use e-commerce platforms for shopping. These counterfeit goods are offered at any price range and can be labeled with a counterfeit trademark or sellers just simply use images of the genuine goods for trading their counterfeit goods. Practices show that fashion retail, electronics, perfume and cosmetics, and medicines are particularly vulnerable to online counterfeiting activities.

## Vietnamese regulations for the prevention of violations of IPR in e-commerce

In Vietnam, since the first Intellectual Property (IP) Law was approved by the National Assembly in the year 2005 and followed by the Intellectual Property Law 2009, many IP issues have appeared. In 2013, **Decree No. 99/2013/ND-CP** on regulations on sanctioning of administrative violations in the field of industrial property was promulgated, providing the very first brick of regulations on handling IP infringements on the Internet. After that, acts of infringing upon industrial property rights on the Internet

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2 “Sellers”: entities who establish an account for selling activities on a platform.

3 Article “Strengthening control of smuggling, counterfeiting and commercial fraud in the e-commerce environment – published by Ministry of Industry and Trade of the Socialist Republic of Vietnam”, for full text, please see: <https://moit.gov.vn/bao-ve-nen-tang-tu-tuong-cua-dang/tang-cuong-kiem-soat-ca-c-ha-nh-vi-buon-lau-hang-gia-va-gian-lan-thuong-mai-tren-moi-truong-thuong-ma-i-die-n-tu-.html> (only available in Vietnamese language)

have been specified in **Circular 11/2015/TT-BKHCN** and subsequent **Circular 47/2014/TT-BCT** of the Ministry of Industry and Trade. Accordingly, a website is a means of business and when there is an act of advertising or selling goods in violation of IP rights, it will be handled like other infringement cases.

Besides, **Decree 52/2013/ND-CP** on e-commerce also stipulates the responsibilities of parties when participating on an e-commerce platform such as: to require sellers to provide information when registering an account of such platform to use the platform's services; to establish an inspection and supervision mechanism to ensure that the seller's information supplied on the e-commerce platform is registered and published accurately and completely; to remove fake goods, imitation goods, smuggled goods, goods infringing upon intellectual property rights and other illegal goods and services when detecting or receiving authentically grounded complaints about these violations; to comply with regulations of law on payment, advertising, promotion, protection of intellectual property rights, protection of consumer rights and other relevant laws when selling goods or providing services on the Internet<sup>4</sup>. Recently, **Decree No. 98/2020/ND-CP** was issued to define the term “counterfeit goods” and the relevant compensations for violations.

## **Anti-IP violation practices on the most popular e-commerce platforms in Vietnam**

### **SHOPEE**

#### ***Brief introduction about SHOPEE***

*“Launched in 2015, it is a platform tailored for the region, providing customers with an easy, secure and fast online shopping experience through strong payment and fulfillment support”<sup>5</sup>.* In addition to Taiwan, in the region of Southeast Asia, SHOPEE is available in Singapore, Indonesia, Malaysia, Thailand, Vietnam and the Philippines. SHOPEE launched their Vietnamese e-commerce site on 8 August 2016, with the local website <https://shopee.vn/>.

#### ***Method for handling IP infringements on SHOPEE***

According to SHOPEE's terms of services, trading counterfeit and/or IP infringing products are prohibited. Therefore, if any IP infringing products are spotted, the IP holder can submit a request for handling such infringement via the Customer Services channel of SHOPEE Vietnam at <https://help.shopee.vn/portal>. After a request is submitted, within 24 hours, a member of the customer services team will contact the IP holder via email and guide them on handling the case according to the internal procedure.

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4 Articles 35, 36 of Decree 52/2013/ND-CP on e-commerce, for full text, see: <http://en.idea.gov.vn/default.aspx?page=legal&do=detail&id=712cb46e-13d1-4cba-93fd-f43215f56f0a>

5 <https://careers.shopee.vn/about>

**Đội chăm sóc khách hàng Shopee**  
 Chúng tôi muốn lắng nghe câu hỏi và ý kiến đóng góp từ bạn. Hãy phản hồi cho Shopee biết vấn đề của bạn nhé! Chúng tôi sẽ liên hệ lại bạn trong 24h tiếp theo.

\* Bạn cần hỗ trợ với vai trò là người bán hay người mua?  
 - Lựa chọn -  
 Select

\* Tên đăng nhập  
 Input

\* Địa chỉ email của bạn  
 Input

\* Nội dung phản hồi  
 Điền thêm thông tin chi tiết về thắc mắc/vấn đề của bạn  
 Input

Tải Lên Tập Tin  
 Bạn có thể đính kèm tối đa 5 tệp với đuôi là jpg / jpeg / png / pdf / mp4. Dung lượng mỗi tệp không quá 5MB.  
 Click to Upload (0/5)

Gửi

Fig.1: Print screen of the request template on SHOPEE (also used for IP dispute requests)

The advantage of this method is that for every single case of dispute, an official member of the SHOPEE team will directly handle the case with the IP holder.

## LAZADA

### *Brief introduction about LAZADA*

Lazada Group is an e-commerce company of Alibaba. Founded in 2012, Lazada is an e-commerce portal for domestic and international distributors and brands in Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. With the largest payment and logistics network in the region, Lazada has become an integral part of consumers' daily lives in Southeast Asia. Since 2016, Lazada has been a strategic e-commerce platform in the region with the support of technology infrastructure from Alibaba Group<sup>6</sup>. LAZADA entered the Vietnamese market under RECESS COMPANY LIMITED in 2012, with the local website <https://www.lazada.vn/>.

From the beginning of its operation, Alibaba Group in general and LAZADA in particular has been interested in the protection of IPR. In an effort to tackle the proliferation of counterfeit products and the related complaints, through experimentation, Alibaba Group has pioneered the development of a system to protect IPR in a more sophisticated and effective way. By using advanced computing technology and big data, Alibaba's Platform Department has built and implemented an efficient system to detect and process offers related to counterfeit goods on its platform.<sup>7</sup>

6 [https://vi.wikipedia.org/wiki/Lazada\\_Group](https://vi.wikipedia.org/wiki/Lazada_Group)

7 [https://www.wipo.int/wipo\\_magazine/en/2018/si/article\\_0006.html](https://www.wipo.int/wipo_magazine/en/2018/si/article_0006.html)

## ***Method for handling IP infringements on LAZADA***

A modern system for handling trademark infringements, anti-counterfeiting and counterfeit goods mentioned above is Alibaba's Intellectual Property Protection Platform (**IPP Platform**) available at <https://ipp.alibabagroup.com/>. Of course, all complaints related to counterfeit goods on the LAZADA e-commerce platform will be handled in accordance with current law provisions present in the Vietnam e-commerce territory.



Fig.2: Print screen of the IPP Platform

The advantage of this method is that LAZADA provides a specialized channel for handling IP matters, which expedites the handling process and with the assistance of AI technology, the number of cases handled can be scaled up with higher accuracy.

## **TIKI**

### ***Brief introduction about TIKI***

TI KI Company Limited (also known as “TIKI”) is a local company specializing in e-commerce services. Since its establishment in March 2010, TIKI has been providing its services to Vietnamese consumers through the website <https://tiki.vn/>.

### ***Method for handling IP infringements on TIKI***

The method being used by TIKI against IP infringement is quite similar to what SHOPEE is doing. Namely, the IP holder can submit a request for handling such infringement via the customer services channel of TIKI at <https://tiki.vn/lien-he/gui-yeu-cau>. Alternatively, the IP holder can submit a request by sending an email to the customer services team at the address [hotro@tiki.vn](mailto:hotro@tiki.vn). After a request is submitted, within 24 hours, a member of the customer services team will contact the IP holder via email and guide them on handling the request according to the internal procedure.

## Đội ngũ chăm sóc khách hàng TIKI

TIKI luôn sẵn sàng lắng nghe câu hỏi và ý kiến đóng góp từ bạn. Chúng tôi sẽ phản hồi ngay trong 24h tiếp theo!

Hãy chọn vấn đề bên dưới nhé\*

Vấn đề hỗ trợ chính

Vấn đề hỗ trợ chi tiết

Địa chỉ email của bạn\*

Nhập địa chỉ email

Số điện thoại\*

Nhập số điện thoại

Mã đơn hàng

Bạn có thể nhập nhiều mã đơn hàng, cách nhau bằng dấu ";"

Tiêu đề\*

Nhập tiêu đề

Nội dung\*

Mô tả chi tiết vấn đề của bạn

Tập tin đính kèm

Thêm tập tin hoặc thả tập tin ở đây

Gửi

Fig.3: Print screen of the request template on TIKI (also used for IP dispute requests)

The advantage of this method is that TIKI can combine the traditional way (handling cases via email) and a modern way (handling via request submission form).

## Difficulties and challenges

Firstly, it is always difficult for companies to learn and adapt to new procedures. In our case, our client was familiar with the traditional ways of reporting, i.e., sending hard copies of C&D letters or communicating with the platform and the alleged infringers via email.

Secondly, as each e-commerce platform conducts their own method of handling IP infringement actions, it takes times for the user/IP holder to get used to, understand and take advantage of each method used for each specific platform.

## Conclusion

It is undeniable that the Internet has created great opportunity for businesses, especially for Small and Medium-sized Enterprises (SMEs) to develop and expand their business internationally. On the other side, digitalization also creates a fertile ground for online IP infringements, such as counterfeiting, fake goods, and stolen trade secrets, etc. As a result, it has caused various negative impacts on the sales, profits and reputations of affected companies as well as having broader adverse effects on the economy, safety and security.

Besides the traditional methods of fighting IP infringements, now, IPR owners have more chances to use the online complaints system provided by each e-commerce platform so that the infringements can be swiftly and efficiently taken down.

The Vietnamese government is paying more and more attention to the e-commerce environment. The Law of Vietnam is seeking additional opinions on the amendment of the IP law and hopes that the enforcement of IPR in the e-commerce environment will be a point of interest in many upcoming laws.

## References

- (i) WIPO, Use of Trademarks on the Internet, 1999
- (ii) The Liability of online markets for counterfeit goods: A comparative analysis of secondary trademark infringement in US and EU
- (iii) WIPO, IP infringement online: the dark side of digital, 2011
- (iv) WIPO, IP issues related to electronic commerce
- (v) Franklin Pierce Law center, IP in E-commerce (prepared for WIPO)
- (vi) Online IP Infringement in South-East Asia: How to protect your business

## Trademarks and the Morality Argument

**Ms. Elayne Oliveira Da Silva (Brazil)**

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Furukawa Electric Latam S.A.



JPO/IPR Training Course for Practitioners Specializing in Trademarks  
(September 3 – October 11, 2021)



The Paris Union Convention (in article 6, 5B) establishes that a trademark cannot be contrary to morality and public order, and in particular, of a nature to deceive the public.

Based on the aforementioned Convention, the member countries of the Paris Union, including Brazil<sup>1</sup> and the United States of America<sup>2</sup>, created rules determining, in summary, that signs which violate morals and public order cannot be registered as marks.

In the United States, the validity of the Lanham Act was challenged before the Supreme Court, which concluded that provision §2 (a) was unconstitutional, since prohibiting the trademark registration of terms considered offensive is an attack on freedom of speech. Such a decision was made in the precedent case *Matal v. Tam*, which authorized the registration of the trademark THE SLANTS<sup>3</sup> for an American band formed by Asian descendants.

Before the Supreme Court's decision, it is important to highlight that the trademark THE SLANTS (slanted eyes) had its registration denied by the USPTO (United States of America Patent Trademark Office) examiner because the term is pejorative, since it refers to Asian descendants. However, the band's goal in using the said term to identify themselves is an attempt to reclaim the term and drain its denigrating force. Before approaching the application of the law in the examination of trademarks, it is worth drawing a parallel on the right to nominate or re-signify certain terms.

The purpose of the American band when applying for the registration of the trademark THE SLANTS was to take ownership of the term considered pejorative, and thus give a new interpretation—as was also the case with the term GAY<sup>4</sup> that was considered pejorative during the '90s when referring to homosexual people, but after a process of reframing, has been used to describe homosexuals positively.

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1 Industrial Property Law (9.279/1996)

Article 124. The following are not registered as trademarks:

III - Expressions, figures, drawings or any other sign contrary to moral and good customs, or that offends the honor or image of people or violates freedom of conscience, belief, religious cult or ideas and feeling worthy of respect and veneration;

2 The Lanham Act, available at: <https://www.ftc.gov/legal-library/browse/statutes/lanham-trade-mark-act>

3 US Registration Number: 5332283

4 Dictionary Merriam-Webster. Available: <https://www.merriam-webster.com/dictionary/gay>

CALVET<sup>5</sup> (1974), when mentioning the right to name, presents historical examples to demonstrate that colonizers and invaders call the populations with which they come in contact whichever names they want, considering them always inferior. The Greeks called those who spoke a language other than Greek “barbarians”; the Slavs called the Germans *némits*, which meant “mute”, perhaps because they spoke another language; the North American Indians were fancifully baptized as if they had not existed before the arrival of the colonists; Anthropophagic peoples were called cannibals by the Spaniards (a deformation of the word in the Caribbean language of the Antilles, which meant something like “courageous”). In this way, it is fair to say that the right to name something would be, for Calvet, the linguistic parallel of the right to appropriate.

In other words, the right to nominate is perceived to be the prerogative of the dominant group over the dominated group. Thus, when a certain group in society decides to appropriate a term used to denigrate them and thereby incorporate a new meaning, it is possible to affirm that such group is exercising its right to name.

In Brazil, the phrase “ISSO É COISA DE PRETO”<sup>6</sup> was used for a long time as a synonym for poorly done work. However, in 2018 the Afro Brazil Museum highlighted the competence, talent and, black resistance in the fields of architecture, plastic arts, sculpture, goldsmithing, literature, music, dance, theater, language and, customs, through a new exhibition titled “It’s a Black Thing – 130 Years of the Abolition of Slavery”. As can be seen, this is an attempt to re-signify the use of the term to characterize the talents and work done by black people.

However, even though certain groups in society are appropriating and re-framing terms that were previously considered pejorative, trademark examiners—at least in Brazil and the United States—are not following this evolution, which results in an excess of conservatism or even conflicting decisions. Similar to the example cited above, the Brazilian PTO recently denied registration of the trademark “THE HEMP COMPANY”<sup>7</sup> on the grounds of “an equivalent expression in Portuguese to “hemp company (marijuana)” based on Item III, Article 124 of the Industrial Property Law. On the other hand, the Brazilian PTO granted registration of the trademark “CÂNHAMO CANHÂMO”<sup>8</sup> in another case, which is a word also related to cannabis.

Such divergence among decisions shows how vague item III is, which results in conflicting and negative decisions regarding trademark registration based solely on the moral opinion of each individual examiner. The diversified treatment of cases that fall into the same legal category constitutes clear arbitrariness.

In the decision of the case *Matal v. Tam* Justice Alito said: “Except as required by §1052(a), an examiner may not reject a mark based on the viewpoint that it appears to express. If the mark meets the Lanham Act’s viewpoint-neutral requirements, registration is mandatory.”

Bearing this in mind, it is important to highlight that this article is not intended to criticize the refusal to grant trademarks that offend morals and public order, but to demonstrate how vague the provision is, and how it leaves this at the mercy of each examiner’s different interpretations and previous opinions, without considering the modernization of society. In Brazil, no case involving the denial of trademark registration based on the offense to morals and public order has so far been judged by the Superior Court

5 CALVET, Louis-Jean. Linguistique et colonialism: petit traité de glottophagie: Payot, 1974

6 Translation: THIS IS A BLACK THING

7 Process Number 908082029

8 Process Number 905829638

of Justice, so we still experience contradictory decisions issued by the Brazilian PTO.

In order to have proper functioning of the industrial property system, it is necessary to have the application of predictable and rational rules, at the risk of violating freedom of speech by not taking into account the advances of society and science. This problem could be solved via regulations on procedures designating how examiners should analyze trademark registrations that might be considered offensive or prejudiced.

## Copyright in Famous Paintings

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KJ Intellectual Property



JPO/IPR Training Course for Practitioners Specializing in Trademarks  
(September 3 – October 11, 2021)



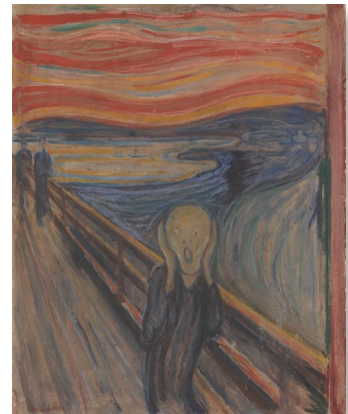
Which artworks would immediately come to your mind when we talk about famous paintings? Naturally, we would think of “Mona Lisa” by Leonardo Da Vinci, “The Starry Night” by Vincent van Gogh, “The Scream” by Edvard Munch, and so on. In fact, you may often come across these famous paintings being used and displayed whether on television, in restaurants, on social media, on merchandise or other places from time to time. Some questions may pop up in your mind: if you can also use or even copy these famous paintings on your social media or as a meme; and if you can use it in a commercial sense e.g. printed on t-shirts, mugs, phone covers, etc.



“Mona Lisa” by  
Leonardo Da Vinci



“The Starry Night” by Vincent van Gogh



“The Scream” by  
Edvard Munch

It has to be noted that under the Malaysian copyright law (Copyright Act 1987), all artistic works (including paintings) are automatically protected without the need for any form of registration upon fulfilling certain requirements such as the work has to be original, and recorded or reduced to material form (tangible form). Many foreign countries actually have similar principles in terms of copyright protection because of intellectual property protection initiatives from around the world such as the Berne Convention for the Protection of Literary and Artistic Works and other international treaties or agree-

ments.

## Exclusive Rights of the Copyright Owner

The next questions would be: “What is the effect when an artistic work is protected by copyright law?”, “What does it mean?” and “How will copyright affect you and everyone else?” Basically, the owner of a copyrighted work (usually the author, painter, or creator) shall have the exclusive rights to control the doing of certain acts in relation to the copyrighted work covering the following:

- the reproduction in any material form;
- the communication to the public;
- the performance, showing or playing to the public;
- the distribution of copies to the public by sale or other transfer of ownership; and
- the commercial rental to the public.

Therefore, copyright is infringed on when someone carries out any of the acts above without consent of the copyright owner. Let’s discuss a few of these exclusive rights.

### The Reproduction in Any Material Form

Under the Copyright Act 1987 (“the Act”), “reproduction” means *“the making of one or more copies of a work in any form or version, and in relation to an artistic work includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.”* Hence, if an artistic work is protected by copyright, no one can duplicate or copy the work in any form (including taking a photo or snapshot of it), be it digitally or physically.

Note that even if you have bought an original painting, there are certain restrictions as to how you can deal with the painting. The laws state that you are not allowed to make copies of the painting. Merely because you own the physical painting does not mean that you own the copyright of the painting. Hence, it goes without saying that you are not allowed to make copies of the painting or make derivative works out of the painting (e.g. modification to the painting) for distribution or sale. The same is true when you have bought a book. It does not mean that you can then start to photocopy the book or make a digital copy of it and put them on sale. You merely own the physical copy of it and not the intellectual property.

### The Communication, Performance, Showing or Playing to the Public

Under the Act, “communication to the public” means *“the transmission of a work or performance through wire or wireless means to the public, including the making available of a work or performance to the public in such a way that members of the public may access the work or performance from a place and at a time individually chosen by them.”*

Hence, you are also not supposed to show or display the painting (or any artwork, etc.) to the public either via the internet, broadcasting station, physically, or otherwise. However, it is acceptable if the painting is displayed in a domestic setting and not to the public. Another common example is that a physical store owner is not allowed to play music or a movie (although the music or movie is played from an original DVD or source) in his store as it would amount to playing to the public which is one of the

exclusive rights belonging to the copyright owner. Again, owning the physical work (including music and movies) does not mean that you can do whatever you want with it. It is always subject to certain restrictions due to the existence of intellectual property rights.

## Use of Copyrighted Works

So then you may ask, since all these paintings and artworks are automatically protected by copyright, how come someone is still able to use or duplicate them without liability or infringement?

### Consent

The most common answer is that the user of the artworks has obtained consent to use the same from the copyright owner. Consent can be obtained in the form of a license where the license is granted to the user in return for a licensing fee or royalty. In certain scenarios, it can even be royalty-free as long as consent is given. More often than not, consent must be recorded or in written form. Although verbal consent also works, it may be very difficult to prove the existence of such a verbal consent when issues arise.

### Defences / Exceptions

If any acts fall under one of these defences or exceptions provided under the laws, then it would not be an act of infringement. The detailed defences or exceptions can be found in section 13(2) of the Act. In general, such defences or exceptions include when it is used for research, private study, criticism, review, reporting of news or current events (fair dealing), parody, caricature, incidental inclusion, education, government use or legal process, and so on; subject to further requirements for each of the defences or exceptions.

### Unknowingly Or Knowingly Use Of The Works

Not everyone is equipped with legal knowledge and many a time, he or she may not even know that certain acts are prohibited under the copyright laws especially when we are now living in a fast-changing digital era where information sharing is just too common. For example, downloading an image from Google Images would probably have infringed on the owner's copyright because the act of downloading involves duplicating the image file (artistic work) onto your computer. One has to always be mindful that "*ignorantia juris non excusat*" meaning "ignorance of the law is not an excuse".

On the other hand, some people just do not care about copyright and intentionally infringe on other people's rights in order to obtain certain benefits.

### Expired Works

Yes, you see it right, a copyrighted work (e.g. a famous painting) has a protection period and it will expire someday. Once it expires, there is no way to renew or revive it. The rationale is that it is beneficial for the public to have freedom to use and access to creative works. Section 17 of the Act provides that in general, "*copyright in any artistic work which subsists in such work under this Act shall subsist during the life of the author and shall continue to subsist until the expiry of a period of fifty years after his death.*" In some countries (e.g. the United States), such period is seventy years instead of fifty years.

What then is the effect of expiry of a copyrighted work? Essentially, it means that the exclusive rights are no longer effective and applicable and the work is now in the public domain free to be used or copied by anyone. Back to the famous paintings of “Mona Lisa”, “The Starry Night”, and “The Scream”, since the authors / painters died over seventy years ago, there is no longer copyright protection in these famous paintings. Hence, these famous paintings (artistic works) are now in the public domain. They can be freely duplicated, adapted, reinterpreted, and modified by anyone. However, it is always good to acknowledge the author of the works.

# Administration and Promotion of Intellectual Property Rights (IPRs) in Nigeria

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(July 29 – September 2, 2021)



## Introduction

Intellectual property (IP) is globally acknowledged as an important tool for economic development, especially with the paradigm shift from a resource-based to a knowledge-based economy. Intellectual Property covers various categories of inventive and creative works such as inventions, signs, marks, symbols, designs, indications, books, novels, poems, drawings, paintings, photographs, films, phonograms, etc. Thus, IP cuts across many fields of endeavor, including, science, medicine and agriculture, and also extends to arts, music, broadcasting, and so on.

The owners of the various works are conferred exclusive rights over their works. In the contemporary world, IP is fast becoming a critical resource for advancing the national economy. Therefore, it is imperative for developing countries such as Nigeria to commit to fostering a strong IP regime for the development of the national economy. This is particularly crucial insofar as the Tertiary and Research Institutions have developed innovative goods and services for exploitation in the industry.

IP is crucial in various ways, including (but not limited to) the following:

- Giving statutory expression to the moral and economic right of creators for their creations, and the right of public access to such creations
- Promoting creativity and R&D results
- Facilitating university-industry linkage
- Preserving and promoting the development of cultural heritage
- Generating wealth for owners through the payment of royalties when works are licensed to interested users
- Stimulating the transfer of technology
- Encouraging the establishment of spin-off firms and creating jobs
- Serving as a “power tool” for economic development

It is unfortunate, however, that Nigerians have a wrong perception of IPR, which has led to poor creativity and inventiveness, low patent density; a weak technology base, poor investment in research and development infrastructure, a low human development index, an import- and monetary-dependent economy, and low use of science and technology data within decision-making processes. These inadequacies have given rise to various socio-economic problems leading to unemployment, hunger, high crime waves, a high rate of child/maternal mortality, and youth restiveness, despite the abundant human and natural resources endowed in Africa, which must be properly harnessed.

## **IP Administration in Nigeria**

In Nigeria, the registration, administration, licensing and management of IPR are primarily undertaken by the following three government agencies:

- The Trademarks, Patents and Designs Registry (TPDR) under the Federal Ministry of Industry, Trade and Investment, established by the Trademark Act, Cap 436 LFN, 2004 and Patent and Designs Act, Cap P344 LFN, 2004. The registry is responsible for the registration of Trademarks, Patents and Designs, and the publication of the respective journals.
- The Nigerian Copyright Commission (NCC) under the Federal Ministry of Justice, established by the Nigerian Copyright Act, Cap C68 LFN, 2004. It is responsible for the administration, regulation, enforcement and prosecution of all copyright matters in Nigeria.
- The National Office for Technology Acquisition and Promotion (NOTAP) under the Federal Ministry of Science and Technology, established by Decree No. 70 of 1979, now Cap N62, LFN, 2004. It is responsible for facilitating the acquisition of foreign technology, and promoting the development and commercialisation of locally-generated technology. It also promotes IP culture and acts as patent agent as a means of evolving a strong STI system and building a strong national science and technology base.

As can be observed, the three IP offices are under separate ministries. While their interactions (especially in the areas of IP promotion) and efforts are being made toward building a strong IP regime in the country, the relationship could nevertheless have been better if they were coordinated umbrella-style under a singular body.

Presently, there is a low IP culture in Nigeria, and the IP regime is not strong. In addition, there is a disconnect between the academic and research institutions on the one hand, and industry on the other. Consequently, most results emanating from the research institutions do not meet the needs of industry. Thus, instead of the uptake of the research results by industry, they usually remain on the shelf. It is against this background that NOTAP has embarked to bridge this gap by promoting linkages between academia/research institutions and industry—particularly through the establishment of Intellectual Property and Technology Transfer Office (IPTTOs) in tertiary and research institutions across Nigeria.

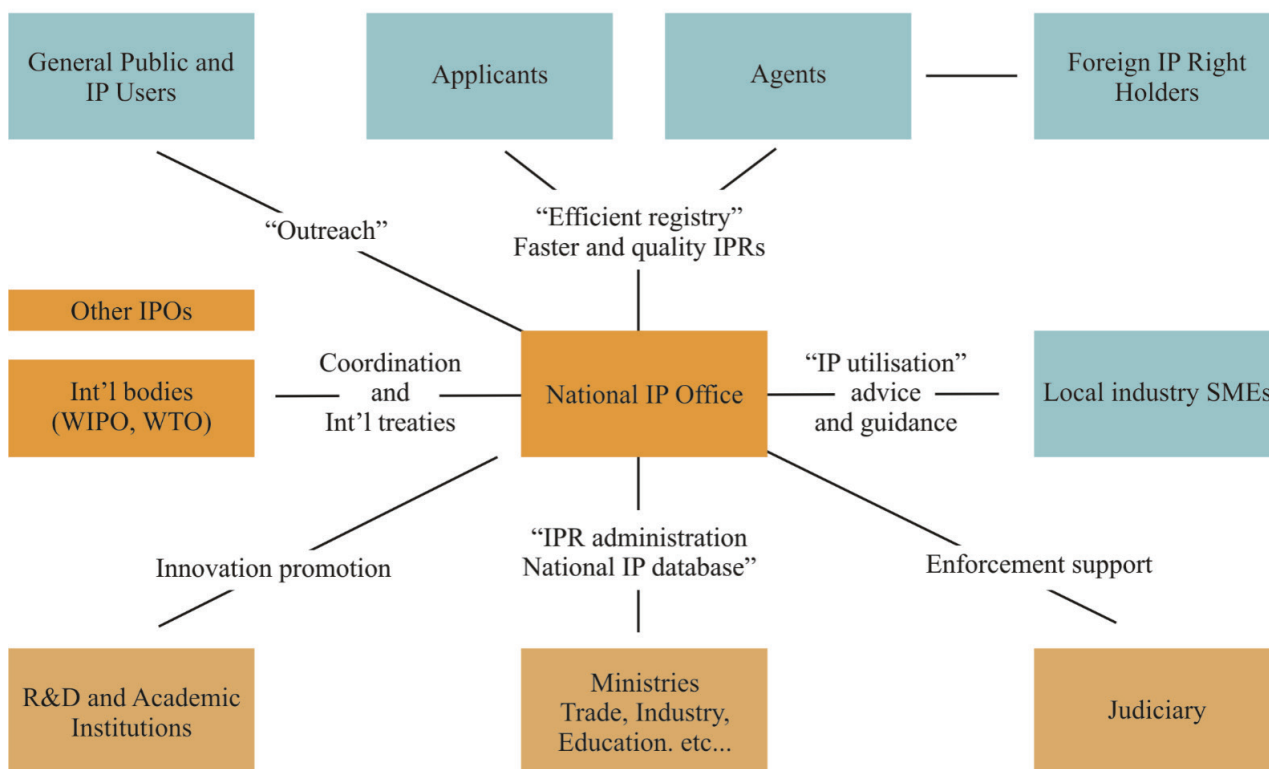
One of the roles of the IPTTOs is to ensure that the activities of research institutions are driven by demand and markets, in order to facilitate the uptake of results by industry. Other roles of the IPTTO include IP training and seminars on patent searches, harnessing of IP assets by host institutions, and licensing and negotiations of IP assets. Also, through the activities of the IPTTOs and other IP promotional programmes, the relationship between NOTAP and the other two IP offices in Nigeria has improved greatly. The three offices now interact better, and share ideas on how IP culture in the country can best be enhanced.

## Ideal IP Administration and Promotion

An Intellectual Property Office (IPO) refers to the agency responsible for the administration, registration and enforcement of IP assets within a jurisdiction. In this respect, an ideal IPO plays various roles depending on the structure and the enabling laws of the country in question. The role of IPO is to assist in the management of a country's IP system. By encouraging innovation and creativity, as well as promoting a strong and competitive market, it serves as the foundation of a knowledge-based economy, and balances the aspirations of consumers and users. IPO operates in both national and international environments within existing legal frameworks, aiming to ensure the creation and development of new technologies and productions, as well as the encouragement and growth of competitive markets that are essential to a nation's economic development and wealth. This is done by granting IPR to creators or innovators through the IP system, so that they can benefit from their creativity—a very important element for successful commercial endeavours (Micklewright, 2020).

According to the World Intellectual Property Organisation (WIPO) model for administration and management of IP, IPO also plays a major role in the formulation of international as well as domestic IPR policy, while dealing with examining applications and granting rights under domestic legislation on various types of IP (WIPO, 2015). In Nigeria, IPOs are also involved in IP promotions such as liaising with relevant government agencies and the private sector in order to formulate and implement plans and policies to strengthen the protection and exploitation of IPR within the country.

### Role of a Modern IP Office (IPO)



## Possible functions of a modern IP office

### Source: WIPO

Another role of IPO is the development and implementation of strategies to promote the use of patent information as a tool for technology development, capacity-building, training of IP professionals on IPR, and creating IP awareness across all sectors of the economy—particularly among educational and research institutions, so as to enhance, promote and facilitate technology transfer and the registration of technology transfer agreements.

Additionally, IPO is largely involved in IP-related legal issues (IP tribunals) based on national legislation by resolving disputes involving technology transfer issues, as well as facilitating compulsory licensing and enforcement of IPR, amongst other matters.

The absence of some of the key instruments for promotion and development of IP functions in Nigeria, where IPO does not have all IP categories under a single government agency or ministry—but rather in various ministries—often constitutes impediments to the administration of all IPRs in the country. For instance, copyright and related rights are administered by the Nigerian Copyright Commission (NCC) under the Federal Ministry of Justice, while industrial property (primarily trademarks, patents and industrial designs) are administered by the Trademarks Patents and Designs Registry under a department in the Federal Ministry of Industry, Trade and Investment; and there is no autonomy for their operations, as is the case in most jurisdictions (Ibrahim, 2020).

As earlier noted, there are three IP offices in Nigeria: namely, the Trademarks, Patents and Designs Registry (TPDR), Nigerian Copyright Commission (NCC), and National Office for Technology Acquisition and Promotion (NOTAP). Each of them is responsible for different aspects of IP activities.

### The Trademark, Patent and Design Registry (TPDR)

Patent examination within the Trademarks, Patents and Designs Registry remains limited to formality procedures. Through constant collaboration with the Japan Patent Office (JPO), WIPO and NOTAP on strengthening IP awareness and capacity, however, amongst other matters, there have been gradual improvements in this regard. The most notable IP promotional programme anchored by the registry is the establishment and inauguration of the Technology and Innovation Support Centre (TISC) in Nigeria by WIPO in December 2012 (Daniel, 2014).

The WIPO TISC programme has services and objectives that complement those of the IPTTOs established by NOTAP. For instance, the TISC provides innovators in developing countries with access to locally-based, high-quality technology information and related services. It also helps innovators to exploit their innovative potential, and to create, protect, and manage their IPR.

### The Nigerian Copyright Commission (NCC)

The NCC engages in voluntary registration of copyrights and related rights, as well as the enforcement of copyrights. Over the years, it has been commended in its fight against piracy and IP promotion programmes through its training arm, the Nigerian Copyright Academy (NCA). The NCA provides services designed around three broad areas of its mandate, which are trainings (both short- and long-term), curriculum development, and advisory services/research and publishing.

Furthermore, the NCA designs and maintains training programmes that cater to the general and indi-

vidual needs of diverse groups.

## National Office for Technology Acquisition and Promotion (NOTAP)

NOTAP facilitates the inflow of technology to Nigeria and promotes the development of locally-motivated technologies. It also promotes the culture of IP by creating awareness among researchers and the general public. It is in this regard that it organises training programmes and seminars on IP for scientists and researchers, and also provides patent support services for researchers, inventors and innovators. In addition, NOTAP establishes IPTTOs in the research and tertiary institutions in Nigeria. IPTTOs have the same functions as Technology Transfer Offices (TTO) in most institutions around the globe, although there might be some distinct differences in their operations.

## Conclusion

Unfortunately, IPO in Nigeria—especially in the area of industrial property—lacks adequate human capital in all relevant fields of IP and IP management, and additionally lacks infrastructural facilities to enable them to perform optimally. The Patents and Designs Act also does not make provisions for substantive examination. Consequently, the Trademarks, Patents and Industrial Designs Registry does not carry out the substantive examination of patents.

These and more are the rationale for the Patent Registry in Nigeria not carrying out substantive patent examinations. Although the NCC is making much efforts to campaign against copyright infringement and piracy among the general public, the establishment of the NCA is still at the elementary stage, with the hope that the implementation of the programmes and the objective of the Institute will be realised as soon as possible. This will go a long way in complimenting NOTAP's promotional activities.

This situation is actually not peculiar to Nigeria, but to developing countries in general. As noted by Sikoyo, Nyukuri & Wakhungu (2006), developing countries lack the capacity to effectively implement and harness legislative compliance with international IPR norms for national development. In addition, developing countries—particularly in Africa—have a limited understanding of IPR along with implications of instituting effective IP protection systems, since there are very few people and institutions in the continent with the experience and capacity to handle IPR. This is particularly true with respect to trade, competition, investment and other recent global imperatives.

Kudos to JPO and WIPO, who have supported the IPO in Nigeria by facilitating access to trainings and databases (among both trainers and local users, as well as via both on-site and distance learning); and by providing information and training materials, supporting awareness-raising activities, and disseminating best practices and experiences.

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# Capturing and Transferring Knowledge to Cultivate and Harness Intellectual Property

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JPO/IPR Training Course on Promoting Public Awareness of IP  
(July 9 – August 2, 2021)



### CATCH IP!

A catchy phrase, is it not? Smart and witty at the same time. This is the shortened version or acronym of **Capturing And Transferring Knowledge to Cultivate and Harness Intellectual Property** – a knowledge-sharing program of the Intellectual Property Office of the Philippines (IPOPHL), wherein participants who attended a foreign or local training program are encouraged to share and disseminate their training program knowledge by conducting a technical learning session for fellow IPOPHL employees at a specific date and time assigned by the IPOPHL Human Resource Development Division.

So, what brings me to this topic? I recently attended the JPO/IPR Online Training on Promoting Public Awareness of IP, and as mentioned in my introduction to IPOPHL's knowledge-sharing activities, I had the opportunity to present what I learned from this online training course, and at the same time give a glimpse of how other IP offices promote their public awareness programs. For training participants, this is our way of sharing information and transferring the knowledge we have learned, and through this activity, our IPOPHL colleagues will get to understand how other IP offices operate and how the knowledge we acquired can translate and improve the way we do things in our own office.

### The CATCH IP Technical Learning Session Process

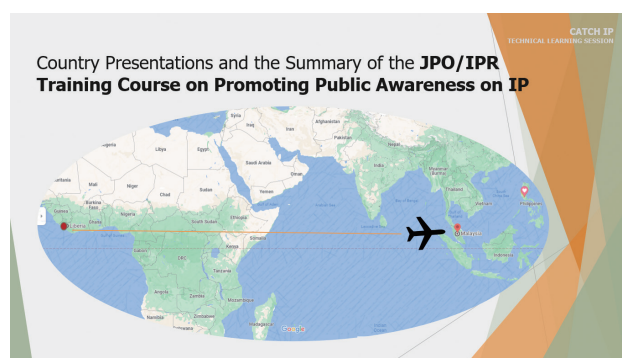
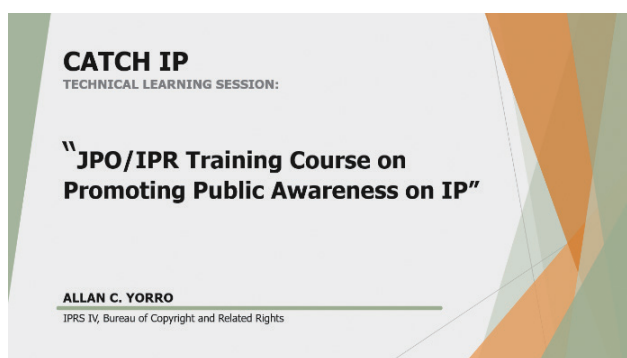
The CATCH IP Technical Learning Sessions (TLS) were implemented within IPOPHL to ensure that the knowledge acquired by employee participants via foreign and local training programs or courses are disseminated within the organization by means of knowledge-sharing activities aimed at promoting knowledge transfer and capacity-building through lectures and short learning sessions.

The learning sessions are offered to all interested employees in IPOPHL, and a typical lecture usually consists of the following: 1) Course overview 2) Presentation of knowledge acquired 3) Recommendations and 4) Open forum. The program lasts between two to four hours depending on the

length of the presentations and questions asked during the open forum. This knowledge-sharing activity also serves to measure how much a participant understood and learned from the training course, while simultaneously gauging how well their competencies have improved through the training in terms of IP knowledge, oral and presentation skills, and collaboration-building. It is safe to say that throughout the duration of the CATCH IP technical learning sessions, more of our employees have shared, learned and acquired knowledge and skills that have made them more IP conscious, effective team players, and positive contributors within the organization.

## My CATCH IP Learning Session

My session focused on the topic of promoting IP public awareness. This training course had the objective of providing knowledge and effective methods undertaken by government for the promotion of public awareness of IP rights through presentations and exchange of opinions regarding the IP promotional activities in the countries of other participants.



Given this objective, and taking off from the knowledge I acquired from the JPO training course, I provided a summary of the country presentations made by each of the participating countries. This session was made up of snippets of the various public awareness programs implemented by IP offices of each country present during the training course. This helped my audience understand how public awareness activities are being conducted in other countries, as well as the similarities and differences in terms of implementation, conduct and dissemination. It is worth noting that most, if not all, countries have already embraced the use of digital or online learning within their programs. Social media was also utilized by the different IP offices in their awareness campaigns and activities.

Being an Intellectual Property Rights Specialist in the Bureau of Copyright and Other Related Rights (BCRR), I also made a presentation on its public awareness programs and activities. This session provided the opportunity to share the efforts and strides made by the bureau during the past two years (2020-21), while at the same time providing a glimpse of how the BCRR effected changes and pursued innovative approaches to its public awareness campaigns and capacity-building programs. On the next page are some of the programs which have been implemented.

## Survive and Rebuild as One (SRO)

When the COVID-19 pandemic struck in the first quarter of 2020, among those severely affected were workers in the creative sector, particularly freelancers or those in the so-called “gig economy”. Despite the social benefits that the declaration of an enhanced community quarantine and the strict enforcement

of the social distancing policy sought to bring about, this also meant a continuing loss of income for these workers. It was within this social situation that this program was conceptualized.

**Entertain And Educate the World** targeted artists (especially freelancers) within the performing arts and audiovisual arts sector, who were free to choose and submit an animation or performance such as, but not limited to, spoken poetry or a songwriting/musical composition.

**Write About the World** targeted artists in the literary and music sectors who were able to write creative and original pieces. It was specified that the works must focus on their human experience and life during the COVID-19 pandemic, and how it affected their thoughts. It could also have covered their reflections on the new normal moving forward, as well as how their spirituality or hope played a part. Pieces in the forms of essays, poems, short stories, comics or musical compositions were accepted as submissions.

Selected entries were given tokens of appreciation, and were featured in various copyright-related events of the Bureau.

### **Chi-Book-a-Han**

In line with the celebration of the “World Book and Copyright Day” the IPOPHL ‘Chi-BOOK-ahan’ Club was held on April 23, 2021. This project was part of the Bureau’s advocacy to promote the culture of reading among IPOPHL employees, and to build a positive and nurturing community with a shared passion for books that would contribute to their personal development, mental well-being, and work-life balance.

### **Publication materials**

**Quarterly Copyright Bulletin** - This covers new and emerging issues that impact copyright policies, protection, and enforcement in the Philippines.

**Copyright Reference Book** - This publication intends to serve as a simple and yet comprehensive reference on the copyright legal system in the Philippines.

**Beijing Treaty on Audiovisual Performances (BTAP) Guidebook** - The BTAP Guidebook Project aims to develop informational materials in the form of a book and E-book, discussing the salient points and providing answers to frequently asked questions on the BTAP specifically by Filipino audiovisual performers.

### **Copyright Forum Series**

This online learning platform is part of BCRR’s education and awareness activities, which are conducted to raise awareness and address issues relating to intellectual property and copyrights.

### **Webinar on Mobile Development**

This webinar is part of the BCRR’s education and awareness-related activities in partnership with **WIPO**. It was conducted to raise awareness and address issues relating to intellectual property in the software sector, particularly the development of mobile applications.

### **Philippine International Copyright Summit (PICS)**

With the theme “United in Copyright,” the PICS aimed to be the unifying platform that gathered all

authors/artists and various copyright-based industries (CBIs), as well as representatives from the government, private sector, non-profit organizations, and other stakeholders who share the same passion for literary, dramatic, musical, and artistic works.



## Moving Forward

As with any learning program, recommendations are always part of the feedback and evaluation process. The recommendations help ensure that any significant knowledge and learning is recognized, and if applicable, built upon to improve future programs, projects and activities of the organization.

Significant efforts and innovations have been made in promoting public awareness of IP. With the onset of the new normal brought about by the pandemic, countries have learned to adapt and further innovate. Various platforms for learning and promoting IP awareness gave rise to a multitude of programs and activities that support the efforts to widen the reach of IP throughout the world. Thus, it is imperative that we continue to uphold the vision of promoting and improving IP awareness by diversifying our efforts to communicate and collaborate with key partners—whether public or private institutions—as well as our stakeholders in order to sustain the impact of our programs and activities.



## Get to know your IP Friends



We have conducted a survey among all contributors to the Enishi magazine about their experiences. Their responses will be published in three parts, the second part of which is shown below.

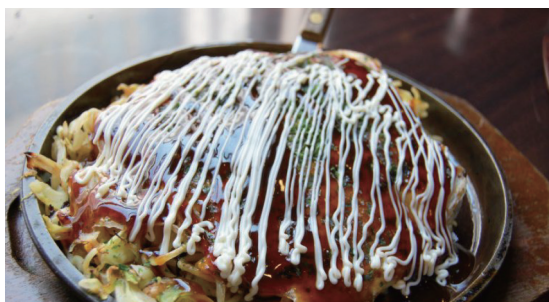
In recent years, Japanese food has become available in many countries. We asked trainees who have been to Japan and those who have not, to share their thoughts on Japanese food.

### Q: What is your favorite Japanese food and drink?

- Sashimi, matcha drink/ice cream (*Malaysia*)
- I don't have any preferred food or drink since I have never been to Japan. (*Kenya*)
- I don't have a favorite Japanese food and drink because I have not eaten any Japanese food nor tried any Japanese drink. (*Nigeria*)



**Sashimi:** Thinly sliced raw seafood



**Okonomiyaki:** A savory pancake with shredded cabbage and other ingredients of your choice.

- Sushi and sake (*Sri Lanka*)
- I love Japanese food, but tuna sushi is my favorite. When I was in Japan, I also ate okonomiyaki, which I have to say, was fantastic. My favorite Japanese drink is umeshu. (*Brazil*)

- I've always liked ramen, a Japanese noodle dish. It has a distinct taste and flavor that I can't seem to get enough of. (*Philippines*)
- In general, I love all Japanese food. It tastes incredible even though it is very healthy, and even when I do not usually like desserts, I could say that my favorite is "mochi". Very refreshing for summer. Yummy. (*Mexico*)



**Ramen:** A noodle soup dish originally from China



**Tempura:** Lightly battered, deep-fried seafood and vegetables

- Japanese rice and green tea (*Nigeria*)
- I haven't had Japanese food yet but I hope to have some soon! Just like in Nigeria, trying rice dishes would be a good experience. (*Nigeria*)
- Sushi (*Kenya*)
- Tempura and Yakult. (*Viet Nam*)
- My favorite food is ramen and my favorite drink is Japanese matcha tea. (*Mexico*)

- Salmon sashimi and Japanese whiskey (*Philippines*)
- I really like sashimi however, I have only enjoyed it in Brazil. I hope one day I get to taste it in Japan. (*Brazil*)
- Ramen and amazake (*India*)
- Many food: Ramen, sushi, sashimi, curry, seafood etc. Drink: Green tea. (*Malaysia*)



**Amazake:** A sweet drink made from fermented rice

\* \* \* \* \*

In addition to the Japanese food listed here, there are many other delicious dishes. .  
If you have the opportunity to come to Japan, please try a variety of Japanese food!

## Message from Lecturer



### *Expectations for the Emergence of a Global Examination Practice Through the JPO/IPR Patent Examination Practice Training*

#### **Mr. SUGIURA Jun**

Director, Dean, Professor, Patent Attorney  
Center for Research Administration & Social Outreach  
Graduate School of Intellectual Property  
Osaka Institute of Technology



I graduated from the Japan Patent Office (JPO) in 2015 and have since been teaching patent law and patent examination practice at the Osaka Institute of Technology. In addition, I have also been a lecturer on Japanese patent examination practice in the training course (JPO/IPR training) of the Industrial Property Rights Cooperation in Human Resources Development Program, and I am pleased to have this opportunity to contribute to this article.

During my 28-year tenure at the JPO, as an examiner, I was involved in the examination of many technical fields, including civil engineering, applied physics, metrology, nanophysics, amusement, and materials analysis. During that time, I was sent to the European Patent Office (EPO) at The Hague on an examiner exchange, where I worked with EPO examiners to compare the examination practices of the two organizations. In addition to the EPO, the JPO Examination Office also engaged in examiner exchanges by receiving examiners from the Korean Intellectual Property Office (KIPO) and the United States Patent and Trademark Office (USPTO). Examiner exchange is a system whereby examiners from other countries in charge of the same technical field discuss the application of patent requirements, such as inventive step, to the same invention. Together with learning about examination practice in other countries, revising examination practice in our own countries, and deepening mutual understanding of examination practice in both countries, we believe that this is a very effective system for building trust between examination practices and institutions, which is the basis for institutional harmonization.

The JPO/IPR Training Program invites examiners and other intellectual property practitioners from various countries to Japan for intensive training in Japanese examination practice, and we provide training based on our experience in international relations, including that of examiners at the JPO and from the examiner exchange. In order to gain an understanding of Japanese examination practice, I provide training in the following sequence:

**(1) Explanation of the main points of patent/utility model examination standards**

The current examination standards are the result of an extensive revision in 2015 with the aim of disseminating information on Japanese examination standards, and thus the participants are informed of the norms and application methods of the examination standards in accordance with the purpose of the revision.

**(2) Exercises using examination examples (cases)**

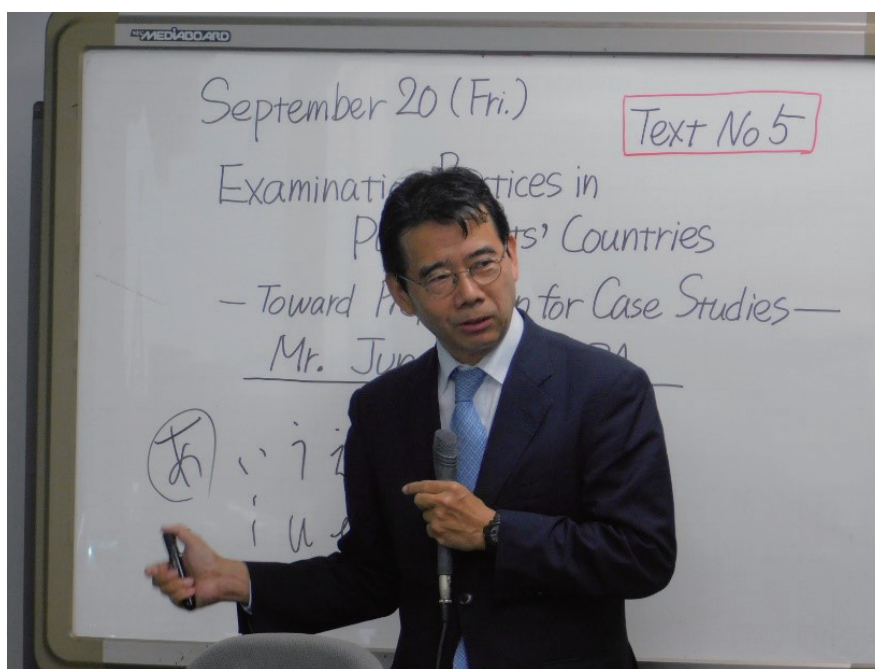
This includes completing exercises involving examination examples in order to deepen understanding of the Japanese examination standards (practice based on cases of novelty and inventive step judgments using the invention and prior art).

**(3) Introduction of examination cases by examiners of each country based on their country's examination method**

Examiners from each country introduce the results of their examinations based on the examination methods in their respective countries for actual cases selected from their own examination fields.

**(4) Practicing examination of the same cases based on the Japanese examination methodology**

Each participant is required to review the same cases selected by him/herself in (3), this time using the Japanese examination practices learned in the JPO/IPR training, and present their results.



2019 JPO/IPR in-person training course



2019 JPO/IPR training course with trainees

In order to deepen understanding of examination practice, it is effective to understand not only through classroom lectures but also through case studies. The training is made more effective by providing opportunities to present the implementation of such case studies, and by applying Japanese examination methods to the same case, we are deepening participants' understanding of Japanese examination practice.

Having foreign examiners understand Japanese examination practice has the effect of encouraging Japanese applicants to use examination results from Japan when they file an application in that country, thereby reducing the burden of examination on the applicant and increasing the efficiency of examination. Furthermore, the gathering of examiners from different countries to discuss examination methods also serves as a basis for harmonizing examination practices in different countries.

I hope that the JPO/IPR training will be a source of information on Japanese examination practice and lead to the establishment of a rational examination method for the creation of inventions in the world.



## Anime

**Mr. OGIYA Takao**  
Director General of APIC



When I was in elementary school in the early 1960s, the TV program I was most passionate about watching was “Astro Boy”. Set in the futuristic 21st century, this anime featured “Astro Boy,” a humanoid robot with a mind like that of humans. Even as a child, I was thrilled and excited by the story of Astro Boy defeating evil.

The futuristic society depicted in this anime included multi-level highways intersecting between skyscrapers, and cars running tirelessly on linear motors. It also showed the everyday use of videophones and bipedal robots. It is amazing and inspiring to think that people 60 years ago were anticipating and visualizing such types of scientific and technological advances.

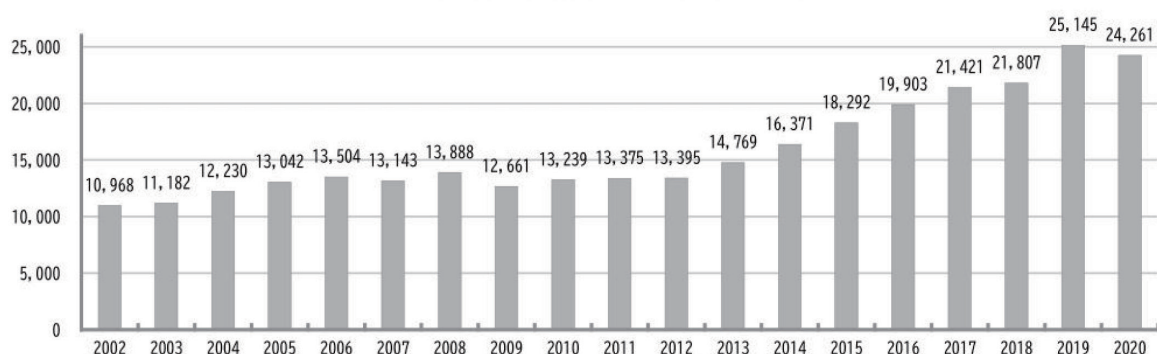


Figure 1: Size of the Animation Industry Market in Japan (Unit: billion yen)

According to the “Anime Industry Report 2021,” the Japanese anime industry market was worth 2,426.1 billion yen, which was 96.5% of the previous year’s level (Figure 1). The coronavirus pandemic, which resulted in theater closings and admission restrictions, was also expected to greatly affect movies, but the impact was actually not as bad as expected. Of this amount, the value of the overseas market

expanded rapidly to reach 1,239.4 billion yen, or 103.2% of the previous year's level. Looking at the number of licenses for the overseas expansion of Japanese anime by individual country, the U.S. licensed the most anime, followed in order by Canada, South Korea, Taiwan, and China (Figure 2).

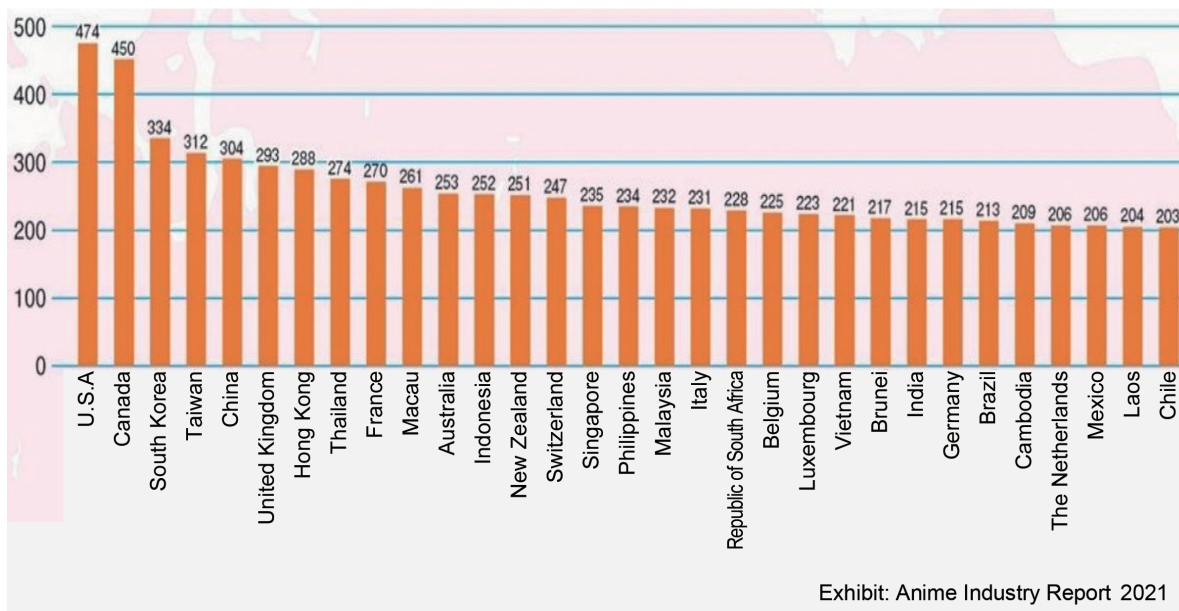


Figure 2: Overseas Expansion of Japanese Anime  
(Number of licensing contracts)

Japanese anime is popular throughout the world, and has become representative of Japanese culture. Although anime is produced in many other countries, Japanese anime is highly regarded for several reasons that I will now explain in detail.

### (1) High quality of images and background music

Japanese anime carefully depicts the facial expressions and detailed movements of its characters. In addition, the scenes of nature and buildings in the background are rendered so delicately that one might think they were real photographs. Furthermore, the background music uses piano and orchestra to create a sense of scale, and to express the characters' emotions and impress upon viewers the atmosphere of the anime's particularly unique world.

We must not forget that behind the creation of such high quality works, there are people who possess both passion and superior technical skills.

### (2) Epic and profound stories

Japanese anime is made not only for children, but also for adults. The accompanying table lists the titles of anime by decade (Table 3), many of which were created from manga that ran for decades.

Many of the works are thought-provoking, with large and complex storylines. Their characters face a variety of challenges and difficulties, endure frustrations, and demonstrate personal growth. Such depictions of complex lives and realistic human emotions are appealing not only to children, but also to adults.

1960s	Astro Boy, Kimba the White Lion, Sally the Witch, Star of the Giants, Sazae-san
1970s	Tomorrow's Joe, Doraemon, Candy Candy, Space Battleship Yamato, Mobile Suit Gundam
1980s	Captain Tsubasa, Fist of the North Star, DRAGON BALL, Anpanman, AKIRA, Nausicaa of the Valley of the Wind, Castle in the Sky, My Neighbor Totoro, Kiki's Delivery Service
1990s	Sailor Moon, Neon Genesis Evangelion, Detective Conan, Pokemon, Princess Mononoke, Porco Rosso, ONE PIECE, Crayon Shin-chan, Chibi Maruko-chan
2000s	Spirited Away, NARUTO, Summer Wars
2010s	Attack on Titan, Yo-kai Watch, Your Name, Demon Slayer: Kimetsu no Yaiba

Figure 3: Timing of Japanese Anime by Decade

### (3) Wide range of genres and settings

Japanese anime includes a variety of genres, such as fantasy, science fiction, romance, sports, combat (heroes), detective fiction, mystery, and horror. In addition, there is rich variation in the stories' settings and the characters' personalities.

The wide range of genres and characters encourages spectators to immerse themselves within a unique worldview—and the fact that many foreigners sympathize with and are moved by Japanese anime is probably the reason why it is so popular overseas.

A motion picture is made up of still images developed on film, which are illuminated and projected onto a screen using a lens. A human after-image effect is then utilized by intermittently projecting the images at a speed that creates the illusion of motion and continuity, and thereby appears as a movie. Currently, 24 frames per second are able to be projected intermittently, and in the case of anime, each of these still images must be created from scratch. Computers and software have now made it possible to create such images efficiently, which contrasts with anime's early days, when each image was drawn by hand. This meant that a 20-minute anime required an extraordinary total of 28,800 images, at a calculation of 24 (images) x 60 (seconds) x 20 (minutes). The fact that Osamu Tezuka took on this daunting task shows how remarkable he was as the creator of the "Astro Boy" manga, as well as its television anime adaptation.

Between 2014 and 2016, the Japan Institute for Promoting Invention and Innovation ran a project to select innovations that contributed significantly to the development of postwar Japan's industrial economy. In June 2016, we published this list under the title "100 Postwar Japanese Innovations". Manga and anime were selected as being among the top ten of this list, along with Shinkansen bullet trains and instant noodles, among other innovations.

The roots of Japanese manga are said to lie in the "Scrolls of Frolicking Animals". This painting, created between the 12th and 13th centuries, amusingly depicts anthropomorphic animals swimming, sumo wrestling and practicing archery (Figure 4). The story unfolds on a horizontal scroll, with lines of effect drawn to represent movement, and speech bubbles representing dialogue. It is truly astonishing that the various techniques used in modern manga had already been incorporated into these "Scrolls of Frolicking Animals", which were drawn more than 800 years ago.

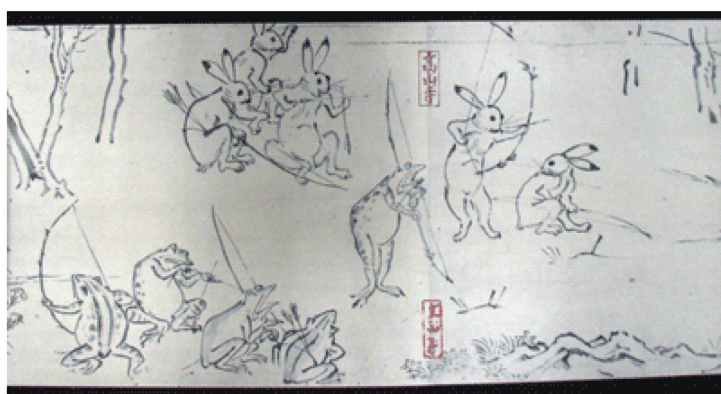
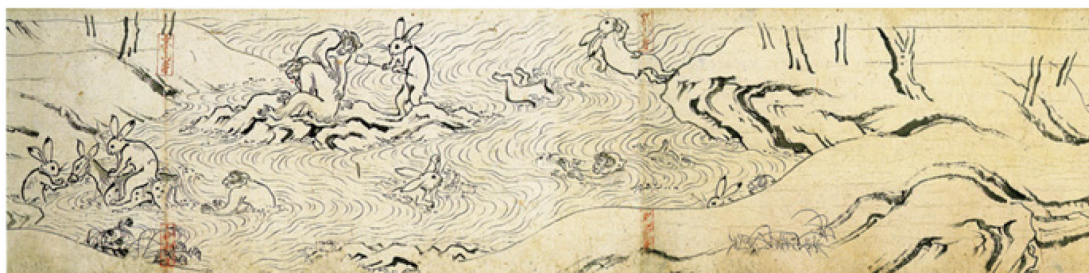


Figure 4: “Chōjū Jinbutsu Giga” (Caricatures of frolicking birds, animals and humans)

The scene shown in Figure 4, in which the frog throws the rabbit away, is a cut-out depiction of a series of movements. By showing the different time streams of the same characters within the same space, the creators were able to represent a sense of chronology. When people view this picture, they will see in their mind’s eye a scene of a frog throwing a rabbit away. In that sense, these “Scrolls of Frolicking Animals” can be said to represent the roots of anime.

The 12th and 13th centuries were a time of great historical change in Japan, as the country transitioned from rule by the aristocracy to rule by samurai. Drawing such a humorous cartoon at this tension-filled time in history may have some important meaning behind it, and such depth may also be described as a characteristic of Japanese culture that reflects the spirituality of its people. I believe that this uniquely Japanese culture has been handed down from generation to generation within people’s hearts and minds, which in turn led to the anime of today. This is why I believe that Japanese anime has become representative of Japanese culture, and has also been well-received around the world.

When you enjoy Japanese anime, therefore, I hope that you will also sometimes reflect on the Japanese spirituality that lies behind it.



## Let's Explore Japanese Culture!!



In this section, the editorial department has been independently selecting and featuring tourist spots in Japan. Of course, all of these places are open to the general public. There are many fascinating places in Japan, and we hope that you will find this information useful in deciding which places to visit when touring Japan!



### Toshima City Tokiwaso Manga Museum (Toshima City, Tokyo)

In recent years, Japanese manga and anime have been translated into many languages and have become increasingly popular throughout the world, attracting the interest of many of our trainees.

This time, we visited the Toshima City Tokiwaso Manga Museum, a recreation of the famous “Tokiwaso” building considered to be the starting point of Japanese manga history as many great manga artists lived there in the 1950s. We talked with museum staff and a representative of Toshima City, where Tokiwaso is located, about the museum’s appeal and the city’s efforts to promote manga culture.

Tokiwaso is a wooden apartment building in Toshima City, Tokyo, where Osamu Tezuka (1928-1989), often considered “the God of Manga” in Japan (known for *Astro Boy*, among many other works<sup>1</sup>), and Fujiko F. Fujio, who admired Mr. Tezuka and became a manga artist (known for *Doraemon*), spent their younger days.



Exterior view of the museum:  
Although the museum opened in 2020, it faithfully recreates the run-down condition of the original Tokiwaso (written ‘トキワ荘’ in Japanese above).

<sup>1</sup> A report issued by Japan’s Agency for Cultural Affairs in 2014 confirmed that a total of 227 titles of Osamu Tezuka’s manga have been translated and distributed in 14 countries.

Tokiwaso was demolished in December 1982 due to aging. Many local residents had hoped to revive the area as a “mecca for manga,” but due to financial reasons, this has been difficult to achieve. Under such circumstances, a community council was formed among local residents, and the passion of the community matched the strong desire of then-mayor of Toshima Ward to “value culture from now on,” and the Tokiwaso Manga Museum finally opened on July 7, 2020.

### And so we went to the Tokiwaso Manga Museum!

Although 40 years had passed since the demolition of the original Tokiwaso, the building was faithfully recreated to look like it did around 1950, which was 10 years after its original construction when many manga artists lived there.

The sloping angle of the staircase has been adjusted and additional handrails have been installed in accordance with current regulations. The staircase has been reproduced so that it makes a creaking sound when ascending and descending, which is a very subtle touch.

When you go up to the second floor, in front of the staircase is a communal bathroom. There are two toilet stalls (with vault toilets) and two urinals in the front. Next to this is a communal kitchen with numerous gas stoves, pots, and pans, giving the place a disorganized but lively feel. There is even a bowl of ramen noodles from a Chinese restaurant called Matsuba, from which the manga artists actually ordered and had food delivered. The sink was sometimes used by residents to wash themselves, as there were no baths at that time.

All the living rooms on the second floor are covered with tatami mats and are four and a half tatami mats<sup>2</sup> in size. If you spread out your work tools, it seems like you would have a hard time stepping around them.



The wooden hallway on the second floor of the museum evokes the atmosphere of an old Japanese house.



Communal kitchen on the second floor of the museum: In the center of the table with chopsticks on top is a bowl of ramen from the Chinese restaurant Matsuba. The restaurant is still in business on Tokiwaso Street.

2 One tatami mat measures approximately 174 cm x 87 cm, which is generally large enough for one person to lie down. In this case, each room would be the size of 4.5 tatami mats (approx. 6.8 m<sup>2</sup>).

In one of the residential rooms, a number of manga tools are on display and a video of professional drawing techniques is shown.

On the first floor, there is the Manga Lounge with works by manga artists associated with Tokiwaso. On display is the ceiling panel of Tokiwaso, which depicts the main character of Mr. Tezuka's work "*Princess Knight*." Reluctant to say goodbye, Mr. Tezuka visited the apartment at the time of its demolition. You can also see a diorama model of Tokiwaso on display. They also have a special exhibition room, and various events are held regularly.



There are both vacant rooms and reproductions of the rooms when they were lived in (shown above). Visitors can enter the rooms, sit down, and get a feel of the tatami.

### We asked the museum staff all sorts of questions!



Mr. KUMAGAI Takayuki  
Director of Manga and Anime  
Utilization,  
Toshima City Office

#### ---- Situation after the opening of the museum

"Originally scheduled to open in March 2020, the museum opened in July of the same year due to the coronavirus, and we have continued to restrict admission by only taking reservations in advance ever since. We have an English reservation form, but we are in the process of creating a more user-friendly form. We also have English-speaking staff on hand, so we hope to have more and more visitors from overseas."

#### ---- About visitors from overseas coming to the museum

"I don't think it is well-known because there are few foreign visitors to the museum. We would like to increase media exposure through social media, as we also have English versions of VR videos of the museum. Meanwhile, the museum has received over 400 million yen in donations. We are very grateful for the several donations we have received from overseas, even though we have not made it widely known to the rest of the world."

#### ---- Overseas reactions to Japanese anime and manga

"In 2019, Toshima City was selected as an East Asian Cultural City along with Xi'an City in China and Incheon Metropolitan City in South Korea. At that time, Toshima City was relatively unknown, but when I explained about Ikebukuro<sup>3</sup> and the anime/manga culture centered on Tokiwaso, they readily understood. In addition, I have seen firsthand that Japanese anime and manga are very popular abroad."



Mr. NARA Koji  
Director, Tokiwaso Manga  
Museum Management and  
Operation Section,  
Tokiwaso Manga Museum

<sup>3</sup> Ikebukuro, located in Toshima City, is a place like Akihabara where Japanese manga and anime culture thrives, and is particularly famous for Otome Road, a spot where many stores for girls are located.

#### ---- Animation and manga culture initiatives in Toshima City

“We would like to expand our area to include events centered in Ikebukuro as well as sales events for manga and anime-related goods. In November 2022, we plan to open the Showa Retro Museum on Tokiwaso Street, where the Tokiwaso Manga Museum is located, as a facility for exhibits related to the history and manga/anime culture of the Showa period<sup>4</sup>. We also hope to link this facility to urban development.”

#### ---- Please give a message to our readers.

Mr. KUMAGAI: It was the residents of Tokiwaso who made manga and anime culture take off in a big way, and I hope visitors can experience their lives and get a sense of the community at the museum.

We also want people of all ages to know the starting point of manga.

Mr. NARA: The museum was built with the enthusiasm of the neighborhood residents, and we want it to be a place like a hometown where anyone can stop by, not just a building. Tokiwaso, a mecca for manga, is the starting point and should be visited by many people.

Ms. KOBAYASHI: Manga drawn by the residents who were here has become a part of the lives of every generation. I feel that manga is a culture that is passed down through generations. I want young people to know and visit because the manga drawn by the residents, even in the distant past, have something to pass on.

When you come to Japan, why not book a tour in Toshima City of the Tokiwaso Manga Museum and the surrounding Ikebukuro area to experience the origins and cutting edge of Japanese manga and anime?



Mural of works by manga artists who resided in Tokiwaso, displayed inside Shiinamachi Station near the museum.  
©Fujio Akatsuka ©Shotaro Ishinomori ©Fujiko Fujio<sup>®</sup>



(From left) Mr. KUMAGAI, Mr. NARA, Ms. KOBAYASHI

#### ■Toshima City Tokiwaso Manga Museum

<https://tokiwasomm.jp/en/>

Please make reservations in advance and through the official website above.

**Admission:** A fee is charged to see the entire museum during special exhibitions

\* Socks must be worn in facilities where visitors enter without shoes. Eating and drinking are prohibited inside the museum.

**Museum VR video:** <https://online-showcase.jp/tokiwaso/en/>

<sup>4</sup> “Showa” is the Japanese era name for the period of Emperor Showa’s reign spanning 1926-1989. This era name is often used when looking back to the old days when personal computers and other devices were not widely used.

## Happenings in Japan



©Hakama

## Editor's Note



Hello. This is Mitty. Trainees who have visited Japan have told me that they learned about Japan through manga. Manga culture is fantastic because it allows ideas to be conveyed through drawings rather than words. I didn't fully appreciate how wonderful it was because I was born in an environment where it was so commonplace. Now, I feel that it is a luxury. Currently, it seems that around 300 animations are aired in Japan each year, and in 2021, 307.85 million manga comic books and 148.78 million manga magazines were sold. I think the fact that we can get excited about the same topic even though we are from different countries means that Manga can be considered a global culture. What is your favorite manga? I like "Haikyuu!!", which means "volleyball" in Japanese. The story follows a high school volleyball player's journey to participate in the Annual National Senior High School Volleyball Tournament and to become the best player in Japan.

This issue of the magazine is rich with content, and we would very much appreciate your feedback on what you would like to continue seeing here. Please feel free to send us your comments and suggestions!



Hello! It's Ken again...you may remember me from the last issue. I am the one who decides the theme for the four-strip comics, and this time, it is about giving tips. Personally speaking, I don't really understand the system of tipping at all. I have rarely traveled overseas, and here in Japan as well, I have never given a tip when having food delivered or visiting a restaurant. First of all, the practice involves touching money, which I believe would pose a problem with respect to hygiene. And if people perform over-the-top service in the hope of receiving a tip, but then don't receive one—or don't receive one that is high enough—I imagine that they would feel quite angry inside.

In my opinion, it is best to provide the same level of service across the board, and to reward this service through the payment of wages. And as for the matter of providing an excessive level of service, this actually happens in Japan, too. People here operate cash registers standing up, for example. But don't you think they should be able to sit down?



Hello! This is Minori. In this edition's "Get to know your IP Friends", we asked everyone to share what their favorite Japanese food is. Rice is the staple food in Japan, but we often hear news that the amount of rice eaten in Japan is decreasing these days.

There seem to be various reasons for this, such as the diversification of eating habits, the declining birth rate, the increase in working families and single-person households, and the fact that more and more people don't spend time cooking. Japanese rice is said to be particularly sticky and sweet compared to rice from other countries. Onigiri, rice balls made by rolling up rice and wrapping it in seaweed, are very popular as an easy-to-eat Japanese version of fast food. They can easily be made at home, but you can also buy onigiri with many different fillings at convenience stores, such as salmon, pickled plum and tuna with mayonnaise. The packaging of the onigiri sold at convenience stores is so ingenious that it can be easily eaten by hand, and seems to have been patented. If you have the chance to come to Japan, try the onigiri sold in convenience stores!

### **[The meaning of 縁 (Enishi)]**

“Enishi” refers to the bond created between people when encountering someone they were destined to meet. We have chosen this term as the title for our publication because we are all members of the Intellectual Property community, and the bonds created between us extend beyond national borders. We hope that you will use this informative publication to deepen the “Enishi” you have created with your IP Friends.

**Publication of this magazine is consigned by the Japan Patent Office to the Japan Institute for Promoting Invention and Innovation.**

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