

## Advisory Opinion

Advisory Opinion No. 2016-600003

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The advisory opinion on the technical scope of a patent invention for Japanese Patent No. 3437373 of the above party is stated and concluded as follows.

### [Conclusion]

The "method of grasping information utilization situation and information providing system using the method" indicated in the drawing A and its explanatory document does not belong to the technical scope of the invention of Japanese Patent No. 3437373.

### [Reason]

#### No. 1 Object of the demand

The object of the advisory opinion is to demand the advisory opinion that the method indicated in the drawing A and its explanatory document (hereinafter, referred to as "process A") belongs to the technical scope of the invention of Japanese Patent No. 3437373.

It should be noted that in the request for the advisory opinion of the case, a demandee does not exist, and as the reason for this non-existence, the demandant makes statements that the advisory opinion is requested by setting the act currently under consideration that the demandant itself will carry out in the future as Article A.

#### No. 2 The patent invention

##### 1. Regarding the patent invention

According to the descriptions of Claim 1 in the scope of claims, the patent invention is separately described in constituent components A-D. (A-D correspond to symbols "(1)"-"(4)" added by the demandant.)

### "[Claim 1]

D A method of grasping information utilization situation relating to provision/reception of a program or data on the Internet,

A wherein an information providing computer sends a program or data describing an imperative sentence calling a utilization reporting program to an information receiving computer according to a request of an information user;

B the information receiving computer refers to or executes the program or data to execute the imperative sentence calling the utilization reporting program, and extracts the utilization reporting program from a computer described in the imperative sentence to be executed; and

C the information receiving computer executes the utilization reporting program to transmit utilization situation data of the program or data to a computer described in the utilization reporting program."

## 2. Descriptions in the specifications of the patent

In the detailed descriptions of the invention in the specifications of the patent, a problem and a purpose of the patent invention are described as follows.

"[0011] However, the grasping of the information utilization situation of the provision/reception of information carried out through the Internet which has spread splendidly recently (since it is a typical example of an open network; although the following descriptions refer to the Internet as an example, that is quite the same as in an open network of the same kind which may be formed in the future) is not so easy as in the case of a conventional closed computer network.

...(omitted)...

[0013] Figure 4 shows, as an example, a system in which an information providing computer 41 and an information receiving computer 42 composed of a client server system respectively provide and receive information through the Internet 43, along with an information flow thereof.

[0014] The provision of information is carried out by the information providing computer 41, most typically by an information providing server 44. Of course, it may also be carried out by information providing client PCs 45a, 45b, 45c, 45d,... through the information providing server 44. Meanwhile, the information receiving computer 42 has an information receiving server 46, and client PCs 47a, 47b, 47c, 47d,... are connected to the information receiving server 46. The information providing computer 41 and the information receiving computer 42 are connected by the Internet 43.

...(omitted)...

[0020] If there were computers such as a PC connected with the Internet without going through a server, when information is tried to be received by the same, there is basically quite the same problem mentioned above. Namely, there is no change in the fact that when a connection request is sent from the PC, the information providing computer can grasp only the time of the connection request, and cannot grasp any other information, for example, how long and what kind of information is browsed.

[0021]

[Problem to be solved by the invention] As understood from the above description, in the conventional provision and reception of information through the Internet, it is impossible to accurately grasp an information user name of provided information, utilization time of information, and contents of used information.

[0022] For example, as mentioned above, when fee-based service providing information on the Internet is carried out, an information user receives information by one server, and then a large number of information users can obtain the information from the server through client PCs without limitation. In such a case, there is a problem that the information provider cannot know such secondary utilization of the information, and cannot receive a fair reward.

[0023] Also, as mentioned above, in a conventional access log analysis tool of the www server protocol on the Internet, only initial connection time when the information providing computer and the information receiving computer are connected can be recorded, and finish time of the connection cannot be grasped. Namely, it has been impossible to grasp how long the information receiving computer actually browses the information, after the connection.

...(omitted)...

[0025] Furthermore, as already described, conventionally, a plurality of pieces of information are temporarily stored in a server on an information providing side (an information providing server), and an information user can selectively and repeatedly use these pieces of information. In this case, the information providing computer cannot grasp which information is repeatedly used. However, recently, demand has increased for a charging method which causes a difference in a charging price between important information and information that is not important, by grasping the contents of the information used by the information user.

[0026] Also, even when service providing information without charge to the Internet is carried out, demand has increased for grasping situations in which the provided information is used and using that for market research, such as sounding the sale of target commodity and the like of the information or specifying an information user class. For that purpose, on the information provider side, it has been important to grasp which information is frequently used. Then, the development of a method of grasping information utilization situation which is more accurate than the conventional method of grasping information situation has been awaited.

...(omitted)...

[0029] Then, the problem to be solved by the invention is to provide a method of grasping information utilization situation, capable of accurately grasping information users of information, utilization time, contents of utilization information, and the like, when the information is provided/received through an open network, and an information providing system using the method".

Regarding the effect of the patent invention, it is described as

"[0088]

[Effect of the invention] As it is clear from the above-mentioned descriptions, according to 'a method of grasping information utilization situation and an information providing system using the method' of the present invention, it is possible to accurately grasp users of information provided in an open network, utilization time, contents of utilization information, and the like.

[0089] Therefore, for example, even when an information user receives information by one server, and then a large number of users refer to the information stored in the server through client PCs, it is possible to make the utilization reporting program report the situation of secondary information utilization as mentioned above, so that the information provider can accurately grasp such secondary utilization, and can receive a fair reward thereon or collect information about the utilization situation thereof.

...(omitted)...

[0092] Furthermore, according to the information providing system in the open network carried out through an information utilization situation acquirer, the information utilization situation acquirer monitors the exchanges of information between the

information provider and the information user, and adds up and analyzes the utilization situation data of the information, thereby reducing time and effort for individually managing both of information providers and information users which are remarkably increased, and effectively managing the provision and utilization of information which is expected to be complicated in the near future".

According to these descriptions, in the system in which the information providing computer and the information receiving computer composed of the client server system respectively provide and receive information through the Internet, when fee-based service providing information on the Internet is carried out, it is necessary to grasp the contents of information used by the information user so as to enable the information provider to receive a fair reward for the utilization of the information, and also when service providing information without charge to the Internet is carried out, on the information provider side, it is important to grasp which information is frequently used. Conventionally, the information providing computer could grasp only time when a connection request was sent from the information receiving computer, but could not grasp any other information, for example, how long and what kind of information was browsed, and the like. So as to solve this problem, the patent invention is to accurately grasp information that users of information have provided and received through the Internet, utilization time, contents of utilization information, and the like, according to a report from the information receiving computer executing "the utilization reporting program". Thus, the information provider can collect detailed information on utilization situation of the information users, including secondary utilization, so that it becomes possible to receive a fair reward or accurately grasp the utilization situation, and to effectively manage the provision and utilization of the information.

### No. 3 Process A

Process A shown in the drawing A and its explanatory document is as follows.

"(d) A method relating to provision/reception of a program or data on the Internet,  
(a) wherein a Web server transmits an HTML file describing an imperative sentence calling a predetermined JavaScript program to a user PC in response to a request of a user;  
(b) the user PC reads the HTML file to execute the imperative sentence calling the predetermined JavaScript program, and downloads the predetermined JavaScript program from a server 1 described in the imperative sentence to be executed; and  
(c) the user PC executes the predetermined JavaScript program to transmit a user browsing URL or a referrer URL to a server 2 described in the predetermined JavaScript program, or transmit information about operation of a user to the server 2 described in the predetermined JavaScript program on the basis of the operation of the user to an object relating to the HTML file."

Also, "a user browsing URL or a referrer URL" of the component (c) of the process A is a URL recorded in the user PC and a browsing history directly or indirectly relating to data browsed by the user, whereas "information about operation of a user" "to an object relating to the HTML file" is a history of the operation of the user (for example, a click, MouseOut, and the like) to the object indicated in the user PC

("description of process A" "description of (c)" in Page 4-5 of the written request for the advisory opinion).

#### No. 4 Judgment

Before sufficiency determination about the constituent components A-D, we will examine "a utilization reporting program", "an information providing computer", "an information receiving computer", and "an information user" included in the constituent components A-C.

##### 1. Regarding "a utilization reporting program" of the patent invention

###### (1) "A utilization reporting program" of the patent invention

Although "a utilization reporting program" of the patent invention, as viewed from the description of the constituent component C, is executed by "the information receiving computer" to "transmit utilization situation data of the program or data", it is not clear what "the program or data" mean here, and to what kind of utilization "utilization situation data" relate, only from the description of the scope of claims for patent.

Then, considering detailed descriptions of the invention in the specifications of the patent, in the light of matters mentioned above in "2. Description in the specifications of the patent" of "No. 2 The patent invention", it is required that "utilization situation data of the program or data" transmitted by "the utilization reporting program" of the patent invention are not only simple history data such as initial time when the information receiving computer connects to the information providing computer, but also detailed data which enable the information provider to accurately grasp information users of provided information, utilization time, contents of utilization information, and the like, in the system in which the information providing computer and the information receiving computer respectively provide and receive information through the Internet.

On the other hand, "a predetermined JavaScript program" of the process A (the constituent component (c)) has a function which "transmits a user browsing URL or a referrer URL to a server 2" or "transmits information about operation of a user to the server 2" "on the basis of the operation of the user to an object relating to the HTML file", and information which "the predetermined JavaScript" of the process A transmits to "the server 2" is simple data relating to a browsing history or an operation history in "the user PC". "A user browsing URL or a referrer URL" and "information about operation of a user" "to an object relating to the HTML file" are not detailed data enabling the information provider to accurately grasp information users of provided information, utilization time, contents of utilization information, and the like, and therefore it is obvious that it is not means capable of solving the problem of the patent invention.

Consequently, "the predetermined JavaScript program" of the process A does not transmit "utilization situation data of the program or data" which "the utilization reporting program" of the patent invention transmits to "a computer described in the utilization reporting program", and therefore it cannot be regarded as "the utilization reporting program" of the patent invention.

###### (2) "An information providing computer", "an information receiving computer", and "an

information user" of the patent invention

"An information providing computer" of the patent invention transmits "a program or data" calling "a utilization reporting program" to "an information receiving computer" in response to a request of "an information user". "The information receiving computer" executes "the utilization reporting program" to transmit "utilization situation data of the program or data". "The information user" requests "the program or data" calling "the utilization reporting program" to "the information providing computer".

On the other hand, as mentioned in (1), it cannot be said that "the predetermined JavaScript program" of the process A is "the utilization reporting program" of the patent invention, and therefore in the process A, it cannot be said that "a Web server", "a user PC", and "a user" specified in connection with "the predetermined JavaScript program" respectively correspond to "the information providing computer", "the information receiving computer", and "the information user" of the patent invention. Furthermore, a relationship between "the Web server", "the user PC", and "the user" is different from a relationship between "the information providing computer", "the information receiving computer", and "the information user".

## 2. Constituent component A

"A Web server" of the component (a) of the process A transmits "an HTML file" to "a user PC" in response to a request of "a user", but as mentioned in 1, it cannot be said that "the Web server", "the user PC", and "the user" of the process A respectively correspond to "the information providing computer", "the information receiving computer", and "the information user" of the patent invention.

Furthermore, concerning "an HTML file describing an imperative sentence calling a predetermined JavaScript program" of the process A, although "the HTML file" can be regarded as one mode of "the program or data", as mentioned in 1, it cannot be said that "the predetermined JavaScript program" of the process A is "the utilization reporting program" of the patent invention, so that "an HTML file describing an imperative sentence calling a predetermined JavaScript program" of the process A is not "a program or data describing an imperative sentence calling a utilization reporting program" of the patent invention.

Consequently, a step in which "a Web server transmits an HTML file describing an imperative sentence calling a predetermined JavaScript Program to a user PC according to a request of a user" which is the component (a) of the process A is different processing from a step in which "an information providing computer sends a program or data describing an imperative sentence calling a utilization reporting program to an information receiving computer in response to a request of an information user" which is the constituent component A of the patent invention, and the process A does not satisfy the constituent component A.

## 3. Constituent component B

Although "the user PC" of the component (b) of the process A reads "the HTML file" to execute "the imperative sentence", as mentioned in 1 and 2, it cannot be said that "the user PC" and "the HTML file" of the process A respectively correspond to "the information receiving computer" and "the program or data" of the patent invention.

Also, as mentioned in 1, it cannot be said that "the predetermined JavaScript

program" of the process A is "the utilization reporting program" of the patent invention, so that the action that "the user PC reads the HTML file to execute the imperative sentence calling the predetermined JavaScript program" of the process A does not correspond to the action that "the information receiving computer refers to or performs the program or data to execute the imperative sentence calling the utilization reporting program".

In addition, although "a server 1 described in the imperative sentence" of the component (b) of the process A is one mode of "a computer described in the imperative sentence", and "downloads the program" corresponds to "extracts the program to perform", as mentioned in 1, it cannot be said that "the predetermined JavaScript program" of the process A is "the utilization reporting program" of the patent invention, so that "downloads the predetermined JavaScript program from a server 1 described in the imperative sentence to be executed" of the process A does not correspond to "extracts the utilization reporting program from a computer described in the imperative sentence to be executed"

Consequently, a step in which "the user PC reads the HTML file to execute the imperative sentence calling the predetermined JavaScript program, and downloads the predetermined JavaScript program from a server 1 described in the imperative sentence to be executed" which is the component (b) of the process A is different processing from a step in which "the information receiving computer refers to or executes the program or data to execute the imperative sentence calling the utilization reporting program, and extracts the utilization reporting program from a computer described in the imperative sentence to be executed" of the constituent component B of the patent invention, and the process A does not satisfy the constituent component B.

#### 4. Constituent component C

Although it is obvious that "a server 2" of the component (c) of the process A is one aspect of a computer, and it can be said that "a server 2 described in the program" of the process A is "a computer described in the program" of the patent invention; as mentioned above in 1, it cannot be said that "the user PC" and "the predetermined JavaScript program" of the process A respectively correspond to "the information receiving computer" and "the utilization reporting program" of the patent invention, so that the action that "the user PC executes the predetermined JavaScript program to transmit" predetermined information "to a server 2 described in the predetermined JavaScript program" of the process A is different from the action that "the information receiving computer executes the utilization reporting program to transmit" predetermined information "to a computer described in the utilization reporting program" of the patent invention.

Also, "a user browsing URL or a referrer URL", which is the component (c) of the process A, as mentioned in 1, is a URL recorded in the user PC and a simple browsing history directly or indirectly relating to data browsed by the user, and cannot be regarded as "utilization situation data of the program or data" of the patent invention.

In addition, "information about operation of a user" of the component (c) of the process A, as mentioned in 1, is a simple operation history of the user "to an object relating to the HTML file" in "the user PC", and cannot be regarded as "utilization situation data of the program or data" of the patent invention, so that "information about operation of a user" "to an object relating to the HTML file" of the process A is not

"utilization situation data of the program or data" of the patent invention.

Consequently, a step in which "the user PC executes the predetermined JavaScript program to transmit a user browsing URL or a referrer URL to a server 2 described in the predetermined JavaScript program, or transmit information about operation of a user to the server 2 described in the predetermined JavaScript program on the basis of the operation of the user to an object relating to the HTML file", which is the component (c) of the process A, is different processing from a step in which "the information receiving computer performs the utilization reporting program to transmit utilization situation data of the program or data to a computer described in the utilization reporting program" of the constituent component C of the patent invention, so that the process A does not satisfy the constituent component C.

#### 5. Constituent component D

Since the component (c) of the process A "transmits a user browsing URL or a referrer URL to a server 2 described in the predetermined JavaScript program, or transmits information about operation of a user to the server 2 described in the predetermined JavaScript program on the basis of the operation of the user to an object relating to the HTML file", it is obvious that "provision/reception of a program or data" of the component (d) of the process A includes a case which becomes an object of the grasping of the information utilization situation in "the user PC".

Then, it can be said that "a method relating to provision/reception of a program or data on the Internet", which is the component (d) of the process A, is "a method of grasping information utilization situation relating to provision/reception of a program or data on the Internet" of the patent invention, so that the process A satisfies the component constituent D.

6. As mentioned in 1-5, the process A differs in components from the constituent components A, B, C of the patent invention, so that the process A does not belong to Claim 1 of the scope of claims for patent of the case.

#### No. 5 Closing

As described above, the process A indicated in the drawing A and its explanatory document does not belong to the technical scope of the patent invention.

Therefore, the advisory opinion shall be made as described in the conclusion.

September 6, 2016

Chief administrative judge: TAKAGI, Susumu  
Administrative judge: TSUJIMOTO, Yasutaka  
Administrative judge: ISHII, Shigekazu