The Promotion of Cross-border Exchange of Intellectual Assets

- The Case of Music and Trade Secrets -

Legal analysis in view of Japanese intellectual property law

Tatsuhiro Ueno*

May 2008

I. Cross-Border Exploitation of Copyrighted Music

1 Subdivision of Copyright

According to the Copyright Act of Japan (JCA), "Copyright may be transferred in whole or in part" (Article 61 of JCA). Therefore, either the "whole" of copyright can be transferred or a "part" of it can be separated from the whole and transferred.

Then, to what extent can copyright be split (subdivided) and partly transferred? The elements that matter here are (1) content splitting, (2) geographical splitting and (3) splitting on a time axis.

(1) Content splitting

First, there is likely to be no objection to the point that copyright can be split into constituent rights to transfer them separately. However, there is argument as to whether each constituent right can be further subdivided in content and each subdivision can be transferred.

According to the drafter of Copyright Act of Japan, the right to reproduce can be split into the right to publish in print, that to record aurally, that to record on film and that to record audio-visually[1], but no split into "the right to reproduce as a pocket size paperback edition" and "the right to reproduce as a deluxe edition" can be approved.[2] In connection with this interpretation, there is also an opinion that the divisibility of copyright should be cautiously judged on the basis of comprehensive comparative weighing of relevant aspects

* Associate Professor at Rikkyo University. <uenot@rikkyo.ac.jp>

[1] *See* Moriyuki Kato, CHOSAKUKENHÔ CHIKUJÔ KÔGI [Commentary on the Copyright Act], 5th revised ed., Tokyo 2006, 370.

[2] *Id.* at 371.

including the nature of the work, mode of its exploitation, rationality of subdivision, social needs and working practices.[3]

Against that, there also is a view that, if the contents of copyright which is a quasi-real right can be determined definitely only a posteriori by "comprehensive weighing", the security of transactions will be seriously jeopardized and, therefore, partial transfer of copyright only in units of constituent rights should be approved.[4]

As a matter of principle, a transfer by a copyright holder of his or her copyright means that, while the transferor loses the exclusive right within a certain extent, the transferee acquires part of the exclusive right in that range. Therefore, unless the divided portions of the right are definitely segregated from each other, neither right holder can have an "exclusive" right. Conversely, if this condition is met, there will be no need to deny partial transferability of copyright.[5]

(2) Geographical splitting

Second, there is the problem whether copyright can be split according to the place of utilization. In other words, is it acceptable to split the right to perform into "the right to perform in Tokyo" and "the right to perform in Kyoto"?

The drafter questions the acceptability of this splitting because, in his view, this would make acceptable even "the right to perform at Tokyo Bunka Kaikan".[6]

However, if we take the position that a partial transfer of copyright can be approved if the divided portions of the right are definitely segregated from each other, a geographical partial transfer will be acceptable if the geographical location is clearly differentiated from others by the name of the prefecture or that of the

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[3] *See* Kenzô Adachi, Chosakuken no Iten to Tôroku [Transfer and Registration of Copyright], in SAIBAN JITSUMU TAIKEI vol.27, 268 (Seirin-shoin, 1997); Tokyo District Court, Oct. 17, 1994, 1520 Hanreijihô, 130 [Popeye Belt Case]; Nobuhiro Nakayama, CHOSAKUKENHÔ [Copyright Law] 320 (Yûhikaku,2007).

[4] *See* Hiroshi Narita, Bukken tono Taihi niyoru Chosakukehô heno Gimon [Questions about Copyright Law as Compared to Property Right], in CHOSAKUKENHÔ TO MINPÔ NO GENDAITEKI-KADAI [Modern Issues of Copyright Law and Civil Law] 502 et seq. (Hogakushoin, 2003).

[5] *See also* Yoshiyuki Tamura, CHOSAKUKENHÔ GAISETSU (Outline of the Copyright Law), 2nd ed. Tokyo 2001, 503.

[6] *See* Kato, *supra* note 1, at 372.

concert hall. Unlike this case, “the right to screen in the Nishi Shinjuku area” would be impermissible because the location is not definite enough.

Regarding the point that copyright can be split by country and transferred differently from country to country, there is no objection. However, as foreign copyright is not prescribed by the Copyright Act of Japan and is independent of Japanese copyright, strictly speaking this is not a matter of partial transfer of copyright.

(3) Splitting on a time axis

Third, there is the issue whether or not copyright can be split by the period of time in which it is exploited. This is a matter of whether “the right to perform for three years from the New Year’s Day of 2008 onward” or “the right to perform for one year from 2011 onward”, for instance, can be transferred separately.

Although the drafter accepts such transfer[7], there certainly is some criticism against approving such transfers on a time axis.[8]

However, from the standpoint stated earlier, unless the split portions overlap each other on a time axis, partial transfers on this basis can be considered acceptable.[9]

Viewed in this way, it is even possible to transfer part of copyright in such a fragment as “the right to perform on piano solo at the Tokyo Opera City concert hall only tomorrow”, for example.

There also is an argument against this interpretation that, since this kind of authorization can be granted by a license to the same effect (Article 63 of JCA), a partial transfer has no social propriety.

Yet, even if subdivision to that extent is approved, there seems to arise no problem because the divided portions of the right are definitely segregated from each other. Furthermore, as the Copyright Act of Japan has no provision regarding an exclusive license of working

[7] *See* Kato, *supra* note 1, at 371.
[8] *See* Kunitoshi Oka, MULTIMEDIA JIDAI NO CHOSAKUKEN NO HÔTEI [Courtroom of Copyright in the Era of Multimedia] 156 (Gyôsei, 2000); Narita, *supra* note 4 at 502.
[9] *See* Tokyo District Court, Sep. 5, 1997, 1621 Hanreijihô, 130 [World of Gaudí and Dalí Case]; Tokyo District Court, Aug. 29, 2000, 1621 Hanreijihô, 130 [World of Dalí Case, the first instance].

unlike the Patent Act of Japan (Article 77 of JPA), no authorization of an exploiter by the copyright holder to license the use of his or her right can grant an exclusive right to the licensee. Therefore, as a matter of practical business, too, it seems necessary to approve partial transfers of copyright.

As this also is a matter to be addressed legislatively[10], some claim that a provision for the exclusive license of exploitation should be added to the Copyright Act of Japan.[11]

2. Transfer of Foreign Copyright

As the Copyright Act of Japan is based on the non-formality principle, an author acquires, upon creation of a work, copyrights to the work in more than 170 countries.

In many copyright transfer contracts, foreign copyrights are likely to be transferred together whether expressly stated or not. The extent and particulars of the coverage of foreign copyrights are left to the interpretation of each individual contract.

Judicial precedents include a court decision in which the Japanese copyright to a work by Salvador Dali was considered to have been "partly transferred on a time axis" as a result of interpretation according to Spanish law, which governs the pertinent contract regarding the work[12] and another in which the case was determined to be a management consignment contract, instead of a transfer contract, under which the copyright to a work by Richard Strauss was supposed to be "übertragen".[13]

II. Protection of Trade Secrets in Japan

1 Status of Pertinent Laws Currently in Effect

(1) Protection of Trade Secrets under Unfair Competition Prevention

[10] *See* BUNKASHINGIKAI CHOSAKUKENBUNKAKAI HÔKOKUSHO [Report of Copyright Division of Council for Cultural Affairs] 114 et seq. (2006).
[11] *See* Nakayama, *supra* note 3 at 321.
[12] *See supra* note 9.
[13] *See* Tokyo High Court, Jun. 19, 2003 [Ariadne auf Naxos Case].

Act

The Unfair Competition Prevention Act of Japan (UCPA) protects trade secrets by stipulating certain unfair acts regarding trade secrets as unfair competition.

Under this stipulation, regarding a matter satisfying the requirement of a trade secret (secrecy manageability, usefulness and non-belonging to public knowledge) (Paragraph 6, Article 2 of UCPA), a person having committed any unfair act (Items 4 to 9, Paragraph 1, Article 2 of UCPA) shall not only bear civil responsibilities (be subject to a claim for cessation (Article 3 of UCPA) and/or be exposed to a claim for damages (Article 4 of UCPA)) but also may be subject to a criminal penalty in some cases (Paragraph 1, Article 21 of UCPA).

(2) Protection of Trade Secrets in Civil Suits (by Revision in 2004)

When instituting a civil suit against suspected infringement on a trade secret, the plaintiff is required to submit preparatory pleadings, evidence and so forth (Paragraph 1, Article 7 of UCPA).

However if any required preparatory pleading, evidence or the like contains a trade secret, its submission may be made difficult by the fear of leakage of the secret in the course of legal proceedings. In view of this point, the following measures are taken to protect trade secrets in legal proceedings.

(a) Protective Order

The court can order parties to the suit and other persons involved not to use or disclose trade secrets contained in preparatory pleadings or evidence (Article 10 of UCPA).

A person who has violated an order to keep confidentiality is subject to penal servitude for not more than five years and/or a fine of not more than ¥5 million (Item 5, Paragraph 2, Article 21 of UCPA).

In the event that a decision under Paragraph 1, Article 92 of the Code of Civil Proceedings has been made regarding the record of proceedings pertaining to a suit bound by an order to keep confidentiality, if any party to the suit has requested perusal or the like of the part of the record where any secret covered by the paragraph is contained and the party having made the request was not given an order

to keep confidentiality in the pertinent suit, the clerk of the court shall notify the party having applied for the protective measure under the paragraph, immediately after the request is made, of the fact that the request has been made (Article 12 of UCPA).

(b) Submission of Documents, etc. (in-camera proceedings)

When requested by the court to submit a necessary document, the holder of the document can refuse its submission if there is a legitimate reason to justify the refusal (the latter part of Paragraph 1, Article 7 of UCPA). Whether or not the pleased "legitimate reason" is truly legitimate shall be determined by the court after disclosing the document only to the parties to the suit, their attorneys and so forth and hearing the opinions of these persons (Paragraphs 2 and 3, Article 7 of UCPA).

(c) Closed Proceedings

Regarding a suit pertaining to suspected infringement on a trade secret, if a party thereto or the like is to be examined as the party per se, a witness or the like regarding what constitutes a trade secret, the judges can suspend by their unanimous decision the openness of the examination of the pertinent matter (Article 13 of UCPA). This provision was added when the law was revised in 2004.

(3) Protection of Trade Secrets by Criminal Legislation

A person who has committed any specific act out of illicit acts regarding trade secrets is subject to penal servitude for not more than 10 years and/or a fine of not more than ¥10 million (Paragraph 1, Article 21 of UCPA). These penalties were made more severe than before when the law was revised in 2006 (effective as from January 1, 2007).

Under the revised provision, a retiree having illicitly used or disclosed a trade secret under certain conditions also is subject to a criminal penalty (Item 5, Paragraph 1, Article 21 of UCPA). Also, regarding trade secrets controlled within Japan, illicit use or disclosure of such a secret is subject to a criminal penalty (Paragraph 4, Article 21 of UCPA). These provisions were added when the law was revised in 2005.

The offence of infringing upon trade secrets is made subject to

prosecution only upon complaint with a view to protecting victims to the offence (Paragraph 3, Article 21 of UCPA).

When a person not authorized to access a trade secret has infringed upon a trade secret on business, not only the offender in person is subject to penalty but also the juridical entity to which the offender belongs is subject to a penalty of not more than ¥300 million (Articles 21 and 22 of UCPA).

2 Pending Issues

(1) Closed Proceedings

Closed proceedings (under Article 13 of UCPA) are understood to be not against Article 82 of the Japanese Constitution (setting forth the principle of public trial). The reason for this understanding is that, though Article 82 of the Japanese Constitution is intended to institutionally ensure just and fair trials by requiring them to be conducted publicly and thereby to secure people's trust in the judiciary, the Constitution is not regarded as demanding public trials even where there are truly unavoidable circumstances under which the need to keep trade secrets makes it difficult to conduct a trial publicly and a public trial would rather make the trial impossible to be conducted appropriately.[14]

However, a judge of IP High Court is of the opinion that closed proceedings should be considered "very important procedural exceptions", and exercising that "last resort" would require extreme caution.[15]

(2) Openness of Criminal Trials

While trade secrets are supposed to be protected by criminal legislation (Article 21 of UCPA), suing against their infringement is often considered unrealistic because criminal trials should be conducted publicly (Paragraph 1, Article 37 of Japanese Constitution).[16]

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[14] *See* CHIKUJÔ KAISETSU FUSEIKYÔSÔBÔSHIHÔ [Commentary on Unfair Competition Prevention Act] 129 (Yûhikaku, 2007).

[15] *See* Ryôichi Mimura, Himitsuhojimeirei wo meguru Soshôtetsuzuki no Unyô nitsuite [Practice of Procedure Concerning Protective Order], in Japan Patent Attorneys Association (ed.), FUSEIKYÔSÔBÔSHIHÔ-KENKYU [Study of Unfair Competition Prevention Act] 385 (LEXIS/NEXIS JAPAN, 2007).

[16] Daini Tokyo Bar Association (ed.), FUSEIKYÔSÔBÔSHIHÔ NO SHIN-RONTEN [New

Industry's insistence on this legislation in spite of this limitation is attributed to the business community's expectation that the existence of such legislation could in itself deter potential offenders from illicit acts regarding trade secrets.[17]

Issues of Unfair Competition Prevention Act] 134 (Shôjihômu, 2006).

[17] *Id.* at 134.

COPYRIGHT ACT (Act No.48 of 1970)[18]

Article 61.(Transfer of copyright)
(1) A copyright may be transferred in whole or in part.
(2) Where a contract for the transfer of a copyright makes no particular reference to the rights provided for in Article 27 or 28 as the rights being transferred thereunder, it shall be presumed that such rights have been reserved to the transferor.

Article 63.(Authorization to exploit works)
(1) The copyright holder may authorize another person to exploit the work which is the subject of his copyright.
(2) A person who obtains authorization pursuant to the preceding paragraph may exploit the subject work in the manner and to the extent so authorized.
(3) The right to exploit the work which is the subject of an authorization granted pusuant to paragraph (1) may not be transferred without the consent of the copyright holder.
(4) Unless otherwise stipulated by contract, an authorization to broadcast or wire-broadcast a work does not include an authorization to make sound or visual recordings of said work.
(5) The provisions of Article 23, paragraph(1) shall not apply to the making transmittable of a work by a person who has obtained authorization to make a work transmittable pursuant to paragraph (1), to the extent the making transmittable of such work is made repeatedly or by means of another automatic public transmission server in the manner and to the extent so authorized; provided, however, that such manner and/or extent do not deal with the frequency of the making transmittable of such work or with the automatic public transmission server to be utilized for the making transmittable of such work.

Unfair Competition Prevention Act（Act No.47 of 1993）[19]

Article 2 (Definitions)
(1) The term “unfair competition” as used in this Act means any of the following:

(iv) acts of acquiring a trade secret by theft, fraud, duress or other wrongful means (hereinafter referred to as "acts of wrongful acquisition"), or the act of using or disclosing a trade secret so acquired (including the act of disclosing such trade secret in confidence to a specific person or persons; the same shall apply hereinafter);
(v) acts of acquiring a trade secret with the knowledge that such trade secret has been acquired through acts of wrongful acquisition or without the knowledge of such matter due to gross negligence, or acts of using or disclosing a trade secret so acquired;

[18] http://www.cas.go.jp/jp/seisaku/hourei/data/CA.pdf
[19] http://www.cas.go.jp/jp/seisaku/hourei/data/ucpa.pdf

(vi) acts of using or disclosing a trade secret after becoming aware or not becoming aware of such matter due to gross negligence;, subsequent to its acquisition, that such trade secret was acquired through wrongful acquisition
(vii) acts of using or disclosing a trade secret, which has been disclosed by the business operator holding such trade secret (hereinafter referred to as the "holder"), for the purpose of unfair business competition or otherwise acquiring an illicit gain, or causing injury to such holder;
(viii) acts of acquiring a trade secret with the knowledge or, without the knowledge due to gross negligence, that there has been an improper disclosure of such trade secret (which means, in the case prescribed in the preceding item, acts of disclosing a trade secret for the purpose prescribed in said item, or acts of disclosing a trade secret in breach of a legal duty to maintain secrecy; the same shall apply hereinafter) or that such trade secret has been acquired through improper disclosure, or acts of using or disclosing a trade secret so acquired;
(ix) acts of using or disclosing an acquired trade secret after becoming aware or not being aware of such matter due to gross negligence, subsequent to its acquisition, that there has been improper disclosure of such trade secret or that such trade secret has been acquired through improper disclosure;

(6) The term "trade secret" as used in this Act means technical or business information useful for commercial activities such as manufacturing or marketing methods that is kept secret and that is not publicly known.

Article 7 (Production of documents, etc.)
In a lawsuit (1) for the infringement of business interests by unfair competition, the court may, upon motion of a party, order a party to produce any documents necessary for proving the act of infringement or assessing the amount of damages caused by such act of infringement. However, this does not apply when the holder of the documents has justifiable grounds for refusing to produce them.
(2) Where the court finds it necessary for determining the presence of a justifiable reason prescribed in the proviso to the preceding paragraph, it may require the holder of the documents to produce said documents. In such a case, no person may request disclosure of the produced documents.
(3) In the case of the preceding paragraph, where the court finds it necessary to disclose the documents prescribed in the second sentence of the preceding paragraph and to hear the opinions of a party, etc. (which means a party [in the case of a juridical person, its representative], an agent [excluding a counsel or an assistant], an employee, or other workers of a party; the same shall apply hereinafter), it may disclose said documents to the party, etc.
(4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to the production of the objects of inspection necessary for proving the alleged act of infringement in a lawsuit for the infringement of business interests by unfair competition.

Article 10 (Protective order)

In a lawsuit (1) for the infringement of business interests by unfair competition, where there is prima facie evidence showing that a trade secret held by a party of the lawsuit falls under both of the following grounds, the court may, upon motion of the party and by means of a ruling, order a party, etc., a counsel, or an assistant not to use the trade secret for any purpose other than pursuing the lawsuit or to disclose it to a person other than those who have received the order prescribed in this paragraph with regard to said trade secret; however, this does not apply when the party, etc., the counsel, or the assistant had already acquired or held the trade secret by means other than the reading of the brief prescribed in item 1 or the examination or disclosure of evidence prescribed in the same item:

(i) the trade secret held by the party is written in an already-produced or a to-be-produced brief, or included in the contents of already-examined or to-be-examined evidence (including documents disclosed pursuant to Article 7(3) or a document disclosed pursuant to Article 13(4)); and (ii) the party's business activities based on the trade secret under the preceding item are likely to become hindered by the use of said trade secret for purposes other than pursuing the lawsuit or its disclosure, and it is necessary to restrict the use or disclosure of the trade secret in order to prevent this.

(2) A motion for the order prescribed in the preceding paragraph (hereinafter referred to as the "protective order") shall be made in writing and include the following matters:

(i) the person to whom the protective order is to be issued;

(ii) facts that are sufficient for identifying the trade secret to be made the subject of the protective order; and

(iii) facts that fall within the grounds listed in the respective items of the preceding paragraph.

(3) When issuing a protective order, the court shall serve a decision letter on the person to whom the protective order was issued.

(4) A protective order takes effect when a decision letter is served on the person to whom the protective order was issued.

(5) When the court dismisses a motion for a protective order, the party may lodge an immediate appeal against the decision.

Article 11 (Rescission of protective order)

A movant (1) for a protective order or a person to whom a protective order was issued may file a motion for rescission of the protective order with the court where the case record kept (when no such court exists, the court that issued the protective order) on the ground that the requirement prescribed in the preceding Article1 is not met or is no longer met.

(2) When the court makes a decision on a motion for rescission of a protective order, it shall serve a decision letter on the movant and the adverse party.

(3) An immediate appeal may be lodged against a decision on the motion for rescission of a protective order.

(4) A decision to rescind a protective order shall not take effect until the decision becomes final and binding.

(5) Where a court has made a decision to rescind a protective order, if the court had, during the same lawsuit in which the protective order was issued, issued a protective order for the protection of the trade secret

against any person other than the movant for rescission of the protective order or the adverse party, it shall immediately notify that person of the decision to rescind the protective order.

Article 12 (Notice, etc. of a request for inspection, etc. of the case record)
(1) Where a court has made a ruling under Article 92(1) of the Code of Civil Procedure (Act No. 109 of 1996) with regard to the case record pertaining to the lawsuit in which a protective order has been issued (excluding a lawsuit in which all the protective orders have been rescinded), if there was a request for inspection, etc. of the portion of the record that represents the secret prescribed in the same paragraph by a party, and the person who performed the procedure for such request has not been issued a protective order in the lawsuit, the court clerk shall, immediately after the request, notify the party who filed the motion under the same paragraph (excluding the requester; the same shall apply in paragraph 3) of the fact that such a request was made.
(2) In the case of the preceding paragraph, the court clerk must not allow the party who performed the procedure for the request under the same paragraph to conduct inspection, etc. of the portion of the record that represents the secret until two weeks have passed since the date of the request (if a motion for a protective order against the person who performed the procedure for the request was filed on or before such date, until the date when the decision on the motion becomes final and binding).
(3) The provisions of the preceding two paragraphs shall not apply when there is consent among all parties who filed a motion under Article 92(1) of the Code of Civil Procedure to allow the party who made the request under paragraph 1 to conduct inspection, etc. of the portion of the record that represents the secret.

Article 13 (In camera examination of the parties)
In a lawsuit (1) for the infringement of business interests by unfair competition, where a party, etc. is to be examined as a party itself or a legal representative or as a witness with regard to a matter that serves as the basis for determining the presence or absence of the infringement and falls under a trade secret held by the party, and when the court, by the unanimous consent of the judges, finds that the party, etc. is unable to give sufficient statements regarding the matter because it is clear that giving statements regarding the matter in open court will significantly hinder the party's business activities that are based on the trade secret, and that, without said statements by the party, the court is unable to make an appropriate decision on the presence or absence of infringement on business interests by unfair competition which should be made based on the determination of said matter, it may conduct the examination on the matter in camera by means of a ruling.
(2) The court shall hear the opinion of the party, etc. before making the ruling under the preceding paragraph.
(3) In the case of the preceding paragraph, the court may order the party, etc. to produce a document that outlines the matters to be stated. In such a case, no person may request disclosure of the produced document.
(4) Where the court finds it necessary to disclose the document under the

second sentence of the preceding paragraph and to hear the opinion of the party, etc., the counsel, or the assistant, it may disclose the document to such person.
(5) Where the court will conduct examination on a matter in camera pursuant to the provision of paragraph 1, it shall render a judgment to that effect and the reason thereof to the members of the public present before making them leave the courtroom. When the examination on the matter ends, the court shall have the members of the public reenter the courtroom.

Article 21 (Penal Provisions)
Any person (1) who falls under any of the following items shall be punished by imprisonment with work for not more than ten years, a fine of not more than ten million yen, or both:
(i) a person who uses or discloses a trade secret acquired by an act of fraud or others (which means an act of deceiving, assaulting or intimidating a person; the same shall apply hereinafter) or an act violating control obligations (which means an act of stealing a document or a data storage medium containing a trade secret [hereinafter referred to as “a medium containing a trade secret”], trespassing on a facility where a trade secret is kept, making an unauthorized access [an act of unauthorized access prescribed in Article 3 of the Unauthorized Computer Access Act (Act No. 128 of 1999)], or violating the control of a trade secret maintained by its holder in any other way) for a purpose of unfair competition;
(ii) a person who acquires a trade secret by any of the following methods through an act of fraud or others or an act violating control obligations for a purpose of using or disclosing it in a manner prescribed in the preceding item:
(a) acquiring a medium containing a trade secret under the control of a holder; or
(b) reproducing information in a medium containing a trade secret under the control of a holder;
(iii) a person to whom a trade secret was disclosed by its holder, and who, for a purpose of unfair competition, uses or discloses it after taking possession of or making a document or a data storage medium containing the trade secret, by any of the following methods, through an act of fraud or others or an act violating control obligations, or through embezzlement or other acts of breaching the duty to keep safe custody of the medium containing the trade secret:
(a) taking possession of a medium containing a trade secret under the control of the holder; or
(b) reproducing information contained in a medium containing a trade secret under the control of the holder;
(iv) a person who is an officer (which means a director, operating officer, managing partner, secretary, auditor, or an equivalent person to them; the same shall apply in the following item) or an employee of a trade secret holder from whom a trade secret has been disclosed, and, for a purpose of unfair competition, uses or discloses it in breach of the duty to keep safe custody of the trade secret (except for a person prescribed in the preceding item); a person who is an (v) officer or an employee of a trade secret holder from whom a trade secret has been disclosed, and, for a purpose of unfair

competition, offers to disclose it in breach of the duty to keep safe custody of the trade secret or receives a request to use or disclose it while in office, and uses or discloses it after leaving the job (except for a person prescribed in item 3);
(vi) a person who, for a purpose of unfair competition, uses or discloses a trade secret acquired by disclosure which is an offence prescribed in item 1 or items 3 to 5;
(2) Any person who falls under any of the following items shall be punished by imprisonment with work for not more than five years, a fine of not more than five million yen, or both:
(i)a person who, for a wrongful purpose, commits any act of unfair competition listed in Articles 2(1)(i) or (xiii);
(ⅱ) a person who, for a purpose of acquiring an illicit gain through the use of reputation or fame pertaining to another person’s famous indication of goods or business or for injuring said reputation or fame, commits any act of unfair competition listed in Article 2(1)(ii);
(ⅲ)a person who, for the purpose of acquiring an illicit gain, commits any act of unfair competition listed in Article 2(1)(ⅲ)
(iv) a person who misrepresents information on goods or with respect to services, or in an advertisement thereof or in a document or correspondence used for a transaction related thereto, in a manner that is likely to mislead the public as to the place of origin, quality, contents, manufacturing process, use, or quantity of such goods, or the quality, contents, purpose, or quantity of such services (except for a person prescribed in item 1);
(v) a person who violates a protective order; or
(xi) a person who violates any provision of Articles 16, 17, or 18(1).
(3) The offenses prescribed in paragraph 1, item 5 of the preceding paragraph may not be prosecuted without a complaint.
(4) The offenses prescribed in item 1 or items 3 to 6 of paragraph 1 shall also apply to a person who committed them outside Japan for a trade secret that had been kept within Japan at the time of the act of fraud or others or the act violating control obligations, or at the time the trade secret was disclosed by its holder.
(5) The offense prescribed in item 5 of paragraph 2 shall also apply to a person who committed it outside Japan.
(6) The offense prescribed in item 6 of paragraph 2 (limited to the part pertaining to Article 18(1)) shall be governed by Article 3 of the Penal Code (Act No. 45 of 1965). The (7) provisions of paragraphs 1 and 2 shall not preclude application of penal provisions under the Penal Code or any other acts.

Article 22
(1) When a representative of a juridical person, or an agent, employee or any other of a juridical person or an individual has committed a violation prescribed in any of the provisions of items 1, 2 or 6 paragraph 1, or paragraph 2 of the preceding
Article with regard to the business of said juridical person or said individual, not only the offender but also said juridical person shall be punished by a fine of not more than three hundred million yen, or said individual shall be punished by the fine prescribed in the relevant Article:

(2) In the case referred to in the preceding paragraph, a complaint filed against said offender pertaining to an offense prescribed in items 1,2, and 6 of paragraph 1, and item 5 of paragraph 2 of the preceding Article shall also be effective against the juridical person or the individual, and a complaint filed against the juridical person or the individual shall also be effective against said offender.
(3) The period of prescription of a penalty of fine to be imposed a judicial person or individual pursuant to the provisions of paragraph 1 in regard to an act of violation of items 1,2 or 6 of paragraph 1 or paragraph 2 of the preceding Article shall be the same as that for the offenses prescribed in the provisions of the preceding Article.