



Who is the culprit?
:The Impact of a P2P Software, “Winny”,
and legal response in Japan

Law Talk at UNSW
Sydney, Australia
19th March 2008

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Today's Agenda

- ◆ Introduction
- ◆ What is Pear-To-Pear program?
- ◆ What is “Winny”?
- ◆ What is the impact of “Winny”?
- ◆ Why the programmer was indicted and convicted?
- ◆ Discussion

What is Pear-to-pear program?

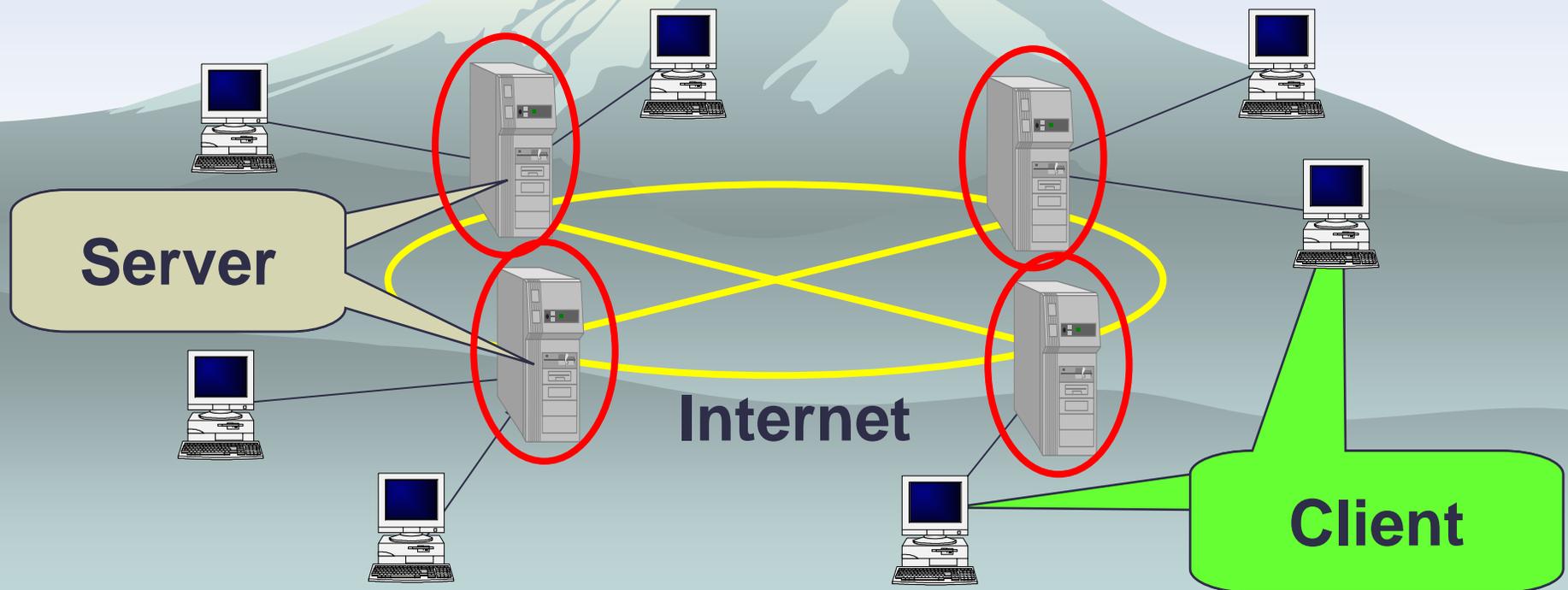


Three kinds of architecture on the computer network

- ◆ 1) stand alone
- ◆ 2) server-client
- ◆ 3) peer-to-peer
 - Napster (1999-)
 - Gnutella (2000-)
 - KaZaA (2000-)

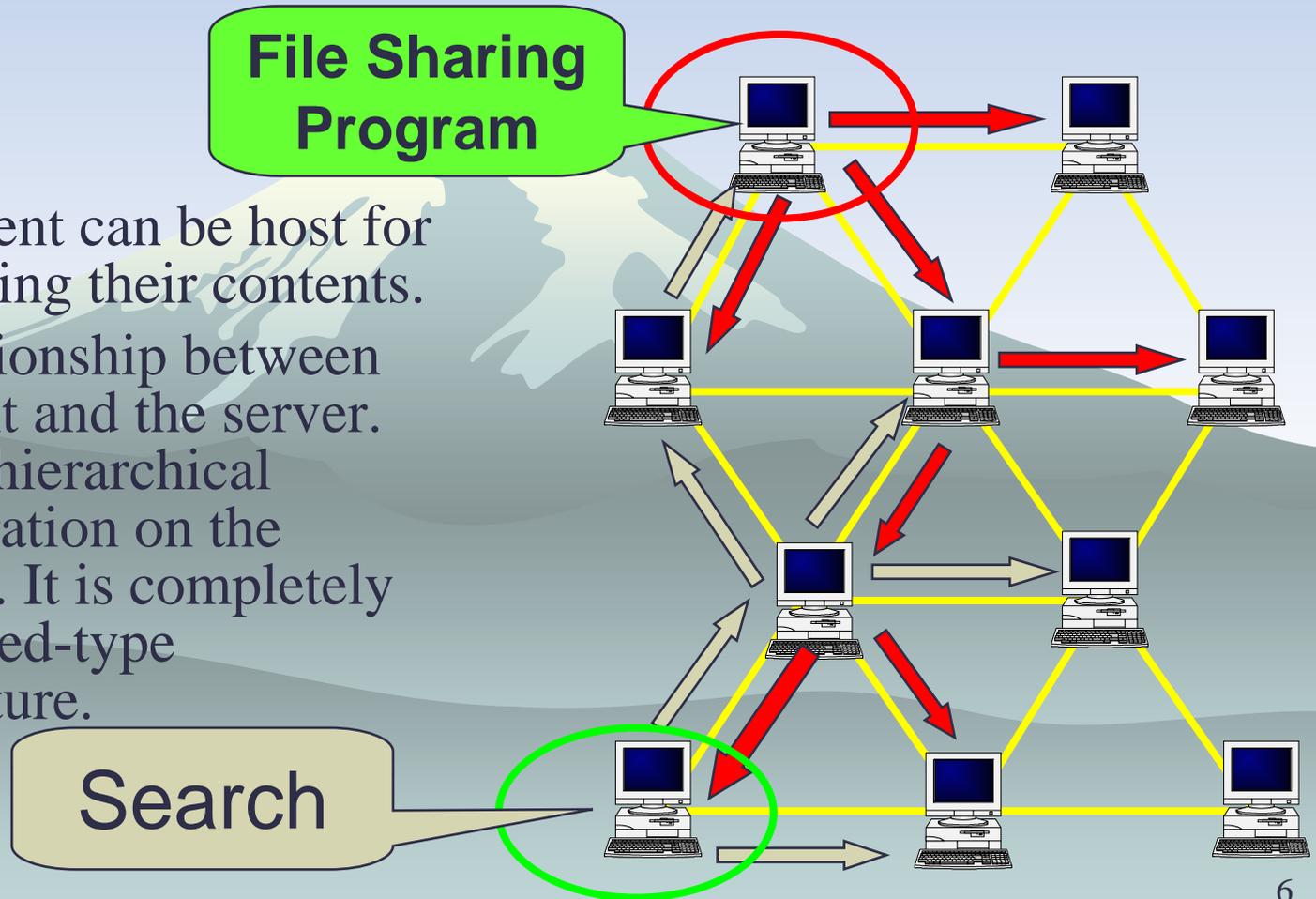
Server-Client Type

- ◆ Server sends a file/information due to request from client.
- ◆ Illegal/legal data can be stocked in the server.
- ◆ Traditional regulation targets the provider, which is inter-mediator of the illegal data, for control.



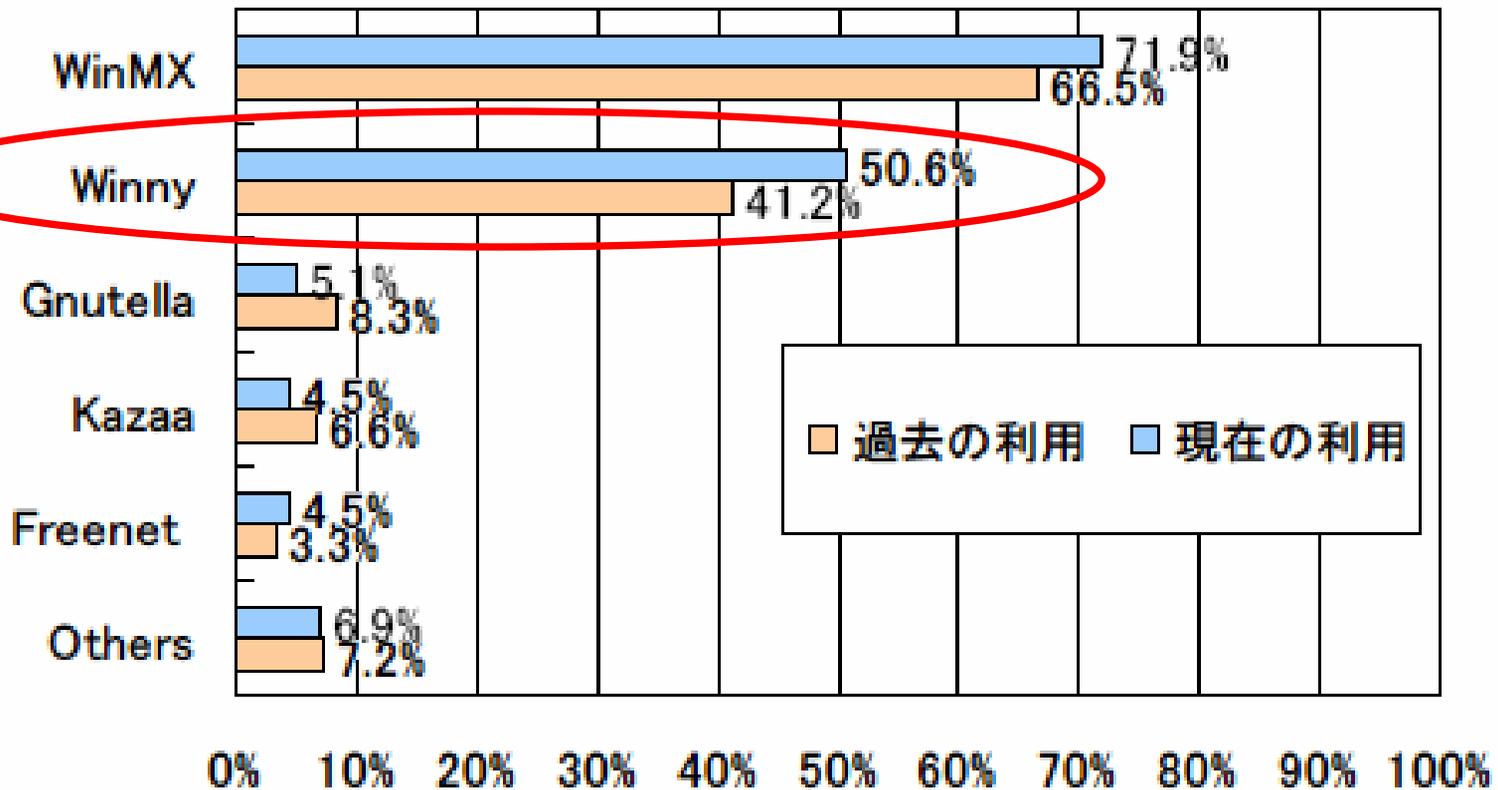
P2P program

- ◆ Each client can be host for distributing their contents.
- ◆ No relationship between the client and the server. And no hierarchical configuration on the network. It is completely distributed-type architecture.



What is “Winny” program?

主なファイル交換ソフト

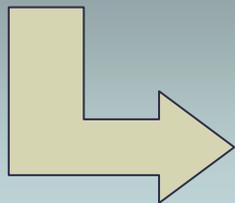


Characteristics

- ◆ 1) anonymity of the communication
- ◆ 2) freeware
- ◆ 3) easy handling
- ◆ 4) excellent functions (auto-searching, high speed data exchange, prompt download, etc)

How many users of Winny software?

- ◆ Survey A (March 2005): **one million thirty thousands** by ACCS (copyrights holder association)
- ◆ Survey B (May 2006): **one million** by a computer security company
- ◆ Survey C (July 2006): **one million seventy thousands** by ACCS



At least, one million.

Possibly, one million half.

What is the Impact?



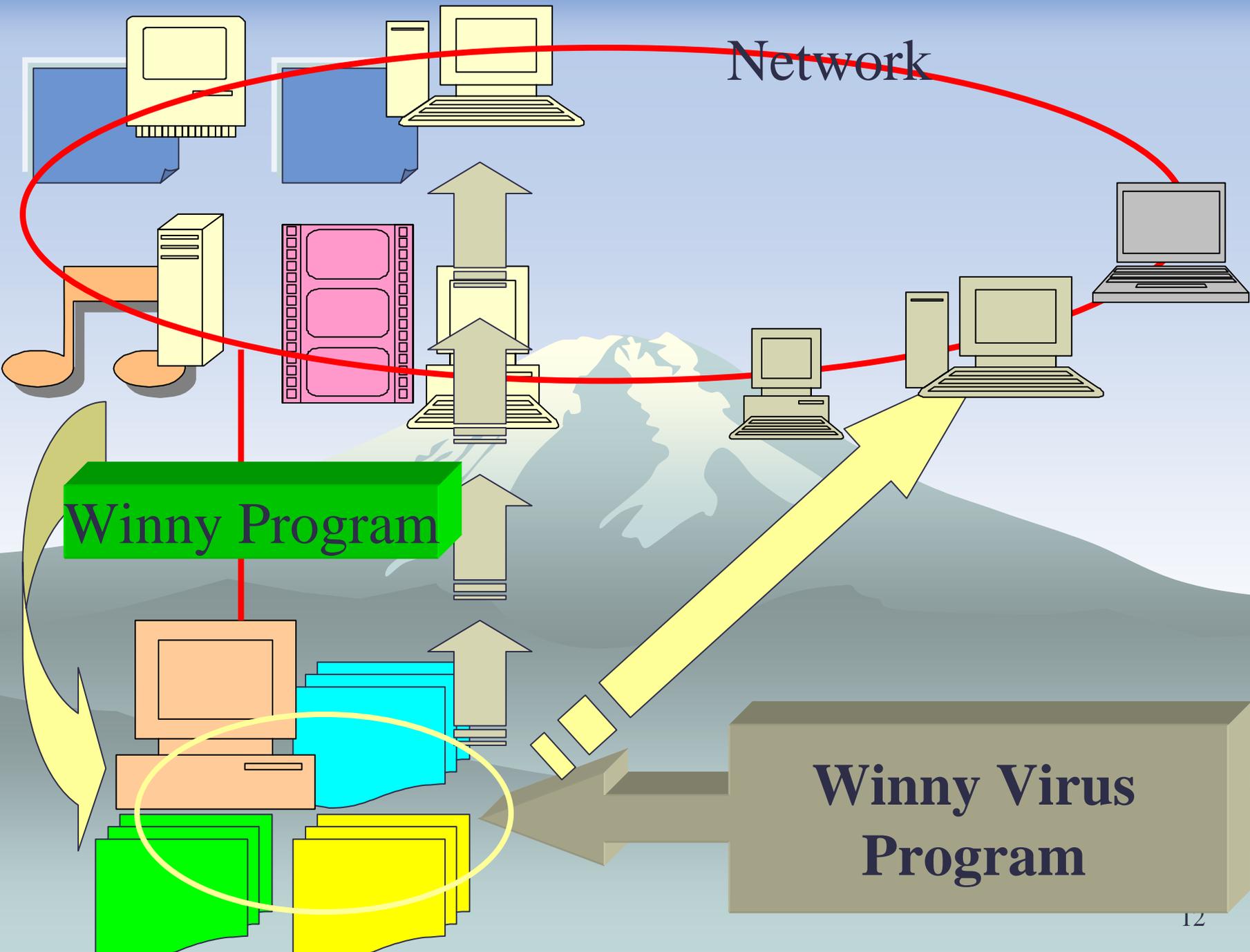
Two major impacts by Winny program

◆ By Winny traffic

- Infringing use of copyright materials – damaging music/computer game/software industries

◆ By Winny virus

- Uncovered personal information, leaking of national security, police internal information and business secret --- Leaking from national defense force, police agency, airline company, court office, corporations...



Network

Winny Program

Winny Virus Program

Winsky Virus Accidents in Japan:1

- ◆ June 2005 - Confidential information on nuclear power plant inspections was leaked on the Internet via Winsky program caused by a Virus
- ◆ Feb 2006 – Confidential information of the Maritime Self-Defense Force leaked
- ◆ Feb 2006 – Tokyo District Court's internal information on public auctions leaked
- ◆ March 2006 – Data of Ground Self-Defense Force and Air Self-Defense Force leaked
- ◆ March 2006 – Personal data on 1,500 people (crime victims and informants) leaked from police officer's PC in Okayama
- ◆ March 2006 – Personal data on 6,200 people and confidential police information leaked

Winny Virus Accidents in Japan:2

- ◆ March 2006 - Airport security code leaked
- ◆ April 2006 – 66,000 subscribers' information of a newspaper company leaked
- ◆ April 2007 – an arms depot and internal information of Ground Self-Defense Force leaked
- ◆ June 2007 – 9,000 documents (interrogation report, investigative photo) and 10,500 individuals' personal information leaked from police officer at the Metropolitan Police Station
- ◆ Dec 2007 – Sensitive data on Aegis defense system of Maritime Self-Defense Force leaked

Winny Case Chronology

- ◆ May 2002 – Winny program opened
- ◆ Nov 2003 – Winny users were arrested for violation of “Copyright Act” (uploading some computer games on their PC)
- ◆ May 2004 – programmer was arrested for assisting violation of “Copyright Act”
- ◆ Nov 2004 – trial started
- ◆ Nov 2004 – user was convicted for violation of Copyright Act
- ◆ Dec 2006 - programmer was convicted at Kyoto Dist. Ct. and appealed

Memorandum #1: Copyright Act

- ◆ Article 19 (i) a person who infringes on the moral rights of author, copyright, right of publication, moral rights of performer or neighboring rights (excluding, however, [(a)] a person who reproduces by himself a work or performance, etc. for private use purposes as provided for in Article 30, paragraph (1) (including cases where applied mutatis mutandis pursuant to provisions of Article 102, paragraph (1)); [(b)] a person who, pursuant to the provisions of Article 113, paragraph (3), commits an act deemed to constitute an act of infringement on the moral rights of author, copyright, moral rights of performer or neighboring rights (including rights deemed to constitute neighboring rights pursuant to the provisions of Article 113, paragraph (4); the same shall apply in Article 120-2, item (iii)); and [(c)] a person who commits an act deemed to constitute an act of infringement on a copyright or neighboring rights pursuant to the provisions of Article 113, paragraph (5)
- ◆ Article 23. (1) The author shall have the exclusive right to effect a public transmission of his work (including, in the case of automatic public transmission, making his work transmittable).

Memorandum #2: Penal Code

- ◆ Article 62 (Assessor-ship)

(1) A person who aids a principal is an accessory.



Why programmer was indicted and convicted for copyrights infringement?

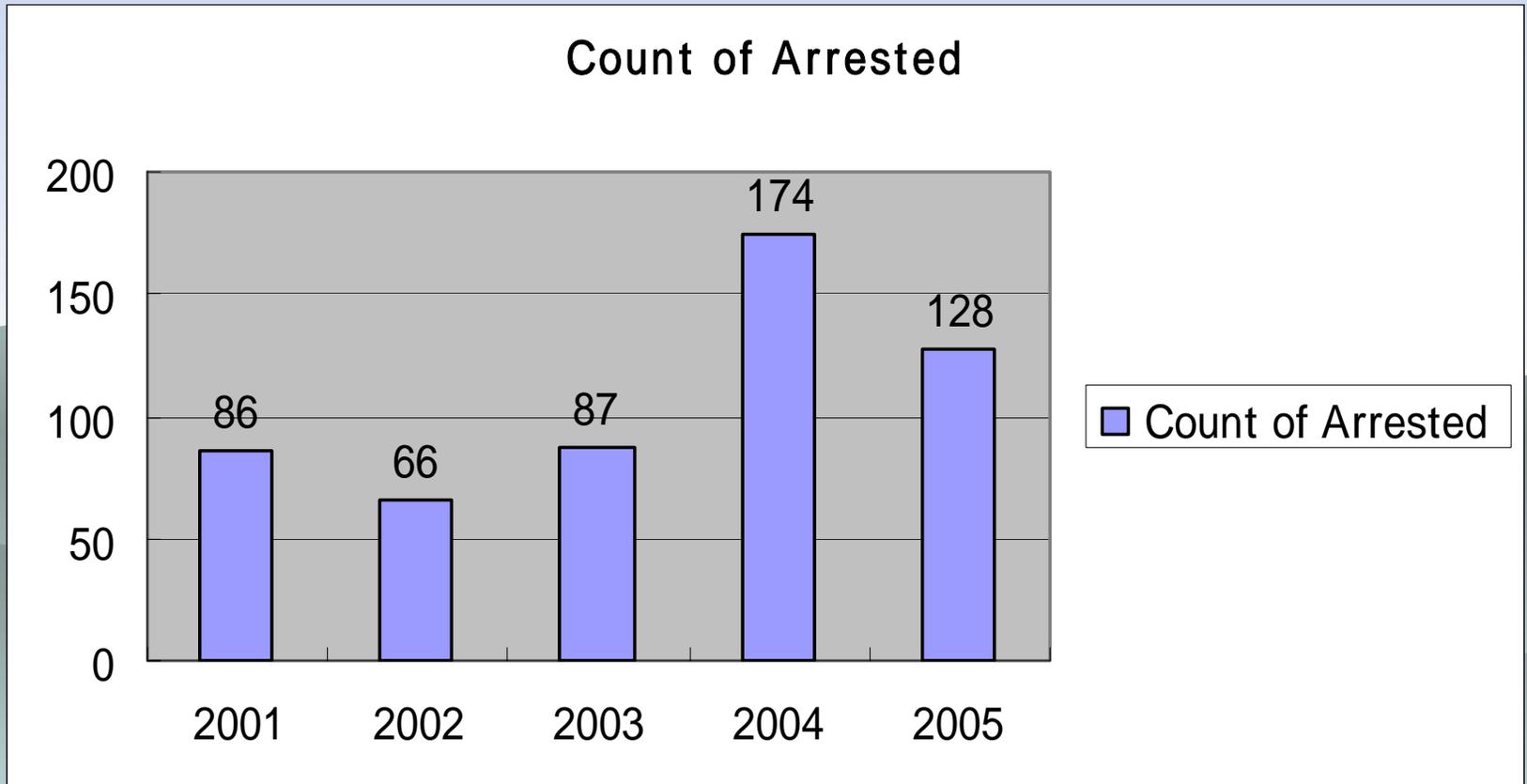


Background

- ◆ Industrial pressure
- ◆ Security concern by government
- ◆ No regulation against file sharing program
- ◆ Police-driven society control (economic unfairness, negligence, corporate regulation etc)

Memorandum #3

The statistics of Copyright law violation in Japan



Judgment in the first trial



Value-neutrality of Winny program and unlawfulness of programmer

- ◆ The court said “Winny program is value-neutral technology itself”.

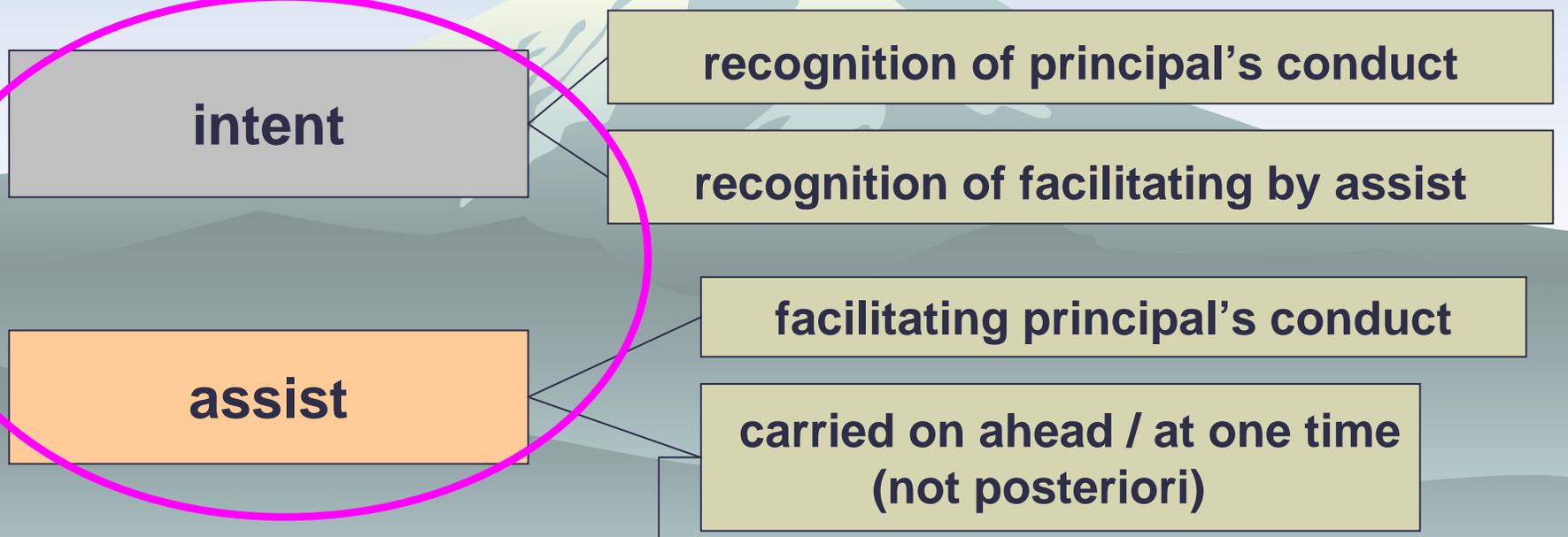
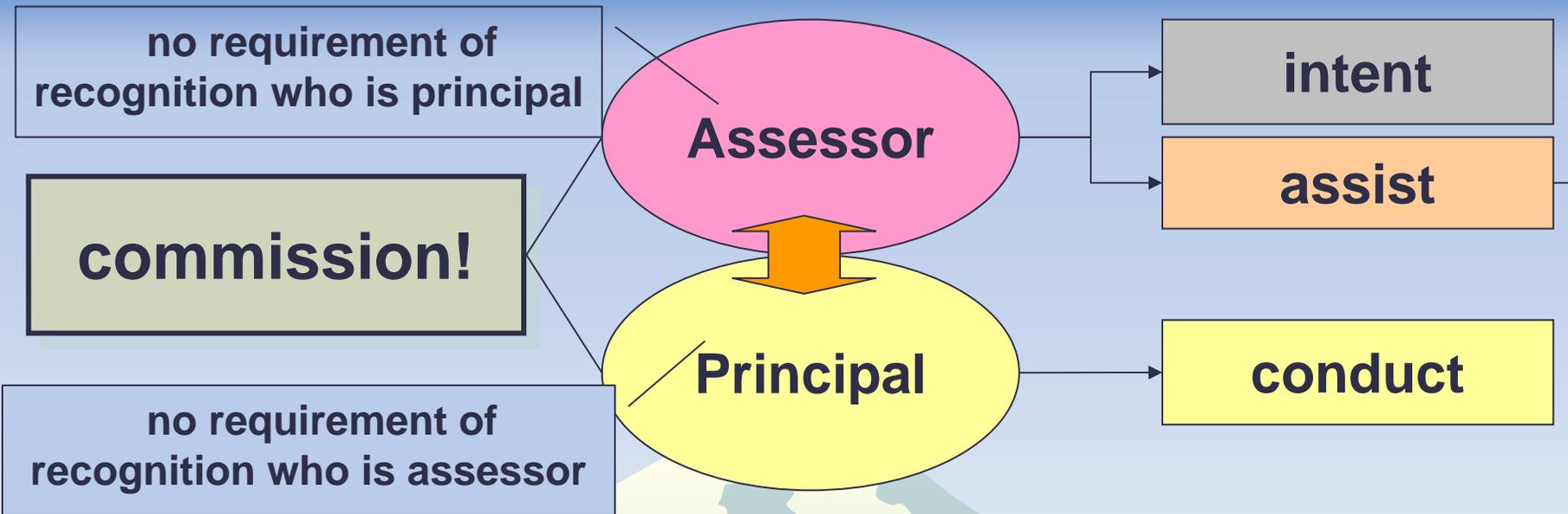


- ◆ **How the court decided the unlawfulness as assessor?**
 - ▣ First: the actual use of the software by public
 - ▣ Second: the recognition to the situation by the assessor
 - ▣ Third: the substantial attitude when providing a specific software to the public

Memorandum #4

The theory of assessor in Japanese substantive criminal law





not punished independently but exception (civil war)

Argument for the factors

	prosecutor	defense	court
1) Condition of use	Infringing copyright work at large	The survey does not fit the reality	No problem in the survey result
2) recognition	Yes	No voluntariness/ reliability in the statement	The defendant had been well recognizing that the program was used for transmitting copyright protected works by general public widely
3) substantial attitude	Entirely intention for assisting copyright infringement activity	Purpose of verification of the program on the network	No reliability on the part which the defendant had intention to spread unauthorized copy on the network

Fact finding by court on the case of Winny program

- ◆ 1) Defendant produced a P2P software, “Winny”, and made and kept it open access from the public on the net, which has function of transmitting and receipting a digital data.
- ◆ 2) Before Y and others acted copyright infringement by using Winny program and making a few of game-software open to public on their websites without legitimate reason, the defendant had provided the program to Y and others while he had been recognizing that the program was used for transmitting copyright protected works by general public widely and he had admitted such situation, and intentionally he had kept his opening Winny program to the public on the net.
- ◆ 3) Therefore the defendant assisted Y’s action infringing copyright, which constituted assessor activity prohibited by Penal Code.

Discussion

- ◆ 1) What's happen in Japan now?
- ◆ 2) Quick look of comparing with other P2P cases
- ◆ 3) What's the point can be argued in appeal court?
- ◆ 4) Who is the culprit?

What's happen in Japan?

- ◆ Petrification on the electronic engineering field - P2P programmers confront with criminal punishment
- ◆ Defenseless Winny users – ironically, programmer can not upgrade for protecting from Antinny
- ◆ Prohibition of using private PC for the work in governmental office, company, police and any institutes- Many PC are purchased by governmental office for the workers

Comparing with other P2P programs

Program	Deliberator	Case & legal battle
Napster (1999-	corporate	US 9 th circuit court ordered to stop the illegal transaction(A&M Records, Inc.v Napster Inc., 239 F. 3d 1004(9 th Cir. 2001)). The site shut down in July 2001.
Grockster (2001-	corporate	In US, although the appeal court decided no legal responsibility but the service stopped by compromise in Nov 2005.
KaZaA (2000-	corporate	Dutch court ordered to prevent from violating copyrights Nov. 2001 but appeal court reversed the order March 2002. MCM Studios, Inc. v.Grokster, Ltd. 545 U.S. 913(2005) Dec. 2005, Fed Ct of Australia prohibited download from Australia IP address
Winny (2002-	personal	May 2004, programmer arrested. Dec 2006, programmer convicted at Kyoto Dist. Ct.

What the points can be argued on appeal court?

- ◆ 1) legitimacy by police-driven control
- ◆ 2) theoretical misunderstanding of assessor punishment - relation with users and substantial recognition by the programmer
- ◆ 3) technological neutrality and unlawfulness of P2P programmer – programmer's social responsibility

Who is the culprit on Winny crises?

- ◆ Winny programmer?
- ◆ Antinny (Winny virus) programmer?
- ◆ Winny user?
- ◆ Defenseless sensitive data holder?
- ◆ Unguarded security policy maker in each sector?

Thank you!

