

The making available right in the “cloud” environment



Toward the harmonization of the
substantive scope of the right

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Outline

- The achievement of the umbrella solution of the WIPO Treaties
 - The significance of the umbrella solution
 - The diversity in national laws
- The current possible problems caused by the diversity
 - The “making available”
 - The “public”
- Conclusion

The umbrella solution

WCT

Right of making available to the public

WPPT



Ban-gasa

Making transmittable right

Japan

Public communication right

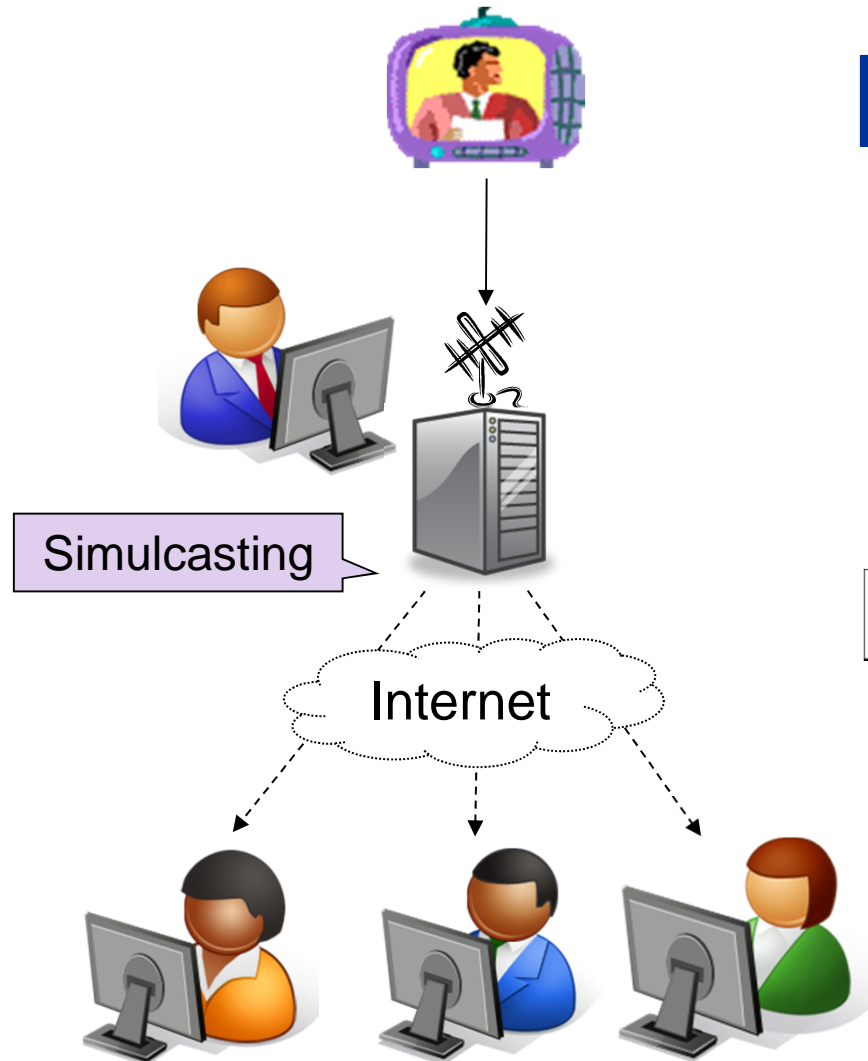
EU

Distribution right

Public performance right

USA

Simulcasting & Webcasting



Broadcasting

Authors

Exclusive right
(Art.8 WCT)

Performers,
etc.

Remuneration right
(Art.15 WPPT)



Making available

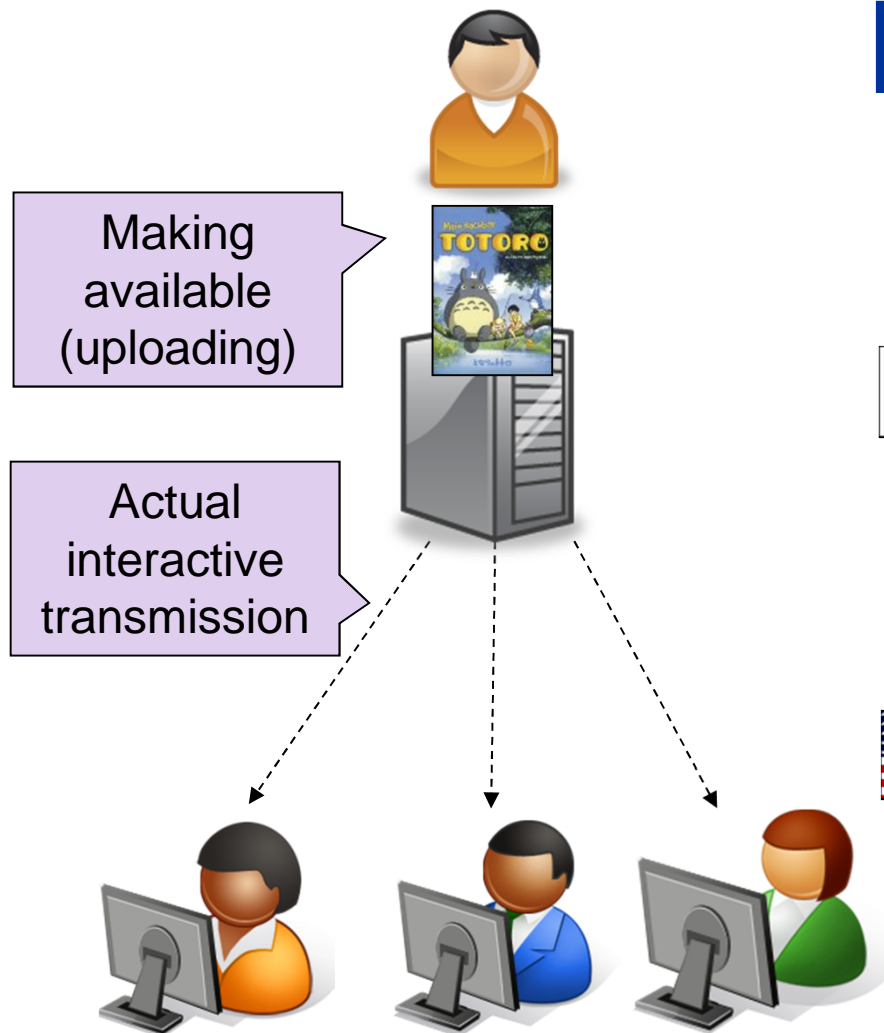
Authors

Exclusive right
(Art.8 WCT)

Performers,
etc.

Exclusive right
(Arts.10&14 WPPT)

Uploading & actual transmission



Making available

Both

Making available

Actual transmission



Making transmittable

Only

Uploading



Distribution & public performance, reproduction

Both?

Making available

Actual transmission

What is the “public”?



WIPO Treaties

Berne Convention

No definition of the public



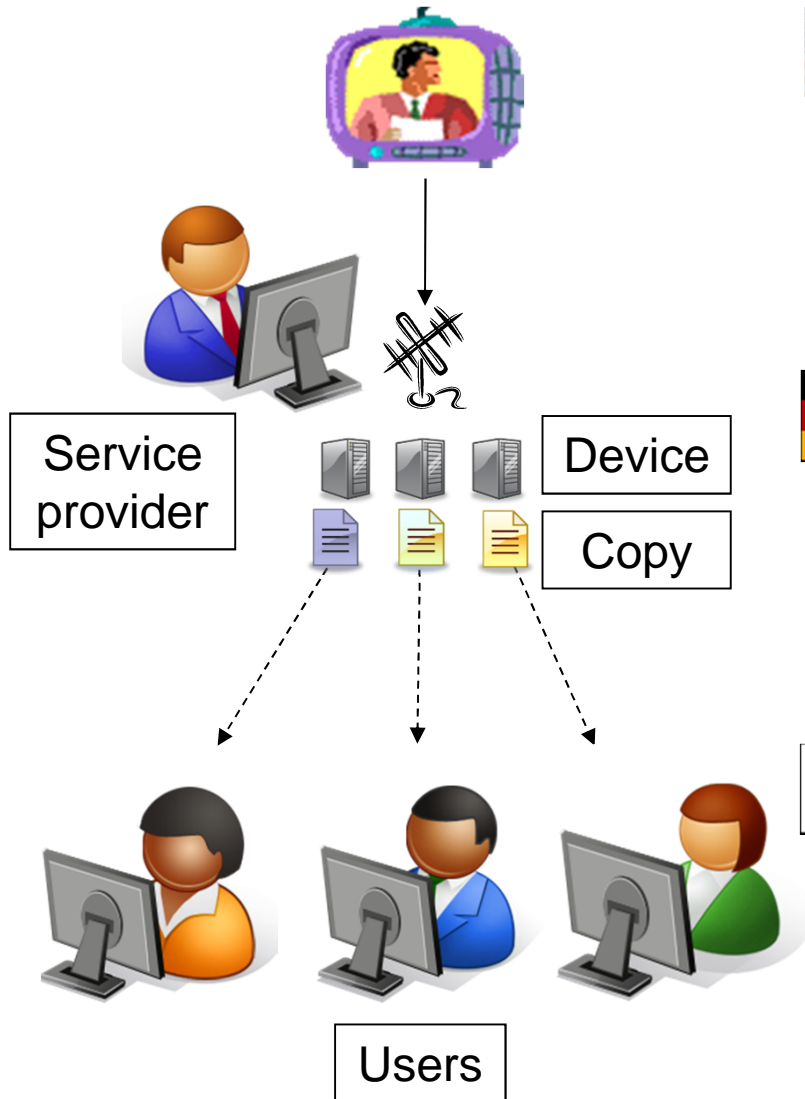
EC Directives

No definition of the public

WIPO: Guide and Glossary (written by Dr. Ficsor)

“The Public” is a group consisting of a substantial number of persons outside the normal circle of a family and its closest social acquaintances.

On-line video recorder



Cablevision & Aereo

Reproduction right

Public performance right

No direct infringement



Save.TV & shift.TV

Reproduction right

Making available right

No infringement but infringement of retransmission right



Maneki TV & Rokuraku II

Reproduction right

Making transmittable right

Direct infringement

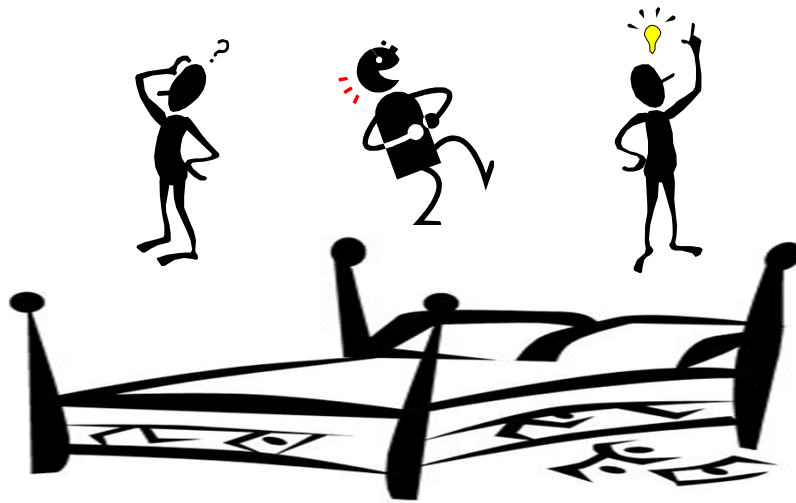
Conclusion

International discussions are important to harmonize the substantive scope of copyrights.

Different dreams
on the one same
bed

同床異夢

Dôshô-imu



Bed?



Umbrella?

Thank you

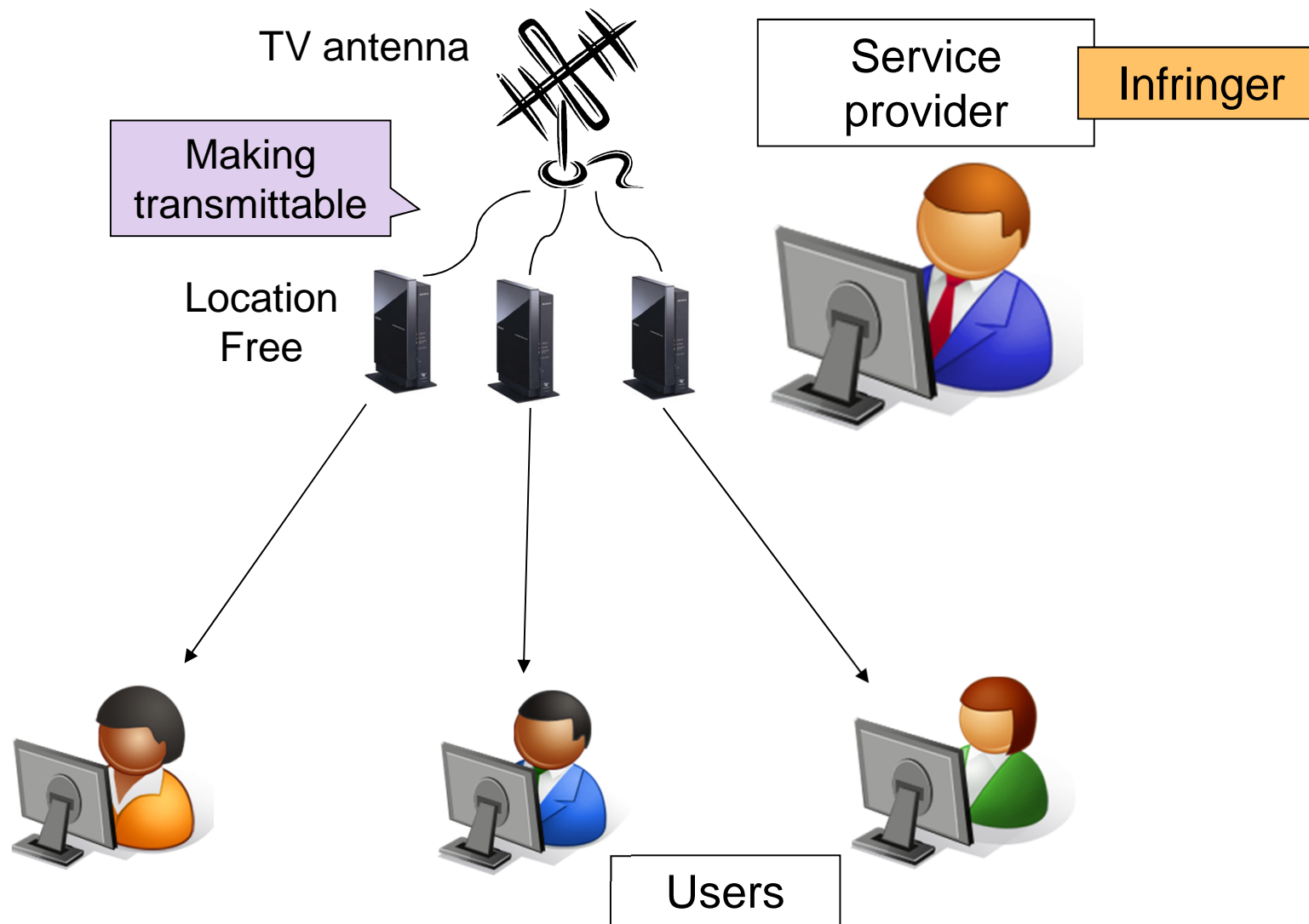


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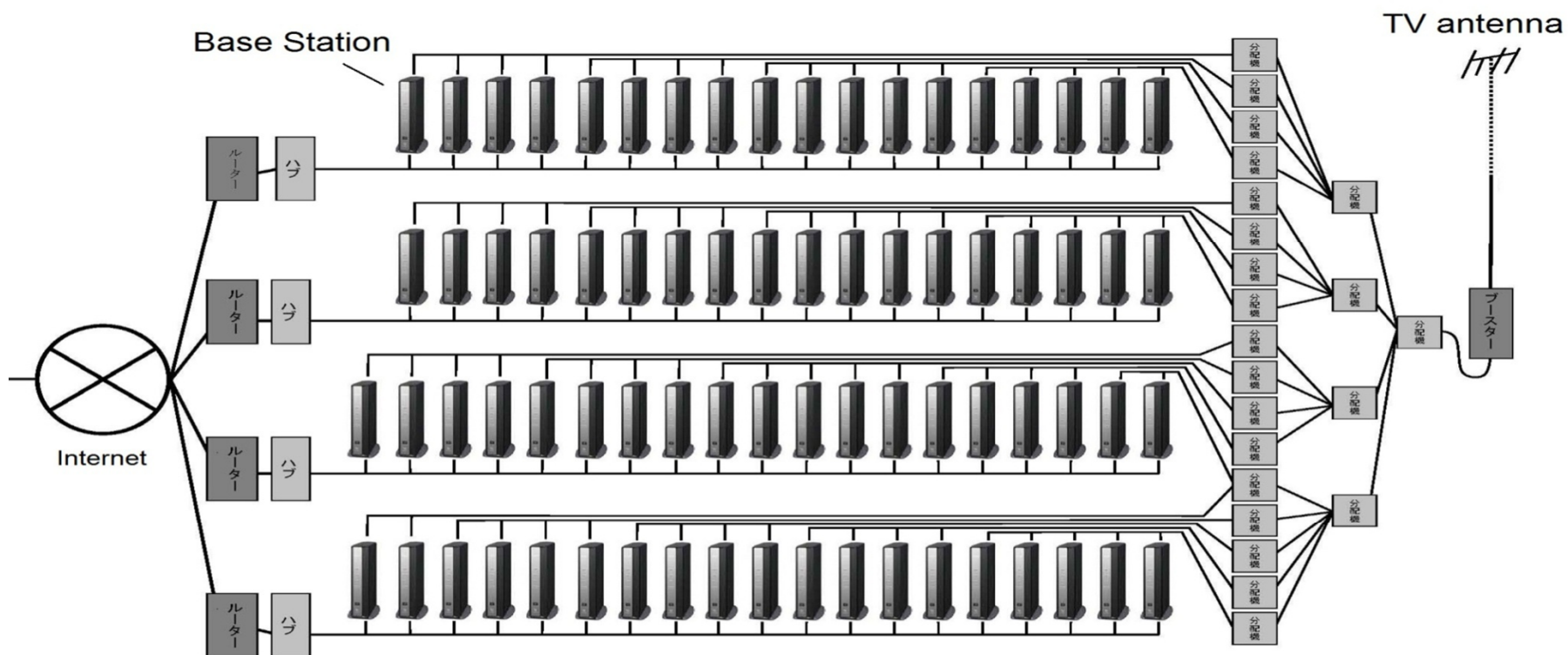


Annex: Maneki TV Case



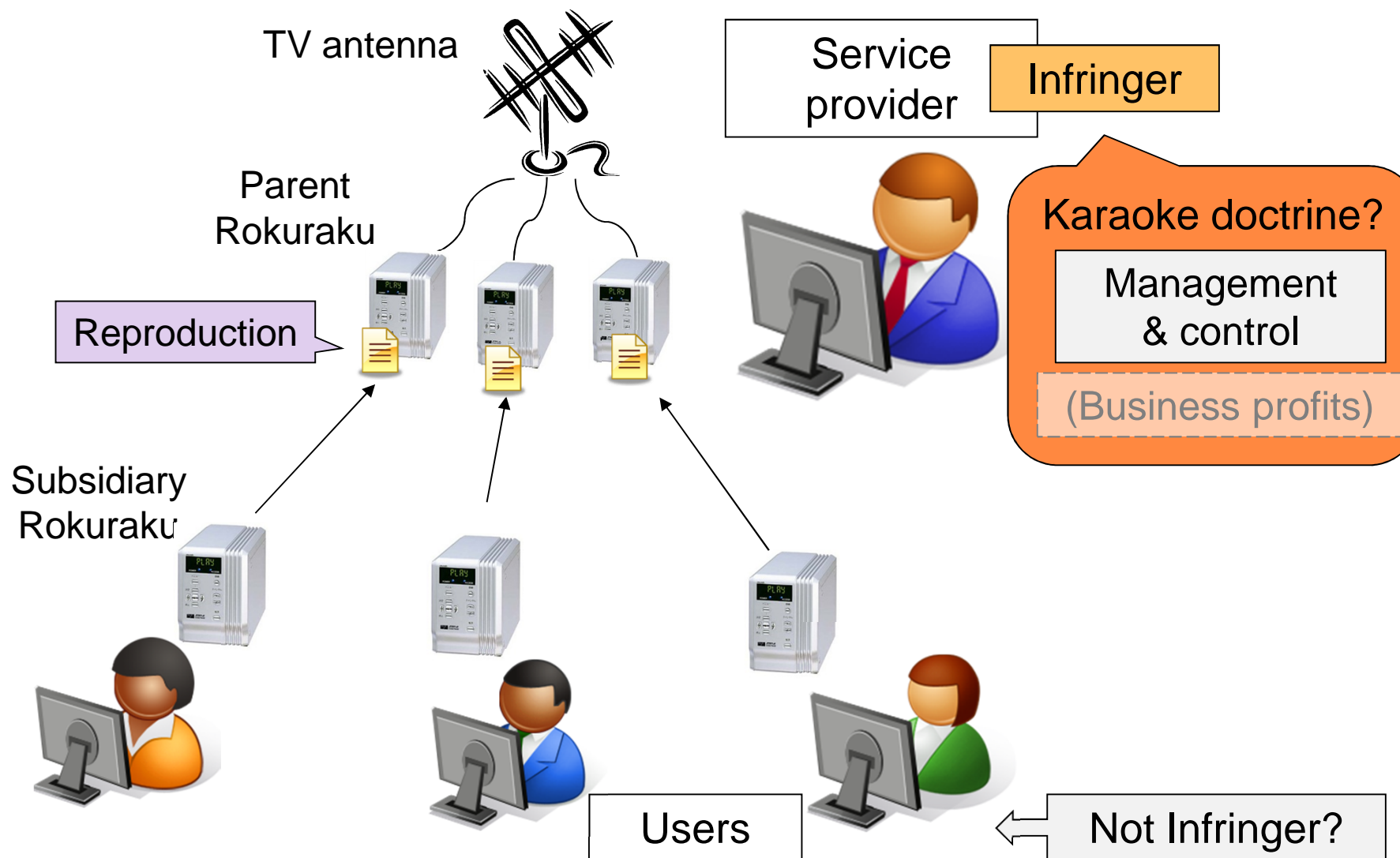


Annex: Maneki TV Case



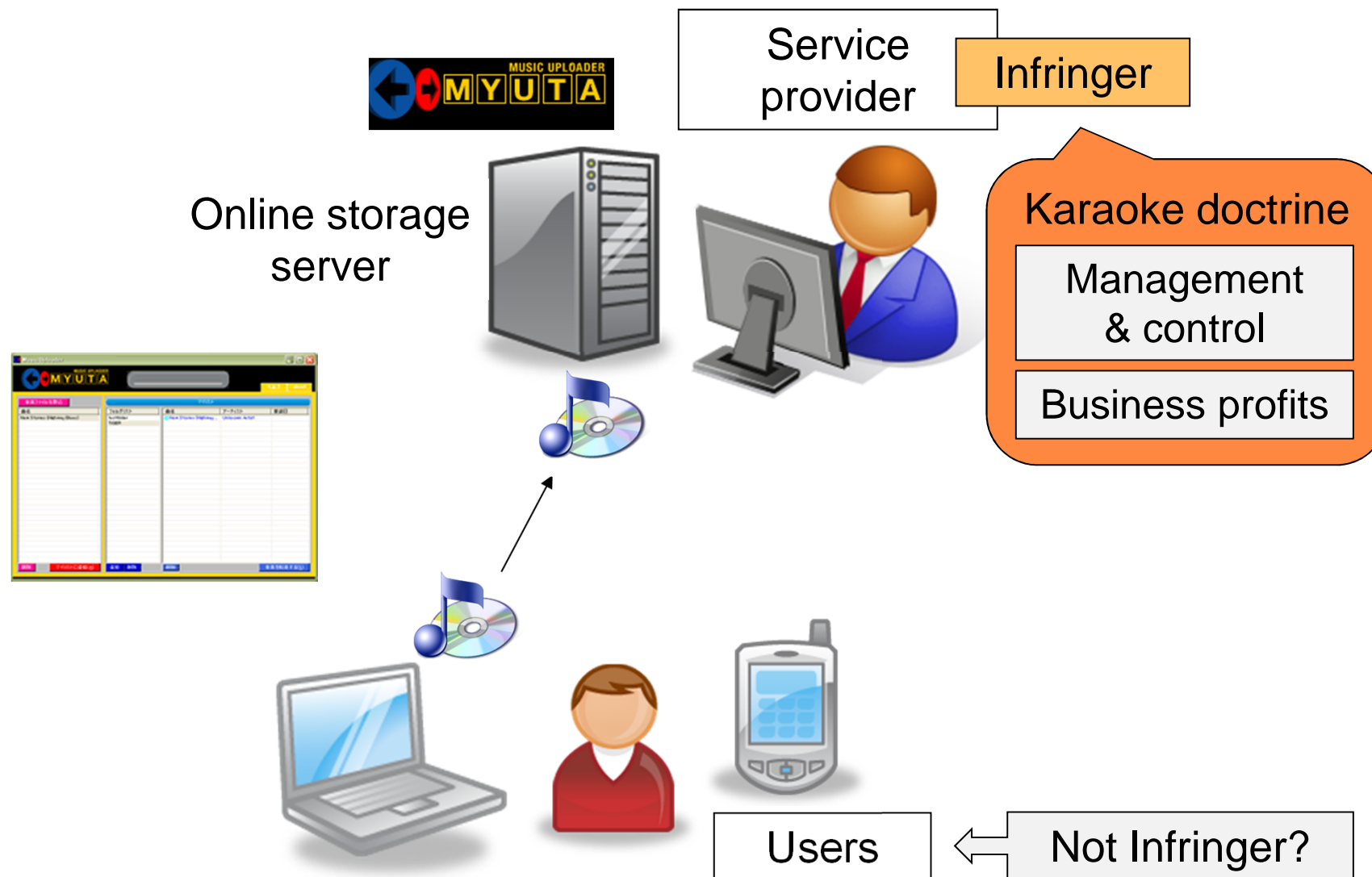


Annex: Rokuraku II Case





Annex: Myuta Case





Annex: TV Break Case

