The History and Present State of the Japanese Copyright Clearance System

Noboru Miyata

Historical Background

Recent developments in digitalization and information networks defy the imagination. We have entered the information age in which everything from text to music to visual images is being digitalized and transmitted instantaneously worldwide via the Internet. In the 21st century the entire world will become a borderless society in terms of access to information.

In order to respond to these rapid changes, the global adoption of uniform standards for the protection of copyrights is essential. The most momentous event in this regard occurred in March 1989 when the United States decided to sign the Berne Convention, which was first established in 1886. Despite its participation in the meeting to draw up the convention, US refused for over one hundred years to sign it because it objected to certain formalities in the registration system and manufacturing clauses designed to protect the printing industry. The fact that the World Trade Organization (WTO) Convention made adherence to the Berne Convention an obligation for the protection of copyright under its Agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS) in 1995 led to further change. As the WTO Convention awarded most-favoured-nation status to countries that reduced tariff barriers, most countries decided to sign. If, however, they did so without also agreeing to the terms of the Berne Convention, they would be required to adhere to the convention’s obligations without receiving any of its privileges. Consequently, the majority chose to sign the Berne Convention as well, and to date (July 2000) 144 countries have signed. Copyright protection in accordance with uniform global standards will likely be implemented worldwide from the beginning of the 21st century.

Copyright Violation and Its Resolution

Digitalization has made copying and changing other people’s works easier while the Internet allows an unlimited number of people anonymous access. These two factors could result in an increase in copyright violations in which people use an author’s works without permission. At the same time, we also need to facilitate multi-dimensional and multi-faceted access to an author’s works and to contribute to the creation of culture and the dissemination of information. A reliable copyright clearance system is essential in order to fulfill these apparently contradictory conditions.

In January 2000, the Subcommittee for Intensive Copyright Administration under Japan’s Copyright Council compiled a report for the resolution of these issues. The Copyright Administration Business Law, the aim of which is the creation of an intensive copyright clearance system, was drawn up on the basis of this report and deliberated upon in the National Diet. It is scheduled for implementation from October of 2001.

Copyright administration includes being commissioned to exercise copyright by the author, conferring consent to use copyright or neighbouring rights to the user, and collecting compensation and distributing the same to the author. In this multimedia age, it is impossible for the individual to give consent and determine and collect the royalties for each of the many and diverse uses of his work. Under the copyright clearance system, the author entrusts his copyright or neighbouring rights to an association administering copyright and this association determines in advance the right applicable to each type of use and the user pays the specified fee to the association, facilitating speedy, multiple utilization of the work.

Other advanced nations have already established this type of system. Japan was not entirely without such a copyright administering association either. More than sixty years ago in April 1939, the Law on Intermediary Business Concerning Copyright was enacted. In December of the same year, two copyright administering associations were founded on this basis. One of these was the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC), which continues to administer copyright to this day. Why then, is Japan taking steps towards the abolishment of the above law and the implementation of a new law concerning the administration of copyright? The historical background leading to the current move towards establishment of the copyright clearance system in Japan is rather complex.

Copyright Clearance System in Japan

There was a period from 1931 to 1940 during which German teacher, Dr. Heinrich Max Wilhelm Plage launched repeated prosecutions against Japan for violation of copyright. His attacks were so ferocious that they were called the Plage Cyclone. Two or three cases were lodged against the publishing industry, but the majority concerned musical compositions, as can be inferred from the fact that he was appointed the representative of the European music copyright association.

Today, Dr. Plage is generally regarded in Japan as a man of great achievements to whom the Japanese owe a debt of gratitude for sounding the alarm at a time when Japan lacked any ideology concerning copyright protection and unauthorized use of musical compositions and translation of literary works was rampant. A survey I undertook, however, revealed that there were in fact very few unauthorized translations at that time and Japanese publishers faithfully applied the Berne Convention in the publication of translated works.

Similarly with regards to unauthorized performances of musical composition, the 1928 Berne Convention for the Protection of Literary and Artistic Works revised at Rome gave world recognition to performance rights and made protection obligatory. In 1931, Japan revised its Copyright Law to reflect this change, but Dr. Plage’s activities began in the same year. Although it would be inconceivable today, the mere act of purchasing a musical score was considered to be equivalent to copyright clearance.

Despite the law being established, however, there was no copyright clearance system to determine how consent was obtained or royalties paid with regards to the countless musical performances and theatrical plays, both large and small, held all over Japan. Moreover, it was particularly difficult to obtain consent for the performance of foreign music. In such a setting, Dr. Plage sought out performances of foreign music and demanded payment of high fees for the right to use the music that completely ignored the practical realities in Japan. Naturally, this outraged many Japanese and aggravated the conflict.
It was with this background that the Law on Intermediary Business concerning Copyright targeted at novels, scripts, lyrics and musical composition was drawn up. Because it was also aimed at eliminating Dr. Plage, it authorized only two copyright administration associations: JASRAC for music and Japan Federation for the Protection of Copyright on Literary Works for literature. As for royalties, application to and approval by the government agency in charge was required. As a result, the Plage Cyclone finally petered out.

Thereafter, JASRAC fulfilled an important role in the collection of royalties for musical compositions both in Japan and abroad. Due to the history of its establishment, however, the Law on Intermediary Business Concerning Copyright had several inherent defects. One was the need to obtain approval of both the intermediary and the royalty fee from the national government. Another was the limit of only one copyright administration association per field, which, although it was more convenient, eliminated competition. Yet another problem was the fact that the copyright administration association, which was based on a collective clearance mechanism, and the copyright agent, who relied on individual consent and personal trust in relationships with the author, were both lumped together within the category of intermediary businesses concerning copyright.

Under the new law, greater distinctions will be made between the two. Copyright administration associations, to which the copyright holder fully entrusts the use of copyright, will no longer be required to apply for approval but will only need to give notification instead, while agents will be free to consult with the copyright holder on a case-by-case basis. In other words, the law will eliminate government mediation and create more freedom to act by separating copyright related business into two types: business which the copyright holder entrusts entirely to someone else and business which he does not. This is envisioned to stimulate greater use of various works both at home and abroad.

Legislation on the Publishers’ Right in Japan

Legislation on the publisher’s right has been pending for the last ten years in the Japanese publishing industry. The aim is to obtain recognition of neighbouring rights for the publisher just as the right of broadcasting organizations and the right of phonogram producers have been recognized. If legislation for this is not enacted along with the Copyright Administration Business Law, Japanese publishers, who are presently unable to claim edition rights, digital rights, or various secondary rights, fear that they will lose their position as the base for the transmission of literary works.

(translated by Cathy Hirano)

Noboru Miyata
Born in 1928 in Tokyo. After beginning his career as an editor at a publisher specializing in translated version of foreign fiction, Mr. Miyata joined a copyright agency and later established an agency of his own. Having worked in the copyright field for nearly 40 years, he is a leading figure in the field. As a consultant of foreign rights and international publishing, he has participated in many domestic as well as international conferences and seminars to educate publishing people. He has also published a number of books including “Guide for International Publishing and Foreign Rights” and “Rights of Translation After World War II” (both in Japanese).

Noboru Miyata
President, Japan Uni Center, 1-27, Kanda Jimbo-Cho, Chiyoda-Ku, Tokyo 101-0051, phone: (81) 3 3233 1091, fax: (81) 3 3233 1379

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Copyright Conventions and Organizations

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1. Berne Convention
   —The Berne Convention for the Protection of Literary and Artistic Works
   In this convention established in 1886 in Berne, Switzerland, to protect international copyright (authors’ rights) through mutual cooperation, copyright is granted automatically without any formality as registration. It was substantially revised in Paris (1896), Berlin (1908), Rome (1928), Bruxelles (1948), Stockholm (1967), and Paris (1971). Its present membership is 144.

2. The World Intellectual Property Organization (WIPO)
   This organization was created in 1967 and came into force in 1970 to promote the protection of intellectual property including literary and artistic property protected by copyright, and industrial property.

3. The Universal Copyright Convention (UCC)
   This convention was adopted in 1952 and came into force in 1955 to close the gap between the countries belonging to the Berne Convention (non-formality regime) and others that need formalities to protect copyright. The symbol © was established as an international notice of claim of copyright. UNESCO administers the UCC. Its present membership is 98.

4. Rome Convention
   —The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
   This convention was adopted in 1961 in Rome for the protection of neighbouring rights. Its present membership is 65.

5. Phonograms Convention
   —The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms
   This convention was adopted in 1971 in Geneva and came into force in 1973 for the protection of neighbouring rights to prevent original records from piracy. Its present membership is 62.

6. The World Trade Organization (WTO)
   The international agreement to establish the WTO was adopted in 1994 and entered into force in 1995. This incorporated the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). TRIPS deals with both copyright (author’s right) and neighbouring rights. In compliance with the provisions of the Berne Convention except for those on moral rights; it includes the protection of computer programmes and databases; introduction of the right of rental for computer programmes, cinematographic works and phonograms; protection of performers, phonogram producers and broadcasters.

Source: Copyright Research and Information Center, Japan (as of April 2000)