
4. Copyright System in Japan

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I. Introduction

In this lecture, I will summarize the copyright system in Japan and the relevant efforts being made on copyright education in Japan. As I am not familiar with the legal rules and contractual practices related to copyright issues in Vietnam, I am not certain whether I can address your interests properly. Nonetheless, I believe introducing to you the copyright system in Japan, as well as covering international copyright rules of the Berne Convention, will prove highly beneficial for Vietnamese publishing practices.

II. Summary of the Copyright System in Japan

1. The Significance of the Development and Enrichment of the Copyright System

First, I would like to mention the significance of the development and enrichment of the copyright system. As was the aim in the establishment of the Berne Convention, the copyright system in Japan also intended to motivate a creator's creative will, encourage new creations, and contribute to cultural development, including those in the arts and sciences by granting moral and proprietary rights to the creators of those soulful and cultural products.

There have been new and rapid developments recently with regard to the development and enrichment of the copyright system seen in many countries, including Japan. They have been triggered by the spread of the Internet with the development of information transmission and recording technologies. The Internet has the potential to largely transform the traditional common sense of content distribution in various fields, such as publication and broadcasting media.

It is also important to note that it has become possible for private homes and offices to provide

services similar to those offered by a copying factory or a TV station. Namely, in using the Internet, the quality of copied or produced contents from homes or offices may prove just as excellent as the original. Indeed, consumers welcome the facile attaining of information such as novels, music, movies, academic papers, and maps through new media like the Internet.

However, the unregulated distribution of contents through such new media could lead to no remuneration for creators, and in turn, result in a loss of creative momentum. It is hoped that an improved trilateral relations of creators, distributors and consumers is developed worldwide by forming proper legal rules concerning non-packaged media such as the Internet, as well as for packaged media such as books, DVDs and CDs.

In the case of Japan, Japanese entertainment such as animation movies and music are greatly appreciated and are spreading to other Asian countries. We are thus, on both a public and private basis, taking steps for the disperse, education, and support in the development and enrichment of the copyright system in these countries, so that their peoples can continue to enjoy such works in the years to come.

2. Subjects protected by the Copyright System

Next, I will explain about the subjects protected by the copyright system.

While the copyright system covers live performances, records (audio sources) and broadcasting—as well as creations which will be mentioned later—at this time, I would like to focus my discussion on [tangible] creations (i.e., copyrighted works). (For those interested in the protection of the performed arts and the like, please refer to the chapter “About Neighboring Rights” in the “Asian Copyright Handbook.”).

The subjects protected by copyright are

¹ An original paper of this presentation was prepared in Japanese. The paper in this report is its translation prepared by ACCU.

copyrighted works, and in the Berne Convention, several exemplifications are made, including all works in art and literature, science and fine art, regardless of modes of expression or form. The

exemplification of the Copyright Law of Japan is similar to that stated at the Berne Convention and is as follows:

Table 1

Berne Convention	Copyright Law of Japan
Books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature	Novels, dramas, articles, lectures and other literary works
Theater and music drama	
Dance and pantomimes	Dance and pantomimes
Musical compositions with or without lyrics	Music
Films	Films
Sketches/drawings, paintings, architecture, sculpture, engraving and lithography	Paintings, engravings, sculptures and other artistic works
	Works of architecture
Photographic works	Photographic works
Works of applied art	(Included in works of fine art)
Illustrations, maps, plans, sketches and three-dimensional models relative to geography, topography, architecture and other sciences.	Maps as well as figurative works of a scientific nature such as plans, charts, and models
	Computer Programs
Modifications of works mentioned above in translations, adaptations, [music] arrangements and other means	Derivative works
Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations	Compilation works

Note, however, that it is a matter for legislation of each participant country [of the Berne Convention] to determine whether works need to be tangible to be protected by copyright law. In Japan, tangibility is not a condition for its protection, hence works such as speeches that immediately cease to exist upon their presentation, are also valid for protection.

On the other hand, works in the United States are protected only if they are tangible. Therefore, unless lectures, improvisations, etc., do not have a set material form, particularly as published works, CDs, and so on, their creators have no means to prevent unauthorized copying of their works.

Within published materials, there are publications such as newspapers and magazines, which are published as a single medium but are in fact created from numerous sources. In such cases, it is obvious that each of the collectively printed articles/pieces is a copyrighted work itself. At

the same time, with consideration to the creativity induced in the selection of such works and their layout in producing a single publication, that publication in its entirety is also viewed as a copyrighted work. Accordingly, when copying a whole magazine, for example, obtaining permission is necessary from not only the individual novelists/writers, photographers, and illustrators (whose works make up the magazine), but also from the editor responsible for the selection and layout of these materials. Failure to do so would be deemed a copyright violation.

As for computer programs, though there are no exemplifications in the Berne Convention, they are considered linguistic works expressed by the usage of programming languages. In TRIP (a WTO treaty related to intellectual property), however, and in WCT (a special treaty of the Berne Convention), computer programs are clearly defined as copyrighted works.

3. Author's Rights

Next, I will explain about literary works and the details of the rights granted to authors.

Table 2

Berne Convention		Copyright Law of Japan	
Author's Moral Rights	-	Author's Moral Rights	Right of making the work public
	Right to claim being the author of the works		Right of determining the indication of the author's name
	Right to raise objections against matters that may violate one's honor or fame due to distortions, eliminations and other alterations of works and to other infringements of works		Right of preserving integrity
Exclusive Right	Right of Translation	Copyright as Proprietary Right	(Included in the Right of Translation and the Right of Adaptation)
	Right of Reproduction		Right of Reproduction
	Right of Performance, etc.		Right of Performance
			Right of Presentation
	Right of Broadcast		Rights of Public Transmission, etc.
	Right of Public Recitation		Right of Recitation
	-		Right of Exhibition
	-		Right of Distribution
	-		Right of Transfer
	-		Right of Lending
	Right of Adaptation and Arrangement		Rights of translation and adaptation, etc.
	Right of Making cinematographic productions		(Included in the right of adaptation)
	Right of Pursuit		-
Rights of the original author in the use of a derivative work	Rights of the original author in the use of a derivative work		

These rights are effective from the point the author completes his/her creation and without public release; the handling of these matters are the principles of the Berne Treaty.

Of the rights described in Table 2, those who are planning to take measures as described in "exclusive rights" and "copyright as proprietary rights," must get permission from the author of the works. The usual practice is for the user and author to discuss how much the user is to pay as a user's fee; for example, X% of retail price, X% of sales profit, or a single lump payment per work. Moreover, as such articles of an agreement is negotiated between the parties, it is even feasible to obtain authorization without royalty payments.

Out of those given in the above Table, the right of lending, the right of public transmission, and the right of transfer under the copyright law of Japan,

are not stated in the Berne Convention. However, the right of lending is described in the TRIP Treaty mentioned earlier, and the right of transfer is defined by WCT respectively. Hence, action without permission becomes a copyright violation in the countries bound by the Berne Convention.

The right of lending refers to the loaning of books and packaged media (such as CDs, videos, DVDs, and computer software) to the public.

The right of public transmission is when digitized works are sent via Internet in a way that the public can receive them. For example, the uploading of music files, frozen frame files or movie files to use on a personal website, as well as the use of e-mail to distribute copyrighted works. Actions like these, which broadcast information and enables end-users to copy [contents]—as high in quality as the originals—onto computers, et cetera. It is for

this reason that regulating the need has been established to obtain author's consent at initial transmission. As the action is characteristically similar to broadcasting, where anyone can easily transmit the works of others albeit without a broadcasting license, and can also transmit high quality contents with immediate response to user request, authors are greatly concerned.

The right of transfer is the transferal of reproduced works, such as printed matter and audio recordings to a third party. Whether a copyright owner is able to execute the same power in a secondary transfer as in a primary transfer depends on each national legislation. In Japan, the right of transfer becomes void after one transferal, but only on the premise that the subject work(s) is authentic (verses pirated works), in which case its smooth distribution is assured. For example, the right becomes effective if an author finds his/her work has been copied without permission (i.e., pirate copies), and that it is being distributed via Internet, etc.. The right enables the author to take legal action to stop such distribution.

4. The Duration of Copyright

Next, I will explain about the duration (time span of effectiveness) of a copyright. In the case of a publisher, for example, that publisher must seek permission from its author to publish a certain work as a publication throughout the agreed duration. According to the Berne Treaty, that duration lasts through the author's lifetime and for at least 50 years after his/her death. The copyright law of Japan also stipulates in principle that duration is effective for 50 years after an author's death.

Within the duration span, copyrighted works may not be copied, performed, broadcasted, etc., without the author's authorization, but they become public property and can be utilized as such upon expiration of duration. In Western countries, the tendency for duration is 70 years after the author's death.

5 Limitations on Right

Limitations on Rights regulate the ability of the

authors in executing rights granted to them, as aforementioned, when given conditions a fulfilled. Under the Berne Treaty, these limitations are effective in "special cases," in "cases of non-obstructiveness under normal use," and where "damages towards an author is inflicted for no valid reason," yet it is again up to each national legislation in dealing with the specifics of the matter.

There are approximately 20 example cases which the Copyright Law of Japan regulates, some of which are: 1) Reproduction of works for private use; 2) Citation of works for academic and other papers; 3) Reproduction of works for teaching purposes; 4) Reproduction, etc., of works for their usage by the visually/hearing impaired, and; 5) Non-profit, free-of-charge performances, etc.. However, as commercial publishing hardly ever falls under any of these categories, publishers have to fundamentally attain author permission.

(Those interested in Limitations of Rights, please refer to "Limitations on Copyright" in the "Asian Copyright Handbook.").

6. Legal Liabilities with regard to Copyright Violation

Next, I will explain the kinds of legal liabilities which are generated upon unauthorized usage of other's works. To countermeasure copyright violations, the Berne Convention warrants legal seizures, as well as further actions each national legislation may take upon itself. Furthermore, TRIP requires the taking of effective steps against copyright violating actions.

According to the Copyright Law of Japan, measures such as the following can be taken in civil cases: 1) demanding cessation; 2) claim for damages; 3) claim the return of unfair profit, and; 4) demanding the measures for recovery of honor. The sum of damages is assessed on a case-by-case basis, as the commercial value and retail price of works differ, as does their means of distribution.

In addition, criminal charges can be made for malicious cases. The penalty for copyright violation is penal servitude for up to five years, or a

fine of up to ¥5-million. In corporate cases, the maximum fine is ¥150-million. The court judges these criminal responsibilities based on the suits filed by authors and/or other plaintiffs.

This concludes my summary of the copyright system in Japan. The copyright system is fundamentally aimed at protecting an author's moral and proprietary profits, but in having close relations with the author, I believe that a publisher's protection of an author is in turn the protection of the publisher profits as well.

III. Efforts on Copyright Education in Japan

1. Copyright Education for Children

In teaching children about copyright issues, classroom education is believed to be the most effective means. When considering copyright education for the general public, therefore, priority should be given to its education in schools.

In Japan, there is a Course of Study laid down as a rough standard with regards to curricula in elementary, junior high, and high schools; school teachers are to teach their respective subjects in accordance to the Course of Study in a creative way. Following the social changes generated by today's information society, the Course of Study calls to deal with "Technology and Home Economics" in junior high schools, and "Information Technology" in high schools, with a number of pages set aside on the copyright system in each of the relevant textbooks. As can be seen, basic copyright issues are included as a core curriculum on the compulsory education level.

Although the Course of Study lays out the content of what is to be taught, it is up to the individual teacher to decide on what teaching materials are to be used other than designated textbooks, and the time and ingenuity invested in teaching and teaching methods. Teachers consider such matters as the interests, abilities and aptitudes of children as they differ greatly. Nonetheless, the national government prepares and provides educational materials and instructional resources in order to support inventive and effective copyright education in schools.

(1) Handing out of cartoon booklets

A cartoon-style booklet on a fictitious story of junior high school life was distributed to some 3.8 million ninth grade students nationwide, free-of-charge. This system has continued annually since 1997.

The booklet was created to encourage students to become aware of copyrighting through credible daily incidents depicted in the story. The cartoon adaptation also makes it easy for students to understand the content.

As this booklet consists of about 30 pages and needs little time to read, it can serve as a textbook or backbone for classroom discussion, or just as reading to take home.

(2) Educational Software

Educational software to study copyright in an enjoyable game-style setting has also been made available. Versions for grade school children and for junior high school children have been produced.

Both elementary and junior high school versions have four steps: "Basics," "Class," "School Life," and "Life." Each step consists of 10 questions, for a total of 40 questions. Players answer to multiple-choice questions such as, "Is it alright to alter your friend's picture without permission?" and "What would happen if nobody were to observe copyrights?" As a matter of interest, the four answer choices for the question, "What would happen if nobody were to observe copyrights?" are:

"Cars would disappear."

"Cartoons and music would disappear."

"School lunches would disappear."

"Summer vacations would disappear."

The correct answer is, "Cartoons and music would disappear." Furthermore, brief explanatory comments are given with the answers.

In the software for junior high school children, points are added and the total sum appears on the screen to motivate students to learn.

(3) Teaching Manual for Teachers

As aforementioned, a Course of Study is prescribed as a rough curriculum guideline for teachers in elementary, junior high and high schools respectively, wherein it is clearly stated that copyright education is to be taught through the subjects of “Technology and Home Economics,” and “Information Technology.” The teaching of copyright education through other school subjects is not noted, and while those textbooks may not mention anything about the copyright system, it’s thought that enhancing copyright education is still possible [through other school subjects] depending on ingenuous teaching methods.

For the purpose of encouraging creative teaching methods, “Instruction Guidelines” have been prepared to aid teachers with “Communicative efforts to copyright education,” drawn on examples of events likely to occur in normal school life.

For instance, a situation is given where a child has drawn graffiti in a textbook, adding mustaches and glasses on historical portraits. Students are asked to imagine how the author would feel if those spoiled portraits were shown to him/her, and by doing so, make them aware of an author’s moral rights. Also, by getting children to make a bulletin board newspaper, they learn about author’s rights in the process of copying text and images from websites. At the same time, they are taught about instances where author’s permission is unnecessary, as in twenty or so such cases.

If teachers were to carry needed and copied excerpts of the Instruction Guidelines, they would probably find them useful when overseeing students in general.

(4) Practical Research of Copyright Education at Model Schools

In an effort to research and develop educational materials and innovative teaching methods for effective copyright education, the national government designated certain schools (Model Schools) to the challenge of practical studies reflective of reality. The government hopes to disclose the results attained from these school researches on websites and by hosting workshops

in the future, and to provide other schools all over the country with information to stimulate each of their curriculum.

2. Copyright Education for Adults

The necessary scope and depth of copyright education for adults differ according to industry, occupation, role (e.g., corporate title) and other factors of an individual.

In the case of educators and administrative officials involved in public services, such as librarians and curators, acquisition of knowledge is imperative in carrying out regulations that limit rights. On the other hand, employees of private companies, regardless of their industry’s direct or indirect handling of [copyrighted work] contents, need to place priority on an accurate comprehension of legal rights due to rare cases of regulated rights while doing business.

In addition, the weight placed on which areas to learn vary according to corporate or organizational rank; executives and managerial officers may prioritize certain legal aspects, while employees who attend to clients face-to-face would likely prioritize other aspects to learn.

Hence, in copyright education for adults, training programs need to be developed according to field of industry, occupation, corporate rank, and so on. It is also necessary to develop appropriate textbooks and teaching materials, as well as conduct periodic training programs.

(1) Training Sessions Held by The National Government

Every year, the national government holds seminars nationwide, targeting the general public with an introductory briefing on copyright issues. The government also holds training sessions for professionals of various fields and industries. Examples of the latter include training sessions for librarians and schoolteachers.

In the sessions held for librarians and schoolteachers, explanation of principle issues, such as the types of rights authors hold, and recent

legal revisions/amendments are given. This is followed by looking at case samples describing key points and conditions that allow the copying and usage of works in schools and libraries, without an author's consent.

Separate textbooks for librarians and teachers have not been produced, and the two professions presently refer to the same introductory level textbook. It is believed that to make training in rural areas possible, training methods need to be deliberated, as well as research into the possibility of distance learning/training via satellite in the future.

(2) "Copyright Educator" Training

While it is necessary to enrich the training sessions held by the national government, there is a limit to how many the government can conduct directly to satisfy the needs of all concerned parties, and especially when having to face a growing awareness on copyright issues from a wide range of public population. In addition to sessions by the national government, original sessions held by local governments, public entities and trade associations are increasing. It is believed that in the future, attention to the training of copyright educators will become inevitable. Trainees of this program are expected to come from educational institutions or municipal governments and related institutions, concerned in core offices on copyright education.

From the standpoint of supporting local efforts in copyright education in the future, the national government needs to study programs and training environments necessary in the nurturing of such human resources. Cooperating with copyright-related associations and similar organizations will also be vital.

(3) Development of a "Standard Training Curriculum"

In order for people of various fields to acquire knowledge on copyright issues respective to each of their [corporate/organization] status, a continuation of sessions based on a standard

curriculum is needed. Also, it is believed that if a standard curriculum of training is appropriately set for each field of industry, duties or by request, the aforementioned copyright educator will play an effective role.

For a copyright educator to substantially plan a workshop appropriate for any given industry, "Standard Workshop Curriculum" drawn up separately for each industry or field is needed. Within the curriculum, the content on copyrighting needs to be divided into two: "matters directly concerned with the industry," and "general matters to be understood." This division is followed by content items, their alignment, comprehension goals per content item, related topics, information on associations and human resources, etc.. After the systematic construction of these elements into a model training session, it is hoped that the model will spread widely across the nation.

IV. Copyright Administration of the Japanese Local Government

Finally, I will explain about the copyright administration found in Japanese local governments. As mentioned earlier, since copyrights are rights that are automatically generated from the moment a creation or work is completed, administrative procedures like screening and inspections to acquire such rights do not exist. Also, as copyrights are private rights, agreement conditions for the execution of these rights can be set freely between the parties concerned.

In addition, whether a case becomes a criminal one depends on if the owner of a right sues or not. Therefore, while the nation plans and prepares for systemic revisions in copyright law, local governments do not have any administrative authority of their own regarding copyright issues.

However, as already described, since the level of awareness by ordinary people regarding copyright issues is increasing recently, an growing number of local governments are strengthening copyright training projects targeting schools teachers, for example.