
8. Copyright Business Practices of Japanese Publishers¹

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Introduction

In this lecture, based upon my experience as an editor in Japan involved in the editing and publication of magazines and books, I would like to explain about copyrights and publication rights as simply as possible, including points of concern regarding publication rights, overseas copyright business practices, and other related matters. As I am unfamiliar with Vietnamese publishing and the legalities surrounding the industry there, I am not sure whether the information and ideas I will be presenting today will answer to the needs of the audience. Nevertheless, I believe the respecting of copyrights in effect leads not only to personal enrichment as an individual, but also to the augmentation of culture as a nation. I therefore hope the audience will come to understand the importance of copyright protection and the basic procedures of its enhancement.

1. Business Operations of a Publishing Company

• Magazines

Project planning. Determining number of pages; drawing up flow chart. Writer (author) contracting for manuscript (article, novels, etc.). Gathering of illustrative rough drafts and/or photographs (or have someone draw rough drafts/take photos). Determining page layout. Insertion of headings, refining text, editing process. Completing of cover design.

• Books (e.g. children's books)

Project planning. Contracting of author for manuscript. Contracting of artist for illustration(s). Determining of title, contracting of bookbinder and book designer. Editing based on manuscript and materials therein.

After the above process is undertaken by the

editor(s), and proofreading, printing and bookbinding is completed, the final product is then set for sale in bookstores.

2. What is a Copyright?

The reason why we edit, publish, and sell magazines and books is because there is consumer demand. Readers attain information, knowledge, or are emotionally touched or simply entertained by such publications. Another way to express this is that readers are willing to actually spend money to purchase magazines or books for the "nourishment of mind and soul." The elements which provide this "nourishment" are the manuscripts (text), pictures/illustrations, photographs, and so on. Thus the money readers spend on publications is actually the monetary value/commission to read these texts and see these illustrations/photographs. The industry refers to such manuscripts, illustrations and photos as "copyrighted works," and producers of copyrighted works as their "authors (writers)."

According to the copyright law of Japan, a copyrighted work is defined as "a production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain."

The term "Author" refers to those "creator(s) of copyrighted works such as novelists, painters, illustrators, poets, composers, lyricists, designers, scholars, scriptwriters, programmers, et cetera."

A copyright is the right given to such authors. A copyright is similar to the patent rights of an invention, and is likewise considered an "intellectual property." As such, copyrighting is a legal right to protect these works of cultural creativity.

Why "protect copyrighted works"?

- (1) A copyrighted work is the creative result of an author's painstaking hard work, great time,

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

effort, and various monetary expenditures. Therefore, to copy and sell such “intellectual property” without permission is equivalent to its theft; a serious crime which must be prevented. If you toiled to make a creation and someone were to copy or use it without your permission, surely you too would be angered and frustrated. It is for this reason that copyrighting is a universal human right as stipulated in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

- (2) Over a course of time, these “cultural creations” become part of the cultural heritage of a nation, ethnic group or region, stemming to the refinement of tradition or national strength. The fundamental principle of copyrighting is to protect the rights of these valuable cultural creations and their authors both socially and economically. It is wrong to use cultural creations—products of creative ingenuity, blood and tears—without permission. When they are to be used, authorization and necessary compensation is a must. Acknowledgement of the value of any given intellectual property in monetary terms must be made.
- (3) As in the case of magazines given above, Japan’s publishers pay a single manuscript fee or illustrations fee to authors as proprietary profits. Negotiation on various conditions, such as the number of articles if the project is a series, the number of pages (or words) per manuscript, deadlines, an agreement (often oral) is concluded. After which, the steps taken go from contracting, publishing, and then payment. In the case of books, payments made are generally in the form of royalties. The net profit from sales is calculated with the following formula, where P% represents the royalty rate: Number of editions published (or actual number sold) x retail price of book x P%. However, in actual fact—as will be explained later on in this presentation—the general practice is for the author and publisher to first agree on publishing rights, wherein the legal duration of [agreement] effectiveness, commissions (royalty, etc.), and other conditions are discussed. Ultimately, a written agreement is drawn up and concluded.

- (4) Offering proprietary profits/commissions to authors for their cultural creations is also impetus for further creative activity. In turn, the production of copyrighted works is intensified and the cultural heritage of ethnic groups and/or states is enriched.
- (5) As can be noted above, the copyright granted to authors is a proprietary right which allows for the exclusive utilization of copyrighted works such as novels, academic papers, paintings, and music. In other words, [a copyright] is the right for the authorized use of copyrighted works, and is also the right to demand remuneration.
(Via copyright property rights)
- (6) As will be mentioned later, in a broad sense, the [copy]right consists of two rights: The moral right of the author related to benefiting the individual, and the right involving proprietary profits.

3. About Publication Rights

- (1) “Copyright,” known as “CHOSAKUKEN” in Japanese, is specified in the U.S. as “COPY RIGHT” indicating “the right to copy.”
- (2) Publishing rights are given to the publisher by the author, allowing for the “right to copy/duplicate.” Its definition is “the right to reproduce the original text of the work, on which the right of publication is established, in a writing or painting by means of typography of other mechanical or chemical processes.”
- (3) A publication agreement is conditional for establishing publication rights.
 - “Remuneration” as an author’s property rights.
 - Retaining the moral right of an author
 - A publication agreement essentially outlines rights such as the secondary and the subsidiary use, while specifying duration of effectiveness, details of

which will be given later.

- (4) As magazines and books are published with the existence of copyrighted works and their authors, publishers are to respect author rights. In other words, publishers are to honor “Property Rights,” and “Moral rights.”
- (5) During the effective period of a publication agreement, the subject copyrighted work cannot be published by any other publishing company.

4. Contents of a Publication Agreement

- (A) Copyright usage fee
- (B) Period of effectiveness
- (C) Range of Rights
- (D) Conditions for automatic renewal
- (E) Others

Explanation of item (C)

- (1) Multiuse of copyrighted works (diversified use)
From a serial column in a magazine to becoming a book, and then a paperback—The process up to this point entails the use of a manuscript in its original form, and is thus “secondary use.” However, the secondary use of translated foreign works, cinematization of works, reproduction for television, and commercialization of character goods are transfigurations of the original work, and thus come under “secondary work reproduction rights.”

With the spread of Internet and i-Mode use, et cetera, the copyright business is expanding further, along with the modern digital age. A reflection of this is the following revised publishing agreement sample drawn up by the JAPAN BOOK PUBLISHERS ASSOCIATION.(N.B.: “A” is the owner of the copyright, “B” is the publisher)

Article 20 (electronic use) A shall grant “B” to publish full or an equivalent portion of the literary work through any electronic media, or approve B’s usage in public transmission.

Specific conditions shall be determined after discussion between A and B.

Article 21(subsidiary use) While this agreement remains in effect, if the literary work is exploited in the form of a digest, performance, motion picture, broadcasting, audio recording, video recording, electronic media and other secondary use, A shall authorize B to proceed in regard to the use of the literary work, and specific conditions shall be negotiated and determined between A and B.

- (2) On “Subsidiary Use”

The usual business practice in Japan is for the author to endorse responsibility to a certain publisher of all relevant business duties and external negotiations, wherein the publisher is at liberty to receive a set management fee or commissions.

- (3) Points to keep in mind concerning “Subsidiary Use”

Most disputes over agreements involve the infringement of an author’s moral right, when his/her work is modified without authorization. Under copyright laws, an author’s moral rights include the right of making the work public, the right of determining the indication of the author’s name, and the right of preserving the integrity, where the right of preserving the integrity is particularly important. This is because it stipulates that “Changes, editing, or any other form of modifications which violate the author’s intent are not to be made.”

5. Copyright Infringement

Infringement of a copyright refers to actions such as the unauthorized use of a copyrighted work, or the registration of a copyrighted work under a name other than the rightful author. Such items are known as “pirated” goods, and their circulation cut sales of authentic products, books, and CDs. The selling of pirated goods affects an author’s property profits, and is a criminal offence. This is true as copied products are made without the author’s permission, and no form of compensation has been made to the author.

It is therefore also imperative that cheap music tapes, pirated CDs, videos, manga comic books, and character goods, often sold on streets off the main road, are not bought. To buy pirated goods is to assist in violating copyrights. The circulation of pirated goods affects “the healthy nurturing of domestic authors,” “the enrichment of national culture,” and “prevents the overseas publication of a nation’s cultural creation.”

6. Points to Keep in Mind concerning Copyrighted Works

- (1) Is the copyrighted work the creative product of this author? Was it plagiarized? Is it an imitation of another work(s)?
- (2) Quotes and citations: Are they within reason? As long as the following four points are met, permission from the copyright holder is not needed when citing quotes:
 - Necessity in quoting from another copyrighted work
 - Use of brackets/parentheses to differentiate citation(s) from ongoing copyrighted work
 - Clear status of relationship between ongoing copyrighted work and the work from which the citations were made. (i.e., ongoing copyrighted work must be the main framework/body)
 - Resources clearly stated
- (3) Copyright shall continue to subsist until the end of a period of fifty years following the death of the author, after the death of the author, from which point the work becomes public property and can be used freely.

7. On Handling Overseas Copyrights

There are two types of overseas copyrighting. One is the translating and publishing of foreign books. The other is the exporting of domestic publications to be published overseas by a native publishing company. (i.e., subsidiary work reproduction use).

- (1) When translating and publishing foreign publications
In general, the translating and publication of a

foreign book for the domestic market comes as a result of purchasing negotiations with a foreign publishing company over a work(s) either introduced through an agent, or discovered at an international book fair (such as those held in Bologna and Frankfurt). An agreement stating “the acquisition of translation rights” of a given publication is then made. The party selling that right usually draws up the written agreement. Negotiations on specific conditions (particularly on payments made in advance, royalties, etc.) based on the agreement then go underway. Later, with the greatest consideration given to respecting the author’s moral rights, editing of the translated publication takes place. Actual publishing proceeds after obtaining the author’s final approval on the content.

- (2) When domestic publications are to be published overseas
 - The publisher first concludes, with the owner of the copyright, a management commission agreement concerning “subsidiary use.”
 - The essential element of the management commission is the protection of the copyright owner’s rights to the utmost fullest.
 - The requiring of the licensee (foreign publisher) to comply with the copyright.
 - The pursuit of maximum economic benefit for the copyright owner.
 - With regards to Item (a) above, numerous disputes are liable to occur if compliance of the authorship rights (disallowing unauthorized modification)—embedded in the moral rights of the author—is not followed meticulously in particular.

How do actual agreement procedures take place?

- (1) Receiving of an official written offer from a foreign publisher
Present the offer details to the copyright owner, and confirm whether the conditions are acceptable or not. If the author accepts, officially conclude the “Memorandum on The Translation and Publication of Foreign Language Version Edition, and its Secondary Usage.”
-Only after the conclusion of this memorandum

will a publisher attain the right to conclude an agreement with a foreign publisher.

-The explanation to the author includes money-related conditions, book-size, which way the front cover opens (to the right or to the left), a briefing about the foreign publisher, the kind of materials to be used for the book, the scheduled date of sale, its fixed price, etc.; extremely fine details.

(2) The memorandum is accepted. So now, the procedure to conclude the translation and publication agreement begins.

-Agreements are drawn up with the supposition of a worst-case scenario between the parties concerned. For this reason, Asian countries including Japan, which have been unaccustomed to contracts/written agreement culture until recently, still tend to feel uncomfortable with the tedious details of their content. (Contracts such as that of Walt Disney Enterprises of the United States, drawn up in a contract-mature society, for example, is intimidatingly thick).

-As an example, Kodansha has been using two types of contracts: An Asian-type agreement (Japanese or English), and a Western-type agreement (English). Additional conditions and revisions are made with each individual contract accordingly.

Common steps against copyright infringement

- Should the licensee discover a copyright violation (pirated goods), the licensee will immediately inform the original publisher of the discovery.
- The original publisher may then take action in conjunction with the licensee or unilaterally.

Duration of agreement effectiveness: mutual conditions to almost all

-Europe and the U.S.A. – Three years.

Without presentation of intent to terminate contract three months prior the expiry date, an automatic extension of one year takes effect.

-Asia – Two years.

Without presentation of intent to terminate contract three months prior the expiry date, an automatic extension of one year takes effect.

-General books – Five years with no automatic

extension.

8. Negotiating with Foreign Publishers and Internal System Affairs

- The promotion of own publications at various international book fairs in order to “sell” copyrights for translated versions. Also to “buy” excellent foreign magazines and books in an effort to publish their translated versions and to encourage the experiencing of different cultures.
- International book fairs
Bologna Book Fair, Frankfurt Book Fair, Taipei Book Fair, Beijing Book Fair, Tokyo International Book Fair, London Book Fair, Seoul Book Fair, BookExpo, etc.
- At Kodansha, each editorial board is responsible for “buying” and the Rights business board is responsible for “selling.”

Points to keep in mind when negotiating a copyright (oral explanation)

- Whether the copyright of a copyrighted work is protected among its users.
- Whether the copyrighted work is under the term of protection.
- Whether the copyrighted work falls under the category of “copyright restrictions.”

Publishing Agreement (Sample): (Reference Material of “Copyright Business Practices of Japanese Publishers”)

- Article 1 A shall set up right of the book to B.
- Article 2 A hereby agrees that B registers the establishment of the right of publication of this book.
- Article 3 In consideration of the usage fee of copyright, B shall pay to A the amount hereinafter more particularly specified with every printing;
The amount equivalent to _____ of the fixed price
- Article 4 The amount of royalty mentioned in the previous Article 4 shall be paid within 60 days after printing.
- Article 5 B shall give A copies of the book from the first printing. Throughout the first printing and additional printings, A may buy up to 50 copies from B at the discounted price of 20% off the fixed price.
- Article 6 In order to prove the circulation of the book, B shall inform the circulation to A at every bookbinding. B shall allow A to examine proof documents on request from A. The seal of approval may be abbreviated.
- Article 7 While the right of the publication based on this agreement remains effective, A shall not issue per se nor allow other parties to issue the literary work that has the same or similar contents without B's prior consent.
- Article 8, While the right of the publication based on this agreement remains effective, if A publishes books being included into A's collected edition, complete works and anthologies, A shall obtain B's authorization.
- Article 9 If A transfers copyright of the book, A shall obtain B's authorization and B may not transfer the right of publication to others without A's authorization.
- Article 10 Due to the contents of the book, if A has infringed others' copyright, or caused troubles including defamation and has inflicted damage on B or others as a result, A shall be responsible for the problem.
- Article 11 B shall bear responsibilities for and determine matters, including the production, sales and advertisement of the book.
- Article 12 In case either A or B breaches any of the provisions of this Agreement, the other party shall have the right to terminate this Agreement, and if the other party has suffered damages, the other party shall have the right to make a claim for damages.
- Article 13 Any matters which are not provided for in this Agreement shall be determined through mutual and faithful consultation between the parties.
- Article 14 The right of publication based on this Agreement shall continue in force for a period of _____ years as of the effective date of this Agreement.
- Article 15 Unless terminated three (3) months prior to the expiration of the term of this Agreement by either party in writing, this Agreement shall continue in force automatically under conditions similar to those of this Agreement, and its effective term shall be extended for a period of _____ years.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate by placing their signatures and seals thereon, and each party shall keep one copy of the originals.