

# **Outline of the Japanese Copyright Law**

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## CONTENTS

	Page
Chapter 1 General .....	1
1. Introduction .....	1
2. History of the copyright law .....	1
3. International Harmonization and Cooperation Concerning Copyright Systems .....	10
4. Essence of Copyright .....	14
5. Relationship Between a Copyright and Various Neighboring Rights .....	15
Chapter 2 Outline of the Copyright Law .....	18
1. Purpose .....	18
2. Subject of Copyright .....	18
3. Object of Copyright .....	19
4. Works not protected under Copyright Law .....	22
5. The rights of authors .....	23
6. Author's moral rights .....	26
7. Cases where free exploitation of a work is authorized .....	28
8. Terms of copyright protection .....	30
9. Transfer of Copyrights .....	33
10. Grounds for expiry of copyright .....	33
11. Treatment of the author's moral rights .....	34
12. Transfer of a copyright and the authorization of for its use .....	34
13. Copyright registration system .....	35

14. Neighboring Rights .....	37
15. Infringement of copyright .....	39
Chapter 3 Issues in Practice .....	42
1. Characters .....	42
2. The title of a movie or a novel .....	42
3. Publications issued by the government .....	43
4. Newspaper articles and photographs .....	43
5. Red Cross marks .....	44
6. Exploitation of photographs of currencies and stamps .....	44
7. Treatment of maps .....	45
8. Portrait right and right of publicity .....	45
9. The name of goods or service .....	45
10. Copyright symbol (©) .....	45
11. Requirements for quotations .....	46
12. Catchphrase .....	46
13. Authorship of a work completed through a company employee's duty and authorship by a legal entity .....	47
14. Points to be noted in a contract to authorize exploitation of a work .....	47
15. Reproduction by using a copy machine .....	48
16. Background music in shops .....	48
17. Sound and visual recordings of TV programs .....	49
18. Illegal reproduction of software .....	49
19. Reverse engineering of computer programs .....	50

20.	Treatment of packaged software (CD-ROM, CD-I) .....	50
21.	Game software .....	50
22.	Network society and content liability issues .....	51
23.	Treatment of letters and images on homepages as works .....	51
24.	Direct, indirect, and contributory infringement .....	52
25.	Uploading, downloading, and acts of reproduction .....	52
26.	Importation of illegal reproductions into Japan .....	52
27.	Works imported in parallel .....	53
28.	Protection of contents .....	54

## Chapter 1 General

### 1. Introduction

Recently enterprise management has placed an increasing focus on promoting businesses in software, services, and information fields. Because of this, intellectual property right issues are regarded as important in enterprise activities.

Within intellectual property, copyright-related issues are regarded as especially important due to recent progress in multimedia. Thus, enterprise activities now deeply involve copyright law.

Meanwhile, recent rapid technological innovation has given rise to many difficult issues in the copyright field. Now that networking has firmly taken root, there is a need to review past legal systems regarding copyrights on a global scale.

Nevertheless, we shall explain the outline and practices of the Japanese Copyright Law in this textbook.

This textbook is written based on the revised Japanese Copyright Law of 2006.

### 2. History of the copyright law

The world history of copyright systems dates back as far as the invention of typography by Johannes Gutenberg in the 15th century. In those days of the Renaissance period, classics were actively published in Europe. However, it required an enormous effort to collect and arrange them, and publication of a pirated edition seriously affected the sales of the original. As a result, the original printers and publishers claimed a “publication patent system” to prevent publication of pirated editions and secure their economic interests. This system is said to be the basis for today’s copyright systems.

Copyright was thus included in the patent system for some time, but faced a major turning point in the 17th century by the “spiritual property right theory”. This idea stated that copyright is the property right of the author on his/her written work and also appears in the British “Statute of Anne” (8. Anne c. 19, 1710) of 1709, which is the world’s first copyright law.

When we look at Japan’s history of copyright systems, we can see the first signs of such a system in the days of the Tokugawa administration (the Edo period: early 17th century – mid 19th century) where publication of similar editions of a written work was prohibited. However, this was only an agreement among private publishers who were members of a *kabu-nakama* (a trade association in the Edo period), and was not a national system.

The law considered as the first copyright law in Japan is the “Publishing Ordinance” of 1869. The Ordinance granted the publisher of books beneficial to the country a monopoly on such books, in order to compensate for publishing expenses. Clause 3 of the Ordinance provided that the government shall protect publishers of books and allow them to profit from the monopoly. The aim of this provision was to protect the publishers rather than protecting the authors. At the same time, the Publishing Ordinance included provisions to regulate publication. Thus, the Publishing Ordinance had the nature of a publication law, and greatly differed from the present copyright law which protects the rights of the authors. Such a phenomenon is not peculiar to Japan, and also can be observed in various European countries in the early stages of copyright systems.

When the Ordinance was fundamentally amended in 1875, the term “*hanken*” was used in legal provisions for the first time. The term *hanken* means a monopoly

on a book (exclusive publication right). Clause 2 of the Ordinance provided that when a party writes a book or translates a book from a foreign language and publishes it, the party shall be granted a 30-year monopoly on the book, and this monopoly shall be referred to as a *hanken*. This term, *hanken*, was translated by Yukichi Fukuzawa, an intellectual, who is regarded to have introduced the idea of copyrighting to Japan.

The Publishing Ordinance was established about 160 years after the British “Statute of Anne,” and after going through several revisions, gradually settled into shape as a copyright law. The Publishing Ordinance was originally established to protect *hanken* and regulate publication, but provisions regulating publication were separated in 1887, thereby newly establishing the ordinance as the “*Hanken* Ordinance,” the first individual copyright law. In the meantime, the patent approach was shifted toward registration approach, and in 1893, the name of the Ordinance was changed to the “*Hanken* Law.” This period of time principally oriented around registration, as represented by the “*Hanken* Ordinance” and “*Hanken* Law,” is sometimes referred to as the *Hanken* Law period. It marked the transition from the patent to the copyright system.

A full-fledged, modern copyright system was established in Japan with the “Copyright Law” of 1899.

The Meiji government, after negotiating with European countries and the US on the abolishment of their extraterritorial rights, agreed to accede to the Berne Convention in the 1894 Japan-Britain treaty of commerce and navigation etc. in exchange for the abolishment of extraterritorial rights. The convention stipulated

raising standards for protection of intellectual property rights and the equal treatment of nationals and non-nationals. Japan acceded in 1899, the deadline set, and also reorganized and integrated several laws including the “*Hanken* Law” and established the “Copyright Law” in compliance with agreed standards under the Berne Convention. This “Copyright Law” is referred to as the old Copyright Law in contrast to the current Copyright Law, and was drafted by Dr. Rentaro Mizuno. The law attracted the attention of several other countries at the time for being a modern copyright system, in that it used the term “copyright,” abolished the registration system, and extended the duration of copyright protection to 30 years following the death of the author. The Japanese copyright system, after going through the patent approach and the registration approach, finally became a system similar in structure to those in the U.S. and Europe with the establishment of the old Copyright Law.

The old Copyright Law maintained its basic framework for about 70 years, while going through several partial amendments. However, the rapid development of postwar science technologies encouraged the development of reproduction technologies, bringing with it the diversification and advancement of reproduction means. Also, as sequential amendments of the Berne Convention took place in Brussels, the Stockholm, and Paris conferences after an initial Rome conference, the international level of copyright protection under the copyright system improved significantly.

In order to effectively cover these social changes both in Japan and overseas, it was urgent that the old Copyright Law should be amended extensively. Thus, the new “Copyright Law” was finally established in 1970, consisting of seven chapters,

124 articles and 31 supplementary provisions (Law No. 48, promulgated on May 6, 1970). This is the current Copyright Law.

The current “Copyright Law” has the following features: (1) it squarely provided the author’s personal rights under the term, “moral rights of authors” to strengthen the protection of an author’s personal interests; (2) it extended the duration of copyright protection to 50 years after the death of the author; (3) with respect to the ownership of copyrights in cinematographic works, it distinguished the author of a cinematographic work from the copyright owner of the work, and provided that the maker of the cinematographic work shall be the copyright owner; (4) it deleted all provisions on the 10-year preservation of the translation right to keep in line with member states of the Berne Convention; and (5) it established the neighboring right system to achieve consistency with the Neighboring Rights Convention.

Current Copyright Law has undergone various partial amendments following its establishment. Recent advances in the diversification of communication technology, especially concerning multimedia, are remarkable.

Furthermore, many international copyright conventions have been acceded concerning these new fields.

Therefore, various amendments were made to adequately correspond to such a changing society and to comply with international standards. First, legal amendments were made in 1978 to conclude the “Phonogram Protection Convention (The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Products).” In 1984, necessary legal amendments were made for establishment of several rights including lending after

the popularization of phonogram-rental and dubbing businesses. In 1985, legal amendments were made to protect computer programs, and in 1986, provisions on database protection were made clearer. At the same time, provisions on wire diffusions were improved. Furthermore, amendments made in 1988 extended the duration of the protection of neighboring rights and upgraded provisions on penalties for possession of pirated editions for distribution purposes. Then in 1989, Japanese national law was improved for conclusion of the “Convention for Protection of Performers, etc. (The International Convention for Protection of Performers, Producers of Phonograms, and Broadcasting Organizations).” After that, in 1991, legal amendments were made concerning rights granted to non-Japanese performers and producers of phonograms on the lending of commercial phonograms, the extension of duration of the neighboring right protection, and the protection of non-Japanese original phonograms that existed before Japan acceded to the Phonogram Protection Convention. In 1992, amendments were made to compensate for interests of the copyright owner in personal recording at home using digital recording equipment. Then, in 1994, amendments were made for conclusion of the WTO Agreement (the Marrakech Agreement Establishing the World Trade Organization). In 1996, the law was amended to retroactively expand protection under neighboring rights, reinforce civil remedies and penalties, and extend the duration of protection for photographic works. In 1997, provisions on public transmissions were improved to correspond to rapid development of information technologies. Furthermore, in 1999, amendments were made to regulate the circumvention of technological protection measures and protect rights management information in order to match progress of digitization and networking, while expanding rights of cinematographic presentation,

establishing the right of assignation, and abolishing Article 14 of the Supplementary Provisions (abolishment of transitory measures that had restricted the rights of copyright owners concerning reproducing performances of musical works by the use of sound recordings). (Note1, Note2) Further amendments were adopted in 2000 including expanded restriction on the rights relating to the use of copyrighted works for people with visual and hearing disabilities, reduced burden of proof in copyright infringement actions, significantly increased amount of fines to be paid by businesses, and amendments to comply with World Intellectual Property Organization Copyright Treaty (WIPO Copyright Treaty). Amendments were also made in the same year following adoption of Copyright Management Business Law. Amendments in 2002 related to World Intellectual Property Organization Performances and Phonograms Treaty related to establishment of moral rights of performers and to rights of broadcasting organizations and wire diffusion organizations to transmit information. In 2003, amendments were made relating to reproduction to make enlarged books for school education, extension of period for protecting cinematographic work (from fifty years after publication to seventy years after production) and rules for estimation of damages and obligation to clearly show the specific conditions of damages (effective on January 1, 2004.)

In addition to the above, the “Law Concerning Special Provisions on Registration of Program Works” (Law No .65 of 1986) was established regarding procedures for registration of programs, and the “The Copyright Management Business Law” was established regarding centralized management of copyrights in digitization and networking (Law No. 131 of 2000).

(Note 1) Progress of digitization/networking and amendment of the Copyright

## Law

Recently, the progress of digitization/networking has brought about an advanced information society where various forms of information are digitized and such information is transmitted through computer networks. Because of this, the copyright system is being reformed to correspond to the multimedia society. The right of public transmission, which was established in 1997, is a right to transmit a work to the public, and covers a wide area including interactive communications such as CATV or the Internet. Meanwhile, regulation on circumvention of technological protection measures in the amendment of 1998 was aimed at dealing with copyright infringements such as using a work without authorization by circumventing reproduction control technology committed to a DVD or satellite broadcasting. Prohibiting the elimination or altering of rights management information provides that unauthorized elimination or alteration of information on the copyright owner or conditions of use, which is incorporated into the digital data, shall be deemed as an infringement of the copyright.

### (Note 2) Transition of the copyright system

1869	The Publishing Ordinance was established
1893	The name was changed from the Publishing Ordinance to the <i>Hanken Law</i>
1899	The old Copyright Law was established
1970	The current Copyright Law was established
1978	Amendments made for conclusion of the “Phonogram Protection Convention”
1984	Necessary amendments made to establish the right of lending etc. following the popularization of phonogram-rental businesses and phonogram-dubbing businesses
1985	Amendments made to protect computer programs
1986	Provisions on database protection were clarified and those on wire diffusions were improved
1988	The duration of the protection of neighboring rights was extended and provisions on penalties for possession of pirated editions for

	distribution purposes were improved
1989	Improvements made for conclusion of the “Convention for Protection of Performers”
1991	Legal amendments made concerning rights granted to non-Japanese performers and producers of phonograms on the lending of commercial phonograms, extension of duration of the neighboring right protection, and protection of non-Japanese original phonograms that existed before Japan acceded to the Phonogram Protection Convention
1992	Amendments were made to compensate for interests of copyright owners, in personal recordings made at home using digital recording equipment etc.
1994	Amendments made for concluding the WTO Agreement
1996	Amendments made to retroactively expand the subject of protection under neighboring rights, reinforce civil remedies and penalties, and extend duration of the protection for photographic works
1997	Amendments made to improve provisions on public transmissions
1999	Amendments made to regulate the circumvention of technological protection measures of protection, protect rights management information, expand the right of cinematographic presentation, newly establish the right of assignment, and abolish Article 14 of the Supplementary Provisions
2000	Amendments for expanded restriction on the rights relating to the use of copyrighted works for people with visual and hearing disabilities, reduced burden of proof in copyright infringement actions, significantly increased amount of fines to be paid by businesses and amendments to comply with World Intellectual Property Organization Copyright Treaty (WIPO Copyright Treaty). Amendments accompanying adoption of Copyright Management Business Law.
2001	Amendments for information disclosure of independent administrative institutions. Amendments in connection with

	formulation of Provider's Liability Law.
2002	Amendments for establishment of moral rights of performers, and regarding provisions on rights of broadcasting organizations and wire diffusion organizations to transmit information.
2003	Amendments concerning reproductions such as enlargement of books for school education, extension of period of protection (from fifty years to seventy years after production) of cinematographic work, estimation of damages, and obligation to clearly show specific conditions of damage. (Effective from January 1, 2004.)
2004	Obtaining commercial phonograms produced strictly for distribution outside Japan with the intention of distributing these goods within Japan deemed as copyright infringement. Lending rights for publications such as books, magazines and periodicals. Amendments strengthening penal regulations concerning copyright infringement. (Effective from January 1, 2005.)
2006	Revision of the rights of performers and record producers concerning simultaneous retransmissions of broadcasts. Revision of the definition of public broadcast. Automatic public transmission of recorded books. Freedom of reproduction of reference literature for the purpose of patent application procedures and administrative procedures of pharmaceuticals. Recognized the requirement of destroying temporary reproductions due to maintenance or repairs after the maintenance or repairs are completed. Exportation of pirated goods deemed as copyright infringement. Amendments strengthening penal regulations concerning copyright infringement. (Most become effective July 1, 2007.) -

### 3. International Harmonization and Cooperation Concerning Copyright Systems

Works are the cultural products of human beings, and it is ideal that everyone be able to enjoy profits yielded by them. For this purpose, it is necessary to establish a framework in which the works are appropriately protected and can be distributed

easily.

Accordingly, today, it is necessary to harmonize each country's legal systems concerning copyright, and achieve an international harmonization of copyright systems so that copyrights are appropriately protected in each of these countries. Since modern international exchanges in economic, social, and cultural fields have become very active, international harmonization is a common challenge facing all countries.

There are various conventions and treaties concerning copyright. Those to which Japan has acceded are as follows:

- (1) The Berne Convention (The Berne Convention for the Protection of Literary and Artistic Works)

The Berne Convention, concluded in Berne (Switzerland) by mainly European countries in 1886, is based on a non-formality system, where no specific formalities, such as registration, are needed for the establishment of copyright. The Berne Convention has been amended about once every 20 years. Japan is one of the few Asian countries that has acceded to the Convention since its first version. Japan has acceded to the following versions of the Berne Convention:

First version of the Berne Convention (1886)	Japan acceded in 1899
Provisions added in Paris (1896)	Japan acceded in 1899
Version revised in Berlin (1908)	Japan acceded in 1910
Provisions added in Berne (1914)	Japan acceded in 1915

Version revised in Rome (1929)	Japan acceded in 1931
Version revised in Brussels (1948)	Japan acceded in 1974
Version revised in Paris (1971)	Japan acceded in 1975

(2) The Universal Copyright Convention

As is generally known, the Universal Copyright Convention was established by UNESCO, a suborganization within the United Nations, in 1952, as a bridge between countries that adopt a copyright formal procedural system for the establishment of copyright and member countries of the Berne Convention. Japan acceded to this Convention in 1956. Therefore, Japanese works are protected within both member countries of the Berne Convention and those of the Universal Copyright Convention, provided that the copyright is indicated.

(Note)

(Note) Bridge between a formality system and a non-formality system

The system which requires formalities such as entry or registration is referred to as the formality system, and that which does not require such formalities is referred to as the non-formality system. Japan adopts a non-formality system. In order for a work of a country that adopts the non-formality system to be protected in a country that adopts the formality system, the work must satisfy the requirements designated by the country under the formality system. However, the Universal Copyright Convention provides that a work can be treated as satisfying such requirements, by indicating a © mark (copyright mark) on all reproductions of the work. In this way, the Convention aims to serve as a bridge between the countries under the formality system and those under the non-formality system, while maintaining their respective systems.

(3) The Convention for Protection of Performers (International Convention for Protection of Performers, Producers of Phonograms and Broadcasting

Organizations)

This Convention, which aims at protecting neighboring rights of performers and others was completed in Rome. Japan acceded to it in 1989.

- (4) The Phonogram Protection Convention (the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms)

This Convention, aims at preventing piracy of phonograms, was adopted in Geneva in 1971. Japan acceded to it in 1978.

- (5) The WTO Agreement (the Marrakech Agreement Establishing the World Trade Organization)

The WTO Agreement was enacted as a result of the Uruguay Round negotiations of the GATT (General Agreement on Tariffs and Trade), which started in September 1986. The TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) is one Annex to the WTO Agreement. The WTO Agreement came into effect in 1995; in Japan, it came into effect on January 1, 1996. The TRIPS Agreement stipulates new standards for computer programs, databases, rights of lending etc. in the area of copyrights. With regard to the protection of computer programs, Japan had already stipulated standards in the “Law Partially Amending the Copyright Law” of June 1985 in response to the result of a WIPO-UNESCO joint expert meeting in 1985.

- (6) WIPO Copyright Treaty

International raising of copyright protection standards had been called for to correspond to the recent progress of information technologies such as the Internet. To this end, the “WIPO Copyright Treaty” and the “Treaty for the Protection of the Rights of Performers and Producers of Phonograms” were

adopted in December 1996 as new international frameworks for copyrighting etc. that correspond to the progress of digitization and networking. The Treaties covered (a) protection of computer programs; (b) protection of collections of data or databases; (c) right of distribution; (d) right of lending; (e) right of communication to the public; (f) extension of duration of the protection of photographic works; (g) prohibition of circumvention etc. of reproduction control measures; and (h) prohibition of the alteration of rights management information. WIPO deposited the instrument of ratification with Japan on June 6, 2000, and the treaty went into effect on March 6, 2002.

(7) WIPO Performances and Phonograms Treaty

In July 2002, Japan acceded to WIPO Performances and Phonograms Treaty (“World Intellectual Property Organization Performances and Phonograms Treaty”) for the international protection of performances and phonograms which had been adopted together with WIPO Copyright Treaty in 1996. As a result of the accession, 1) phonograms of which performer is a citizen of a Contracting State of WIPO Performances and Phonograms Treaty and whose first fixation (recording) of the sounds was made in a Contracting State of the Treaty; and 2) performances made in a Contracting Party of the Treaty and performances fixed (recorded) by such performers as mentioned above, are now subject to the protection under the Copyright Law.

4. Essence of Copyright

Japanese Copyright Law has a system similar to that of common law countries. Under present provisions, the concept of copyright only refers to the property rights for a work, but not an author’s moral rights. This is indicated in such ways

that only property rights are stipulated in Subsection 3 “Rights Comprised in Copyright” under Chapter II, Section 3 of the current Copyright Law, but moral rights of authors are stipulated in a different subsection (Subsection 2), while authors are also stipulated in Article 17 to enjoy both copyright and moral rights.

(Note) Relation between copyright and author’s moral rights

How each country perceives the essence of copyright, or how each country provides the relation between copyright and author’s moral rights differs significantly between civil law countries (Germany, France, etc.) and common law countries (UK, US, etc.). In civil law countries, the concept of copyright includes moral rights of authors. On the contrary, common law countries maintain the property feature of copyright, and exclude author’s moral rights from the concept of copyright.

## 5. Relationship Between a Copyright and Various Neighboring Rights

### (1) Relation between a copyright and ownership

Ownership is a right to use, take the profits of, and dispose of a subject-matter (Article 206 of the Japanese Civil Code), and is similar to copyright in that it is a right to dominate a subject-matter directly and exclusively. However, they are fundamentally different in that the subject for ownership is tangible but the subject for copyright is intangible, therefore, ownership and copyright of subject-matter may not be the same. Meanwhile, ownership is a property right that realizes a complete, exclusive dominance over a tangible object, but exclusive dominance by copyright is not as complete as that by ownership. For example, unlike ownership, copyright has a fixed duration.

### (2) The Relationship between copyright and industrial property right

The definition of industrial property rights (note) is quite broad under the

Paris Convention for the Protection of Industrial Property. Nevertheless, in Japan, the term only indicates patent, utility model, design, and trademark rights (including service marks).

Industrial property rights and copyrights are similar in that they both apply to intangible matter exclusively. However, while industrial property rights are for laws of nature such as inventions or devices, copyright aims at protecting spiritual and cultural products. Also, industrial property rights adopt a formality system that requires registration to establish rights, copyright adopt a non-formality system that requires no registration.

(Note) Industrial Property Right

On July 3, 2002, the Intellectual Property Strategy Council led by the Japanese Prime Minister adopted an Intellectual Property Strategy Outline which stated that the conventional terms “*chiteki-shoyuken* (intellectual ownership right)” and “*kougyo-shoyuken* (industrial ownership right)” would be referred to as “*chiteki-zaisanken* (intellectual property right)” and “*sangyo-zaisanken* (industrial property right),” respectively, to describe the nature of the right more appropriately.

### (3) Copyrights and intellectual property rights

Intellectual property rights are a generically used to protect achievements (intellectual property) through intellectual endeavors by human beings such as in industrial property rights, copyrights and other rights. This is the same definition as that of “Intellectual Property Right” mentioned in Article 2 of the Convention Establishing WIPO (World Intellectual Property Organization). Under Basic Law on Intellectual Property implemented in 2002, “*chiteki-shoyuken* (intellectual property right)” is defined as patent right, utility model right, plant variety right, design right, copyright, trademark right and other legally

established rights relating to intellectual property or rights relating to interests which are legally protected. (Note)

(Note) Intellectual property right and intellectual property

Today, the term “intellectual property” is widely used along with “intellectual property rights.” “Intellectual property” includes intellectual property rights and, also, legal interests which have not yet become rights such as know-how or technological secrets. In this respect, the Basic Law on Intellectual Property defines that “intellectual property” refers to inventions, devices, new varieties of plants, designs, works and other property that is produced through creative activities by human beings (including discovered or solved laws of nature or natural phenomena that are industrially applicable), trademarks, trade names and other marks that are used to indicate goods or services in business activities, and trade secrets and other technical or business information that is useful for business activities.

## Chapter 2 Outline of the Copyright Law

### 1. Purpose

Article 1 of the Copyright Law states, “The purpose of this Law is, by providing for the rights of authors and the rights neighboring thereon with respect to works as well as performances, phonograms, broadcasts and wire diffusions, to secure the protection of the rights of authors, etc., having regard to a just and fair exploitation of these cultural products, and thereby to contribute to the development of culture.”

This Article protects the rights of authors and creators and the fair exploitation of their works. It states the purpose of this Law and serves as a guideline for the interpretation of provisions from succeeding articles.

### 2. Subject of Copyright

A distinction must be made between the author and the copyright owner. The author means a person who creates a work (Article 2(1)(ii)). Copyright Law grants moral rights and copyrights to the authors of works (Article 17).

To be an author, just the fact of having created a work is required; there is no need for specific formalities, such as registration. In other words, a non-formality system is applied.

The author must be the creator of the work, with the exception where the author is presumed to be the author of that work (Article 14). Also, the author does not have to be a single person, and in cases of authors of a joint work (Article 2(1)(xii)) and authors of a combined work, there will be more than one author for a work.

In addition, the Law provides for authorship of a legal person and that of a work

made by its employee in the course of his duties as exceptional authorship. The current Law has a single article that integrates provisions for authorship of a legal person and that of a work made by its employee in the course of his duties (Article 15) (Note).

(Note) Authorship of a legal person

The current Law provides that the authorship of a work created by an employee of an organization such as a company shall belong to that legal person under certain requirements (Article 15). This is referred to as authorship of a legal person and that of a work made by its employee in the course of his duties. The requirements are as follows: (a) the work was created on the initiative of the legal person etc.; (b) it was created by a person engaged in the operations of the legal person etc.; (c) it was created by an employee of the legal person in the course of his duties; (d) it was is made public under the name of the legal person.; and (e) it is not otherwise stipulated in the internal rules or work regulations of the legal person.

### 3. Object of Copyright

Work means a “production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain” (Article 2(1)(i)).

Therefore, the following requirements must be met to qualify a work. No formalities, such as entry or registration, are required for establishment of copyright (non-formality system).

(1) It must be a “creative expression” of thoughts or sentiments

It cannot be a mere copy of someone else’s work, but it must express original thoughts or sentiments of the author. Therefore, as long as the work is created originally, it shall be protected as an original work, even if it is similar to another person’s work by coincidence (Note).

(Note) Miscellaneous reports and news reports

Mere reports of facts (miscellaneous reports) or news reports, such as a report of a traffic accident in a newspaper, cannot be considered as creative expressions, and thus shall not fall under “works” (Article 10(2)). However, not all newspaper articles are excluded from works. Report articles reflecting the thoughts or sentiments of the reporter are protected under the Copyright Law as works.

(2) It must express thoughts and sentiments externally

A mere thinking process or an idea is not considered a work. It must be expressed externally by telling it to people or writing it down on paper.

(3) It must fall within a literary, scientific, artistic, or musical domain

Mechanically manufactured products and technical or practical products do not fall under works. However, computer programs and databases have come to be protected as independent works due to technological progress.

Article 10 of the Copyright Law enumerates examples of works as listed below.

Literary works	novels, diaries, poems
Musical works	symphonies, jazz, improvisation
Choreographic works	dance, ballet
Artistic works	paintings, engravings, sculptures
Architectural works	buildings themselves
Figurative works	maps, drawings and charts of a scientific

Cinematographic works	nature movies, video movies
Photographic works	photographs, photogravures
Program works	computer programs
Derivative works	(Note 1)
Compilations	(Note 2)
Database works	(Note 3)
Joint works	(Note 4)

(Note 1) Derivative works:

A “derivative work” means a work created by translating, arranging musically, transforming, dramatizing, cinematizing or otherwise adapting a pre-existing work (Article 2(1)(xi)). Derivative works comprise the following four kinds: (a) translated works; (b) arranged works (Article 12(1)); (c) transformed works; and (d) adapted works. To exploit these works, authorization must be obtained from the copyright owner of not only the derivative work, but also of the original work (Article 28).

(Note 2) Compilations:

“Compilations” are works (not falling within the term “databases”) which constitute intellectual creations, through the selection or arrangement of materials (Article 12(1)). If the materials can be considered as works (e.g. encyclopedias), they are categorized as one type of derivative works, but if they cannot be considered as works (e.g. telephone directories by type of business), they are not recognized as compilations. The reason why this article is not described in Article 10(1), which indicates the examples of works, is that Article 10(1) categorizes works by the form of materials, and compilations, which are collections of such materials, do not correspond to such categories.

(Note 3) Database works

Databases means “an aggregate of information such as articles, numericals,

or diagrams, which is systematically constructed so that such information can be searched for with the aid of a computer” (Article 2(1)(xter)). Databases which, due to the selection or systematic construction of information contained therein, constitute intellectual creations and shall be protected as independent works (Article 12(2)).

(Note 4) Joint works, aggregate works, and combined works

A “joint work” means a work created by two or more persons in which the contribution of each person cannot be separately exploited (Article 2(1)(xii)). One of such examples is the record of a discussion. As related concepts, there are aggregate works and combined works. An aggregate work refers to a work in which each part can be separately exploited. An example is a history book comprising a modern history part and a contemporary history part. A combined work is a work that was originally created as a unified piece, but in which each part can be separately exploited. An example is the relation between the text and illustrations.

#### 4. Works not protected under Copyright Law

Some works cannot be protected under Copyright Law due to their public nature, even if requirements for works are met (Article 13).

(a) The Constitution, treaties, laws, orders, municipal ordinance, and other rules and regulations
(b) Notifications, instructions, circular notices, and the like issued by organs of the State or local public entities
(c) Judgments, decisions and orders of law courts, as well as rulings etc. by administrative organs
(d) Translations or compilations of those materials from (a) through (c) above, that are made by the State or local public entities. However, other reports such as white papers are protected under the Copyright Law, though they are

published by the government.

5. The rights of authors

The rights of authors comprise copyrights protecting an author's property rights (property rights to a work) and an author's moral rights which protect the character and personality of the author. The copyrights (property rights to a work) comprise a number of subsidiary rights, as follows:

(1) The right to exploitation of original works (Right to exploit works as they are.)

(a) Right of reproduction (Article 21)

“Reproduction” means the reproduction in a tangible form by means of printing, photography, photocopying, sound or visual recording, or otherwise (Article 2(1)(xv)).

(b) Rights of acting and musical playing (Article 22)

“Acting” means the performance of works by means other than musical playing (including singing) (Article 2(1)(xvii)).

(c) Right of presentation (Article 22*bis*)

“Presentation” means the projection of a work on the screen or other material forms.

(d) Rights of public transmission, etc. (Article 23)

“Public transmission” means the transmission of radio communications or wire-telecommunication intended for direct reception by the public (however, transmission through wireless LAN on the same network is excluded) (Article 2(1)(viii*bis*)). Among these, the public transmission of radio

communications intended for simultaneous reception by the public of the transmission having the same contents is called “broadcasting” (Article 2(1)(viii)), and the public transmission of wire-telecommunication intended for simultaneous reception by the public of the transmission having the same contents is called “wire diffusion” (Article 2(1)(ix*bis*). Public transmission includes “interactive transmission,” meaning public transmission made automatically in response to public requests (Article 2(1)(ix*quater*)), and “making transmittable,” which means the putting in such a state that the interactive transmission can be made (Article 2(1)(ix*quinqüies*)) (Note).

(Note) Examples of public transmissions, etc.

Some examples of broadcasting are TV, radio, and satellite broadcasting, while CATV is an example of wire diffusion. Interactive transmission corresponds to transmission interactive with a user, and making transmittable refers to a case in which, for example, data is inputted to a server connected to a network.

(e) Right of recitation (Article 24)

“Recitation” means the oral communication by means of reading or otherwise not falling within the term performance) (Article 2(1)(xviii)).

(f) Right of exhibition (Article 25)

“Exhibition” means an exclusive right to exhibit the original of an artistic work or an unpublished photographic work.

(g) Right of distribution (Article 26)

“Distribution” means the transfer of ownership and lending of copies of a work to the public with or without payment as defined in Article 2(1)(xx).

(h) Right of transfer of ownership (Article 26*bis*)

“Transfer” means to offer a work, excluding cinematographic works, to the public through the transfer of an original or copy of the work. However, the provisions of the right of transfer shall not apply in the case of transfer of the work to the public by the copyright owner or an authorized party, transfer to the public by arbitration etc., transfer to a specific and small group of people, or lawful transfer overseas (Article 26(2)(ii)).

(i) Right of lending (Article 26*ter*)

“Lending” means to offer a work excluding cinematographic works to the public by lending copies of the work.

(2) Rights of translation, adaptation, etc. (Article 27)

Rights of translation, adaptation, etc. do not mean the right to exploit a work as it is, but cover the creation of a new work (derivative work) based on the original work. The author has the exclusive rights to (a) translate, (b) arrange musically, or (c) transform, or (d) dramatize, (e) cinematize, or (f) otherwise adapt the work (Article 27).

(3) Right of the original author in the exploitation of a derivative work (Article 28)

The author of the original work of the derivative work shall have the same rights as those of the author of the derivative work.

The above subsidiary rights can be summarized as follows:

(1) Rights to	(a) Right of reproduction
	(b) Rights of acting and musical playing

exploit original works	(c) Right of presentation
	(d) Rights of public transmission, etc.
	(e) Right of recitation
	(f) Right of exhibition
	(g) Right of distribution
	(h) Right of transfer of ownership
	(i) Right of lending
(2) Rights of translation, adaptation, etc. (translate, arrange musically, transform, dramatize, cinematize, or otherwise adapt the work)	
(3) Right of the original author in the exploitation of a derivative work	

## 6. Author's moral rights

The author's moral rights protect the character and personality of the author in the work (Note). Moral rights belong exclusively to the author and may not be assigned or transferred (Article 59).

(Note) The stance of the current law concerning moral rights of the author

The author's moral rights were internationally approved after being stipulated in a conference to amend the Berne Convention in Rome (1928). Japan has also stipulated Right of determining indication of the author's name and Right of preserving the integrity of the work since the time of the old Copyright Law. The current Copyright Law additionally stipulates the right of making the work public, and ensures that thorough protection is extended to the author's moral rights.

The content of an author's moral rights is as follows. First is the right to make the work public (Article 18). This is the author's right to determine whether to

publish the work, and if the work is to be published, when and how it should be published. Next is the right to determine indication of the author's name (Article 19). It is the author's right to determine whether to indicate authorship and what kind of indication should be used. Lastly, there is the right to preserve the integrity of the work (Article 20). This is the author's right to preserve the completed work, enabling claims against those who distort, remove, or conduct any other modifications without authorization.

(1) Right to make the work public	The author's right to determine whether to publish the work, and if the work is to be published, when and how it should be published
(2) Right to determine indication of the author's name	The author's right of determining whether to indicate the name of the author to claim who the author is, and what kind of indication should be used
(3) Right to preserve the integrity of the work	The author's right to preserve the completed work, which enables claims against those who distort, remove, or conduct any other modifications without authorization

The author's moral rights are protected not only to safeguard integrity, but also to maintain public interests by preserving the original works as the nation's cultural inheritance.

Legislation handling an author's moral rights after death seems to be different in each country. It is the question of whether the author's moral rights expire with the death of the author, or whether rights are inherited by the author's heir. Under the

Japanese Copyright Law, the author's moral rights expire with the death of the author and are not inherited. However, the bereaved family are vested with their own moral rights in view of the public interests implicated in the work, by virtue of the provisions of Articles 60 and 116. For this reason, it is often the case that the term of moral rights of authors and the term of copyright protection do not correspond with each other.

Furthermore, moral rights cannot be transferred to another party because of the inalienability, because of their inalienability.

#### 7. Cases where free exploitation of a work is authorized

The Copyright Law authorizes certain cases where a work can be exploited freely.

This limitation comes from that the public nature of a work, it being used by the general public. Indeed, indication of the source is sometimes requested to prevent an author's interests from being harmed by the illicit use of his works. Although the work can be used freely, the user cannot harm the author's moral rights.

The indication of the source is not necessary in all cases where the free exploitation of a work is approved. Sometimes, an indication can be inappropriate, limiting cases where the indication of the source is demanded. Article 48 (1) of the Copyright Law covers cases where indication of the source is required. Also, in cases under Article 43, an indication is required based on Article 48(3). Though the specific content of the indication of the source is not stipulated, the title, number of the work, and the name of the author must at least be indicated.

<Cases where free exploitation of the work is approved>

(1) Reproduction for private use (Article 30)*	
(2) Reproduction in libraries, etc. (Article 31)	
(3) Quotations (Article 32)	Indication of source required
(4) Use for the purpose of education (Articles 33 - 36)	
· Reproduction in school textbooks (Article 33)	
· Reproduction in order to prepare a textbook in large print (Article 33(2))	Indication of source required
· Broadcasting in school education programs (Article 34)	
· Reproduction in schools and other educational institutions (Article 35)	
· Reproduction for use as examination questions (Article 36)	
(5) Reproduction for the visually impaired (Article 37)	Indication of source required
(6) Automatic public transmission for the visually impaired (Article 37(2))	Indication of source required
(7) Performance, etc. not for profit-making (Article 38)	Indication of source required
(8) Reproduction, etc. of articles on current topics (Article 39)	Indication of source required
(9) Exploitation of political speeches, etc. (Article 40)	Indication of source required
(10) Reporting of current events (Article 41)	Indication of source required

(11) Reproduction for judicial proceedings, etc. (Article 42 & 42(2))	Indication of source required
(12) Exploitation for the purposes of disclosure pursuant to the Information Disclosure Act (Article 42(2))	Indication of source required
(13) Exploitation by means of translation, adaptation, etc. (Article 43)	Indication of source required
(14) Ephemeral recordings by broadcasting organizations, etc. (Article 44)	
(15) Exhibition of an artistic work by the owner of the original thereof (Article 45)	
(16) Exploitation of an artistic work located in open places (Article 46)	Indication of the source is required
(17) Reproduction required for an exhibition of artistic works, etc. (Article 47)	Indication of source required
(18) Reproduction, etc. by the owner of a copy of a program work (Article 47 <i>bis</i> )	
(19) Temporary reproduction due to maintenance, repair, etc. (Article 47(3))	

\*The limit of private use

Reproductions by using copying devices installed for public use and reproductions with ill-intent, enabled by a circumvention of technological protection measures, do not fall under the private use.

## 8. Terms of copyright protection

If a copyright is regarded as a right which should be maintained forever, public

use of the work would be significantly obstructed, and cultural development hindered. This is why a term of protection is established for copyrights. However, if the term were extremely short, it would not reward the author sufficiently for exerted efforts, and may impede creative activities.

Japanese Copyright Law provides that the term of copyright protection shall be fifty years after the death of the author (in the case of a joint work, fifty years after the death of the last surviving co-author) in principle (Article 51(2)), but also provides for certain exceptions (Article 52 and succeeding articles) (Note).

(Note) The system of calculating the term from the death of the author

In calculating the protection term, there is one system calculating from the death of the author and one system of calculating from the publication of the work. The Japanese Copyright Law adopts the system calculating from the death of the author (Article 51(2)). However, the copyright goes into effect at the point when the author creates the work, continuing fifty years after the death of the author.

The term for copyright protection does not apply to an author's moral rights. Because of the inalienability of moral rights, they expire with the death of the author. However, acts that infringe on an author's moral rights are prohibited even after the death of the author, as will be mentioned later.

General rule	Fifty years after the death of the author (Article 51) * The term is calculated from the year following the year when the author died (Article 57)
Exceptional provisions	(a) Anonymous and pseudonymous works (Article 52) Fifty years following the making public of the work (If it is obvious that fifty years have already passed since the death of the author, the copyright expires at that point)

<p>(b) Works bearing the name of a corporate body (Article 53) Fifty years following the making public of the work (If the work is not published within fifty years after its creation, the copyright expires fifty years after the creation)</p>
<p>(c) Cinematographic works (Article 54) Seventy years following the making public of the work (If the work has not been made public within seventy years after its creation, the copyright will expire seventy years after the creation)(note)</p>
<p>(d) The time when serial publications, etc. have been made public (Article 56) The article stipulates exceptional provisions for the works made public in sequential volumes or issues, such as newspapers or magazines.</p>
<p>(e) Exceptional provisions based on reciprocity (Article 58) The article stipulates exceptional provisions for foreign works of which protection term is not fifty years.</p>

With regard to foreign works, there are exceptional provisions based on reciprocity and those for extended terms during a war (Law concerning Exceptional Provisions for Copyrights Owned by the Allied Powers and Allied Nationals).

(Note) Period of Protection of Cinematographic Work

Upon amendment in 2003, the period of protection of cinematographic work was extended. A cinematographic work will be protected for seventy years after its public release (if the copyrighted work is not publicly released for seventy years after creation, it will be protected for seventy years after creation). The amendment, however, becomes effective on January 1, 2004. The additional rules to the Law provide as the transitional measures, that (a) the amended law will apply to cinematographic works existing under the old law as of the date of implementation of amended Law while cinematographic

works of which copyright has ceased to exist under the old Law as of the date of implementation of amended Law will be treated as under the old Law (Article 2 of Additional Rules); and (b) notwithstanding the provisions of Article 54 (1) of amended Law, cinematographic works created prior to the implementation of amended Law and treated as under the old Law pursuant to Article 7 of Additional Rules to the amended Law, will be protected for the period set forth in the old Law if the period for protection under the old Law (Law No. 39 of 1899) expires after the date of expiration of protection for the work under Article 54 (1) of amended Law (Article 3 of Additional Rules).

#### 9. Transfer of Copyrights

Copyrights are transferred in the following cases:

- (1) Transfer of a copyright (Article 61) (Note)
- (2) Inheritance and merger

(Note) Assignment of copyright through contract

It should be noted that where a contract for the transfer of copyright makes no particular reference to the rights mentioned in Articles 27 and 28 as the purpose for the assignment, these rights shall be presumed to be reserved to the transferor (Article 61(2)).

#### 10. Grounds for expiry of copyright

Copyrights expire in the following cases:

- (1) Expiry of the term of protection of a copyright (Article 51 and succeeding articles)
- (2) Lack of legal heirs (Article 62)
- (3) Abandonment of copyrights
- (4) Extinctive prescription (Article 167(2) of the Civil Code of Japan)

11. Treatment of the author’s moral rights

Current Copyright Law extends virtually eternal protection for an author’s moral rights. The author’s moral rights do not expire even after the expiry of the copyright.

- (1) The moral rights of authors shall be exclusively personal to him and inalienable (Article 59).

Moral rights of authors are inalienable, even if the copyright was transferred due to transfer or inheritance.

- (2) After the death of an author, any act considered prejudicial to moral rights, if the author were alive, is prohibited (Article 60).
- (3) After the death of an author, the bereaved family (spouse, children, grandchildren, parents, and grandparents) are vested with rights as the protectors (Right to claim recovery of honor etc.) (Article 116).
- (4) Criminal sanctions shall be placed on violators (Article 120)

12. Transfer of a copyright and the authorization of for its use

The transfer of a copyright and its authorization for use can be categorized as follows:

Transfer (Article 61)	Transfer in whole	The case where copyright transferred as a whole.  Registration is a requirement for setting up against third parties (Article 77)
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	Transfer in part	The case where copyright is transferred in part. Registration is a requirement for setting up against third parties (Article 77)
Authorization In exploitation (Article 63)	Exclusive authorization	Authorization with a special agreement to the effect that a third party is not authorized to exploit the work under the same condition
	Simple authorization	Authorization without a special agreement on the exclusive authorization

It should be noted that, in the event of transferring a copyright, it shall be presumed that rights mentioned in Articles 27 and 28 of the Copyright Law are reserved to the transferor unless the assignment of these rights is clearly specified in the contract (Article 61(2)).

### 13. Copyright registration system

#### (1) Copyright registration system

Copyright Law adopts a non-formality system for establishing copyrights. Therefore, registration is not a requisite for acquiring a copyright. Nevertheless, the Copyright Law applies a registration system for various reasons.

#### (2) Registration of copyright for certifying changes (Article 77)

Registration is a requirement for preparing against third parties. A “third party” means a party who has a legitimate interest in claiming the lack of

registration.

- (a) Registration for the transfer of copyright or the restriction on the disposal of copyright
- (b) Registration for the establishment, transfer, alteration or expiry, or the restriction on the disposal, of the right of pledge established on copyright
- (c) Registration for the transfer of right of publication or the restriction on the disposal of right of publication
- (d) Registration for the establishment, transfer, alteration or expiry, or the restriction on the disposal, of the right of pledge established on right of publication

(3) Registration for special purposes

- (a) Registration of the true name in the case of an anonymous or pseudonymous work (Article 75)
- (b) Registration of the date of the first publication (the public release) (Article 76)
- (c) Registration of the date of creation of a program work (Article 76*bis*)

Procedures for registration are governed by the Agency for Cultural Affairs (Article 78). Also, details of registrations concerning program works are provided under the “Law on Exceptional Provisions for the Registration of Program Works” (Law No. 65 of 1986), in which the Foundation of the Software Information Center is specified as the designated registration organization. All other registrations are handled by the Copyright Section of the Agency for Cultural Affairs.

## 14. Neighboring Rights

### (1) Significance

Neighboring rights are granted to performers, producers of phonograms, broadcasting and wire diffusion organizations, and others, who are not the authors of the works, but play important roles in communicating works to the public.

They do not create new works, but their activities are equivalent to the creation of works. Therefore, their rights are protected in a manner similar to copyright.

The non-formality system is also applied for the establishment of the neighboring rights (Article 89).

Neighboring rights and copyrights exist independently, and the neighboring rights do not affect copyrights (Article 90). On the other hand, when copyright is subject to limitation of the free exploitation, the neighboring rights also become subject to the same limitation (Article 102).

### (2) Contents of neighboring rights

The owner and contents of each neighboring right are as follows:

Owner	Content of Right
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Performers	Neighboring Right	<p>(a) Right of making sound or visual recordings (Article 91)</p> <p>(b) Rights of broadcasting and wire diffusion (Articles 92)</p> <p>(c) Right of making transmittable (Article 92<i>bis</i>)</p> <p>(d) Right of transfer of ownership (Article 95<i>bis</i>)</p> <p>(e) Right of lending etc. (Article 95<i>ter</i>)</p>
	Right to Claim	<p>(a) Right for compensation for private recordings (Article 102 (1))</p> <p>(b) Right for fees for secondary use of phonograms (Article 95)</p> <p>(c) Right for remuneration for lending (Article 95<i>bis</i> (3))</p>
Producers of phonograms	Neighboring Right	<p>(a) Right of reproduction (Article 96)</p> <p>(b) Right of making transmittable (Article 96<i>bis</i>)</p> <p>(c) Right of transfer of ownership (Article 97<i>bis</i>)</p> <p>(d) Right of lending etc. (Article 97<i>ter</i>)</p>
	Right to Claim	<p>(a) Right for compensation for private sound of visual recordings (Article 102 (1))</p> <p>(b) Right for fees for secondary use of phonograms (Article 97)</p> <p>(c) Right for remuneration for lending (Article 95<i>bis</i> (3))</p>
Broadcasting organizations	Neighboring Right	<p>(a) Right of reproduction (Article 98)</p> <p>(b) Rights of rebroadcasting and wire diffusion (Article 99)</p> <p>(c) Right of communication of television</p>

		broadcasts (Article 100)
Wire diffusion organizations	Neighboring Right	(a) Rights of reproduction (Article 100 <i>bis</i> ) (b) Rights of broadcasting and wire rediffusion (Article 100 <i>ter</i> ) (c) Right of communication of wire television diffusions (Article 100 <i>quarter</i> )

(3) Term of protection

The term of protection of each neighboring right is as follows (Article 101):

Performance	Fifty years following the date when the performance took place
Phonogram	Fifty years following the date when the first fixation of sounds was made
Broadcast	Fifty years following the date when the broadcast took place
Wire diffusion	Fifty years following the date when the wire diffusion took place

15. Infringement of copyright

When a copyright is infringed upon, the copyright owner can demand that civil remedies, and/or criminal sanctions are imposed on the infringing party. (Note 1)

Civil remedies
(1) Right of demanding cessation (Article 112)
(2) Right of claiming compensation for damages (Article 114 , Article 709 of the Civil Code)
(3) Right of demanding the return of unjust enrichment (Articles 703 and 704 of the Civil Code)
(4) Right of demanding measures for recovery of honor etc. (Articles 115 and 116)

* Acts considered to be infringements (Article 113 ) (Note2, Note 3)
Criminal sanctions
(1) Infringement of rights (Article 119) (2) Infringement of moral rights (Article 120) (3) Circumvention of technological protection measures (Article 120 <i>bis</i> ) (Note 4) (4) False indication of the name of the author (Article 121) (5) Unauthorized reproduction of phonograms (Article 121 <i>bis</i> ) (6) Failure to indicate the sources (Article 122) * Crime indictable upon complaint of the injured person (Article 123) * Provisions of dual liability (imposed upon the legal person and the offender (Article 124)

(Note 1) The maximum penalty for the crime of copyright infringement is up to five years in prison and a fine of up to ten million yen. For a corporation the maximum penalty is a fine of up to three hundred million yen.

(Note 2) Acts considered infringements

Strictly speaking, this cannot be said to be copyright infringement. However, as this conduct may endanger the economic profit of the copyright holder, it is legally deemed to be copyright infringement. Applicable conduct is listed in Article 113. (Note 3) Special provision on the right of assignment concerning a *bona fide* person

The act of assigning the original works or copies of a work to the public *bona fide* and without fault, is considered to be an infringement of the right of assignment (Article 113*bis*).

(Note 4) Circumvention of technological protection measures

In recent years, technological protection measures referred to as copy protection have been developed, and contribute to preventing the unauthorized reproduction of works such as musical CDs or DVDs (digital video disks). On the other hand, the acts of developing and selling devices or programs to circumvent such protection are also emerging. Thus, it is provided that the acts of assigning or manufacturing devices or programs that invalidate such

protection are subject to criminal penalties.

## Chapter 3 Issues in Practice

### 1. Characters

The term “characters” refers to, for example, persons or animals appearing in cartoons. In practice, the exploitation of characters is usually handled under a contract on merchandising rights.

Since most characters are subject to copyright, it is necessary to gain authorization for exploitation from the copyright owner before exploiting the characters in advertisements or producing three-dimensional figures of them.

The merchandising right is the right to exploit characters etc. in commodities.

### 2. The title of a movie or a novel

The exploitation of the title of a movie or a novel requires consideration for the following:

#### (1) Copyright Law

Generally, the title of a movie or a novel indicates the content of the work, and the title itself is not considered to be an independent work.

#### (2) Trademark Law

At times, multiple movies or novels have the same title. For example, there are multiple novels written on the life of a woman. Therefore, even if the title is the same as a novel published by another company, it may be used as long as the content of that publication (book) is indicated. However, the title of a movie or a novel cannot be exploited on goods or service without authorization if the title is already registered as a trademark of another goods or service. Exploitation of the title of a magazine requires consideration of other parties’ registered trademarks,

unlike in the case of a book title.

(3) Unfair Competition Prevention Law

In the case where the title of a movie or a novel is used as a distinguished indication of another party's business, the exploitation of that title for a business that may induce confusion with the prior business and become a problem under the Unfair Competition Prevention Law (The Unfair Competition Prevention Law, Article 2(1)(i) and (ii)).

3. Publications issued by the government

Of publications issued by the government, or specifically, publications issued by the State or local governments, notifications, instructions, circular notices and the like are not protected under the Copyright Act (Article 13(2)).

In the meantime, reports such as those on education, materials for public relations, collections of materials concerning research and statistics, etc. are subject to copyright, even though they are published by the government. Nevertheless, these publications can be reprinted in newspapers, magazines, or other publications unless there is an indication to prohibit such reprinting.

4. Newspaper articles and photographs

Within newspaper articles, daily news and miscellaneous facts do not fall in the domain of literary works (Article 10(2)). Thus, they can be exploited without authorization. However, it should be noted that copyright is not generally denied concerning newspaper articles, including editorials.

Daily news and miscellaneous facts are mere communications of current events, for example, the reporting of who did what, where and when, or personal affairs,

weather information, etc. which are exact reports of facts that would not be affected by the influence of the author. These news items do not fall within the scope of a work (literary work) (Article 10(2) of the Copyright Law).

Since news photographs do not fall within the scope of a literary work, they are treated differently from the daily news and miscellaneous facts. In many cases, they cannot be exploited without authorization.

Often, the printed pages of the whole newspaper are considered a compilation, which, as such, would be protected as a compilation work.

#### 5. Red Cross marks

Under the “Law Concerning Restrictions on the Use of the Red Cross Ensign, Names, etc.” enacted based on the Red Cross Convention, no party other than the Japanese Red Cross Society is permitted to use Red Cross marks (the Red Cross ensign on a white ground, or the name, Red Cross or Geneva Cross, or any similar signs or names).

#### 6. Exploitation of photographs of currencies and stamps

In the case of commercially exploiting currencies or stamps in advertisements etc., consideration must be given to various regulatory laws and ordinances. The “Law Regulating Counterfeit Currencies and Securities” prohibits the manufacture and sale of articles whose appearance may be confused with coins, notes issued by the government, banknotes, etc. The manufacture, import, and sale of articles whose appearance may be confused with postage stamps or any other certificates that indicate postal fees are also prohibited.

## 7. Treatment of maps

A map is a work (Article 10(1)(vi)), thus, use of a reproduction requires the authorization of the author. In particular, the exploitation of the reproduction of maps created by the Geographical Survey Institute of the Ministry of Construction requires procedures under the Survey Act.

## 8. Portrait right and right of publicity

In exploiting photographs taken of a person, consideration must be given not only to issues related to the copyright of the photographs, but also to those related to the portrait right. The portrait right is considered as a moral right within the right to privacy.

When an individual concerned is a famous person, rather than a portrait right aimed at protecting integrity, a right to publicity aimed at protecting of economic interests would be at issue.

## 9. The name of goods or service

The name of goods or service is protected as a trademark under Trademark Law, but when its design incorporates a value as creative expression, copyright may be established for it. When the name is well-known or famous, it is sometimes protected as a well-known or famous indication of commodities etc. under the Unfair Competition Prevention Law.

## 10. Copyright symbol (©)

Originally, in order for a work from a country with a non-formality system to be protected by copyright in a country with a formality system, the work needs to

satisfy requirements (registration etc.) designated in the latter country. However, Article 3 of the Universal Copyright Convention provides that, if the copyright symbol (©) is applied to the work, a copyright acquired within a non-formality system will be protected even in a country adopting a formality system. The copyright symbol consists of three parts: © (first letter of “copyright”); the name of the author; and the year of the first publication. If any of these three parts is missing, it is not approved as a copyright symbol. Most countries of the world now adopt a non-formality system, with the US acceding to the Berne Convention in 1989, so the indication of the copyright symbol now has only a customary meaning.

#### 11. Requirements for quotations

Requirements for taking quotations from another party’s work are as follows: (1) the work must already be public; (2) the taking of quotations is compatible with fair practice; and (3) the quotations are made to the extent justified by the purposes (Article 32). Specifically, the following are required: (a) the quotations are inevitable; (b) the quotations constitute a subordinate part; (c) the quotations are made to the minimum of what is required; and (d) sources are clearly indicated. In practice, there are individual standards, for example, the lyrics of a song can be exploited without authorization up to one verse. A standard method of indicating the source is to enclose the quotations in parentheses and indicate the author and the description of the source work.

#### 12. Catchphrase

A catchphrase means a phrase or a sentence used to enhance the effect of

advertisements for goods etc., and determination must be made from the standpoint of three laws: the Copyright Law, the Trademark Law, and the Unfair Competition Prevention Law. In other words, a catchphrase may involve copyrights, and in some cases, it can be registered as a trademark. Furthermore, it falls under the indication of goods etc. under the Unfair Competition Prevention Law, so it is necessary to examine whether the catchphrase does not satisfy the requirements of being well-known or famous.

13. Authorship of a work completed through a company employee's duty and authorship by a legal entity

Generally, companies stipulate in regulations, employment contracts, and such that the copyright of a work created by an employee shall be owned by the company.

Also, authorship of a work whose initial concept is supplied by the company, which is created by an employee in the course of duties, and which is made public with the company's name as author, shall be given to that company (Article 15(1)), and is referred to as the authorship of a corporate work. However, the copyright of a program work will originally belong to the company, even if it is not made public under the name of the company as the author (Article 15(2)). A corporate copyright system of this nature is unique to Copyright Law, and no such system is stipulated in industrial property right, such as in Patent Law.

14. Points to be noted in a contract to authorize exploitation of a work

The following should be noted in contracts to authorize of exploitation of works:

(1) whether the parties to the agreement are specified; (2) whether the object for

exploitation is specified; (3) whether the media used is clarified (pamphlet, TV, radio, etc.); (4) whether the period of exploitation is clarified; (5) whether the compensation should be paid in a lump-sum or in royalties; (6) whether the authorized exploitation is exclusive or non-exclusive; and (7) the territories in which the exploitation is authorized, etc.

#### 15. Reproduction by using a copy machine

Reproduction of documents by using a copier requires the authorization of the copyright owner except in the following cases: (1) reproduction for private use (Article 30); (2) reproduction for judicial proceedings (Article 42); (3) reproduction in libraries (Article 31); (4) and reproduction in educational institutions for use in the classroom (Article 35). To reduce the trouble involved in acquiring authorization of the copyright owner, the Japan Reprographic Rights Center was established in 1991 as the organization that comprehensively handles copyrights related to reproductions in Japan.

#### 16. Background music in shops

Playing music on CDs or phonograms in shops is subject to rights regarding performance of a musical work. In the past, no authorization of the copyright owner was required on the condition that the sources were indicated, concerning public performances of musical works through use of lawful sound recordings, except in specific businesses provided by the Cabinet Order (Article 14 of the Supplementary Provisions of the Copyright Law). Therefore, authorization of the copyright owner was not required on the condition that the sources were indicated, when playing music on CDs etc. in shops such as supermarkets. However, Article

14 of the Supplementary Provisions was abolished in the amendment of the Copyright Law in 1999. Meanwhile, reproduction of CDs and phonograms through dubbing is subject to right regarding sound recording owned by the copyright owner and the performer as well as a right to reproduction owned by the producer of the phonograms.

#### 17. Sound and visual recordings of TV programs

The authorization of a rights owner is required to exploit broadcasts of music or TV programs by means of reproduction, in accordance with the principle of the Copyright Law. However, in certain cases, they can be reproduced without the authorization of the right owner as long as the reproduction is for personal or family use. Nevertheless, when the reproduction is made by means of visual or sound recording using a digital method, such as mini discs, compensation must be paid to the rights owner in accordance with the “System of Compensation for Private Recording,” in view of securing the owner’s interests. In practice, this matter is dealt with by adding compensation to the retail price of the device etc. upon purchase of the digital recording devices and media.

#### 18. Illegal reproduction of software

A computer program is a work considered under Copyright Law (Article 2(1)(*xbis*)), so unauthorized reproduction of a computer program constitutes copyright infringement.

Generally, when a user purchases and exploits commercially-available software, the copyright of the computer program is not assigned, nor is authorization for exploitation given. Thus, exploitation of an unauthorized reproduction of the

purchased software will constitute copyright infringement.

#### 19. Reverse engineering of computer programs

Reverse engineering means to analyze and evaluate another party's product or program in order to investigate its mechanism, manufacture method, principle, etc.

On the other hand, with respect to the reverse engineering of computer programs, it has become an international issue whether the analysis of computer programs created by another party and subsequent access to ideas existing therein should be allowed or not. The Japanese Copyright Law neither permits nor prohibits such acts.

#### 20. Treatment of packaged software (CD-ROM, CD-I)

With regard to the contents of packaged software, the included documents, images, and music are each considered as independent works, and the copyrights of literary works, artistic works, musical works, etc. belong to the respective parties who created them, such as writers, photographers, and musicians. Also, packaged software involves the owners of neighboring rights, such as performers, broadcasting organizations, and producers of phonograms. In practice, there are cases where rights of lyric writers and composers are handled by the JASRAC (Japanese Society of Rights of Authors and Composers), an institution which treats such rights in a centralized organization. Also, sometimes there are special practices unique to the industry.

#### 21. Game software

Game software is a complex unification of various works. First, the source code

program which operates the game is considered as a computer program work. The game characters can be regarded as artistic works. Melodies used in the game are considered as musical works. Furthermore, the game itself can be considered as a cinematographic work because pictures move on the screen sequentially.

## 22. Network society and content liability issues

With the development of an information network society, legal issues concerning information provided on-line have emerged. Such issues are often referred to as content liability issues. Of these issues, the most generally-argued issues are: (1) copyright; (2) defamation (calumny); and (3) Rights to privacy or Right of publicity.

With respect to these, no general rules have been established for specific issues. For example, in what cases will legal responsibilities arise or to what extent one should bear responsibility, so existing laws such as Copyright Law are applied in principle. However, existing laws are insufficient to deal with some aspects, and thus, it is necessary to promptly create guidelines. In practice, these issues shall be dealt with by individual contracts or covenants until generally-applicable guidelines are established.

## 23. Treatment of letters and images on homepages as works

With the development of international networks, new issues are emerging in relation to the Copyright Law. Due to the development of the Internet, the number of homepages has been increasing, and the treatment of contents on these homepages is at issue. Basically, provisions of Copyright Law cover the contents of homepages, and parties who create them have rights to reproduction, adaptation,

public transmission, and the author's moral rights, among others.

#### 24. Direct, indirect, and contributory infringement

The terms "direct infringement," "indirect infringement" and "contributory infringement" are sometimes used as forms of copyright infringement. Direct infringement involves a copyright infringed on directly. For example, the direct reproduction of another party's work on the Internet is direct infringement. Indirect infringement is used for vicarious liability of the employer, which is a kind of indirect liability. An example of such is where a club band exploits another party's musical work without authorization, and the owner of the club ignores this fact for his own economic gain such as collecting admission fees. The contributory infringement is the case where one party conspires with another party in copyright infringement by instigating or aiding the act. It includes the manufacture or sale of illegal duplicating machines. These categories are also being applied to disputes concerning copyright infringement on the Internet.

#### 25. Uploading, downloading, and acts of reproduction

It is debated whether the downloading of another party's work from a network and uploading of another party's work to a network should be subject to rights to reproduction, and recently, they have come to be considered subject to rights to reproduction.

#### 26. Importation of illegal reproductions into Japan

The acts of importing illegal reproductions made overseas, such as pirated versions, into Japan and selling them in Japan are considered copyright

infringements (Article 113(1)(i)). Also, the same applies to a case where a party sells reproductions in Japan, knowing that they are pirated versions (Article 113(1)(ii)). There is a similar provision concerning program works (Article 113(2)).

In addition, Article 21(1)(v) of the Customs Tariff Law prohibits the importation of goods that infringe copyright or neighboring rights, and stipulates that the Director General of each Regional Customs can order confiscation, abandonment, or reshipment against the importation of such goods. Furthermore, Article 109 of the Customs Law provides that criminal sanctions shall be imposed on the party who imported cargoes prohibited under Article 21(1) (contraband of import) of the Customs Tariff Law.

#### 27. Works imported in parallel

Parallel importation means importation by a third party through any importation route other than that of the trader licensed by the rights owner (exclusive import agent etc.). Copyright Law prohibits the importation of pirated versions as infringement (Article 113(1)(i)), but does not stipulate the prohibition of parallel importation of authentic goods. However, the Supreme Court held that in the case where a patentee assigns a patented product to a party overseas without setting reservation of rights, it should be recognized as implied granting of Right to control the product concerned in Japan free of limitation from the patent right of the assignor, to the assignee or the subsequent purchaser, and that parallel importation of authentic commodities does not constitute patent infringement (Judgment on July 1, 1997). The laws of the US and Australia require the authorization of a right owner for parallel importation.

## 28. Protection of contents

Recently, there has been rapid development in contents industries, which digitize music, pictures, or game software providing them to consumers in various forms, such as Internet data or DVDs. These contents providers use reproduction control technologies and/or access control technologies to prevent unauthorized use or reproduction of the contents.

However, if devices or programs that invalidate such control technologies go on the market, they may even obstruct these contents industries from continuing their businesses. Thus, the Copyright Law regulates the manufacture, distribution, etc. of devices/programs that invalidate reproduction control technologies, and the Unfair Competition Prevention Law regulates the act of providing devices/programs that circumvent these control technologies.

# Japan Patent Office

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