



Japan: Essentials of Copyright Law

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JAPAN
ESSENTIALS OF COPYRIGHT LAW

Overview - major differences of copyright laws in the United States and Japan

The Copyright laws of the United States and Japan are similar because both nations are signatories to the same international agreements. However, some differences remain, as follows:

1. Even after the United States became a signatory to the Berne Convention, the US Copyright Act¹ has no moral right provision except for Section 106A.
2. The Japanese Copyright Law² does have a set of detailed provisions specifying fair use in particular circumstances such as reproduction for private use or reproduction in libraries or quotations, but it has never contained a general fair use defense such as in Section 107 of the US law.³
3. The Japanese law does not have statutory damages similar to Section 504 (c)(2) of the US law.
4. In Japan, sound recordings are protected under neighboring right. In the United States, sound recordings are protected under copyright.

Works Protectable By Copyright

The Japanese Copyright Law protects three categories of works:⁴

1. works of Japanese nationals including legal persons established under Japanese law and having their principal place of business in Japan;
2. works first published in Japan, or those published in Japan within thirty days of first publication outside of Japan; and
3. Works that do not fall within the two preceding categories but to which, under an international treaty, Japan has an obligation to grant protection.

¹Title 17 of the US Code.

²*Chosakuken ho*, Law No. 48 of 1970, as amended by Law No. 131 of 2000.

³Keiji Sugiyama, *Japanese Copyright Law Development, presentation at Fordham University IP Conference*, (April 19, 2001).

⁴Japanese Copyright Law art. 6.

The third category is specifically directed to Japan's status as a member of the Berne Convention.

Government Publications

Article 13 of the Copyright Law specifically provides that the following government works are not copyrightable:

1. the Constitution and other laws and regulations;
2. notifications, instructions, and the like, issued by organs of the state or local public entities;
3. judgments, decisions, orders, and decrees of courts of justice, as well as rulings and decisions of administrative agencies that are rendered through proceedings similar to judicial proceedings; and
4. translations and compilations of works listed under items 1, 2, or 3 above, when prepared by organs of the state or local public entities.

In addition, it is permissible, as a fair use, for the press or other periodicals to reproduce informatory, investigatory or statistical data, reports and other works of a similar character which have been prepared by organs of the State or local public entities for the purpose of public information.⁵

Registration

Copyright comes into existence when a work of authorship is created.⁶ No publication or registration or other action in the Cultural Affairs Agency, which has jurisdiction over copyright in Japan, is required to secure copyright.

However, certain information is subject to registration.

1. The Cultural Affairs Agency administers three kinds of copyright registrations: registration of copyright transactions⁷; registration of an author's real name⁸; and registration of the date of first publication⁹.

⁵Japanese Copyright Law art. 32(2).

⁶*Id.*, art. 17(2); 51(1).

⁷*Id.*, art. 77.

⁸*Id.*, art. 75.

⁹*Id.*, art. 76.

2. Software Information Center (SOFTIC) administers registration of computer program works.¹⁰ The author of such a work may register its creation date within six months of its creation.¹¹

3. The Cultural Affairs Agency administers registrations of publication rights¹² and neighboring rights.¹³

Duration

Copyright generally endures for the life of the author and fifty years after his death (in the case of a joint work, after the death of the last surviving author).¹⁴

There are some special provisions. For example, the duration of copyright in an anonymous or pseudonymous work is basically fifty years after its publication.¹⁵ The duration of copyright in a work created by a juristic person or other entity is basically fifty years after its publication if it is not published until that time.¹⁶ The duration of copyright in a cinematographic work is fifty years from its publication or fifty years after its creation if it is not published.¹⁷

Moral Rights

The right to make a work public,¹⁸ the right to determine the indication of the author's name,¹⁹ and the right to preserve the integrity of the work²⁰ are protected under moral rights section of the Japanese Copyright Law.

¹⁰*Id.*, art. 78-2. SOFTIC was designated by the Commissioner of the Agency for Cultural Affairs as the registrar for Program Works pursuant to the Act Providing Special Regulations for the Registration of Program Works.

¹¹Japanese Copyright Law, art. 76-2.

¹²*Id.*, art. 88.

¹³*Id.*, art. 104.

¹⁴*Id.*, art. 51(2).

¹⁵*Id.*, art. 52(1).

¹⁶*Id.*, art. 53(1). This rule is not applicable when the real name or well-known pseudonym of an individual author is indicated when such work is published. Art. 53(2).

¹⁷*Id.*, art. 54(1).

¹⁸*Id.*, art. 18.

¹⁹*Id.*, art. 19.

²⁰*Id.*, art. 20.

Fair Uses

Although there is no general provision for fair uses, the Japanese Copyright Law allows certain fair uses. The fair uses include a number of educational, non-profit, and charitable uses. In some instances, the law imposes a compulsory license, and thus the author is entitled to some compensation for the use.

For example, the reproduction of a published work in school textbooks authorized by the education ministry is permitted by the law. The author is entitled to a license fee for use in a textbook in an amount fixed by the Commissioner of the Agency for Cultural Affairs.²¹

The law also provides for use of some works without compensation. For example, published works are allowed to be quoted in accordance with the fair custom and with proper bounds for use in reports, notices, or studies.²²

The reproduction of a work for the purpose of personal use, family use, or use by a limited circle is permitted as de minimus use.²³ However, when the work has been reproduced by means of an automatic reproducing machine, it is not permissible because of potential abuses.²⁴ Purchasers of certain digital recording equipment or certain digital recording media must pay an appropriate amount of compensation in a lump sum to copyright holders, performing artists, and phonorecord producers.²⁵

Infringement

The Japanese Copyright Law lists various acts that can constitute copyright infringement. The essence of the infringement is making or dealing in reproductions of the copyrighted work. Acts of infringement include importing articles into Japan with the intent of distribution or distributing articles that would infringe an author's moral rights, copyright, publication right, or neighboring rights; using pirated copies of computer programs if the user was in bad faith in acquiring such a copy; and exploiting a work prejudicial to the reputation of the author.²⁶

The Japanese Copyright Law does not have statutory damages similar to Section 504 (c)(2) of the US law. In Japan, the amount of damages awarded by a judgment is generally much lower

²¹*Id.*, art. 33.

²²*Id.*, art. 32(1).

²³*Id.*, art. 30(1).

²⁴*Id.*

²⁵*Id.*, art 30(2).

²⁶*Id.*, art. 113; Intellectual Property Protection in Asia 2nd Edition, §5.62 (1999).

than in the United States.

Neighboring Right

In the United States, sound recordings are protected under copyright. However, in Japan and many other countries, they are protected under so-called “neighboring right.” Article 89 of the Japanese Copyright Law categorizes the works of performers, producers of phonograms (sound recordings), broadcasting organizations, and wire diffusion organization as eligible for the neighboring right. These economically valuable cultural productions are difficult to be regarded as the subject matters of copyright because they are deemed to lack incidia of authorship. For example, sound recording is a work that results from *the fixation* of a series of musical, spoken, or other sounds. “The fixation” does not have enough creativity which is needed in the work to be copyrightable.

The works under neighboring right enjoy part of protection copyrightable works enjoy. The duration of neighboring rights in Japan expires at the end of the fiftieth year after the works took place or fixed at the first time.

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