

Japan's Copyright Policy for a New Age

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It was exactly 100 years ago when Japan's copyright law came into effect. In this year of commemoration Japan has carried out a major legal reform for the next millennium. Thus I am very pleased to be here on this occasion to introduce Japan's copyright law to those of you who have come here from all corners of the world.

1. Preface

In recent years the exploitation and distribution of copyrighted works have changed and expanded due to three major factors: digitization, the growth of networks and the rise of a borderless society (that is, the vigorous dissemination of information across national borders).

On the one hand we see the appearance and development of new forms of distribution, such as electronic commercial transactions, while on the other the dangers of unauthorized use have grown. Because of this, it has been necessary to advance a copyright policy with two prongs, one of "light" that plans for the formation of an adequate market, and one of "shadow" that is aimed at eradicating unauthorized use.

The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty establish a new international system in response to the change in circumstances brought about by the Internet age. Since the time the conventions were adopted in 1996 Japan, as in the case of other countries, has positively advanced the consolidation of a copyright system for the new era.

2. Extension of Rights to Upload

The first measure Japan carried out was in 1997, about a half year after the adoption of the WIPO treaties, with a consolidation of rights related to interactive transmissions, such as transmissions via the Internet. As a matter of fact, in Japan a regime under which the rights of copyright holders extended to interactive transmissions already was clearly established by changes to the law made in 1986. The legal reforms of 1997 were promulgated in order to bring about the "making available" incorporated in the new WIPO treaties and to give the same kinds

of rights enjoyed by copyright holders to performers and producers of phonograms as well.

Recently there has been the problem of persons who carry out the unauthorized transmission of music on the Internet by means of MP3 format, but because of Japan's aggressive stance toward interactive transmissions there has been an increase of cases in which persons who upload without authorization have been prosecuted by the police. Thus from the aspect of the enforcement of rights, it has produced a steady effect to ensure the rights of copyright holders, performers and phonogram producers.

3. Regulatory Steps in Response to Circumvention of Technological Protection Measures

Further changes were made to the laws in 1999. With the reforms this year, mechanisms were established that deal with obligations concerning technological measures and with obligations concerning rights management information, as stipulated in the new WIPO treaties.

Ensuring the sense of security of copyright holders by preventing unlawful copying through technological protection measures will be an extremely large factor in the distribution of copyright works from now on. Therefore, the devising of steps against the circumvention of technological protection measures is indispensable for the growth of electronic commercial transactions in copyright works.

The measures devised by Japan are similar to those in the DMCA of the United States and in the draft of EU directive, in regulating the distribution and manufacture of circumvention devices and circumvention programs. This is based on the belief that the very appearance on the scene of circumvention devices and programs should not be socially approved. In addition to distribution and manufacture, any other acts to disseminate circumvention devices or programs to the public, including the importation and transmission of such items and provision of circumvention services, are subject to criminal penalties.

Further, the revised law actualizes strong and comprehensive regulation of the circumvention devices and programs. That is to say, circumvention devices and programs subject to the regulations is "having a principal function for circumvention of technological protection measures." In addition to stand-alone items, devices combined with clocks, built in to video decks or in whatever other form are subject to regulation. In other words, there are no loopholes in the revised law, same as DMCA of the United States and the draft of EU directive.

Actually, looking at market conditions since these regulations became effective two months ago on October 1st, it is certain that the regulations have been effective against circumvention devices to macrovision measures and SCMS.

Also, in Japan the legal reform has been carried out so that limitations on rights are not recognized in the case of reproductions for private use made by circumvention technological protection measures. That is, if the right holder employs technological protection measures, now he or she can control reproductions made one by one at home both technologically and legally.

Thus, as set forth above, Japan's regulatory mechanism against the circumvention of technological protection measures is extremely thorough, and will have a great effect on the protection of right holders' rights.

4. Regulation of Changes in Electronic Rights Management Information

Electronic rights management information, which makes possible the automatic dealing of rights, is a technology that is the key to the rapid growth of electronic commercial transactions in copyright works. In Japan as in other places, the management of rights using electronic rights management information has already begun. For example, Japanese animated movies are popular world-wide as you know, rights management information is used in CD-ROMs that compile collections of images from such animated films by means of electronic watermark, so that unauthorized uploading of such images onto the Internet can easily be detected.

The measures that Japan devised for electronic rights management information go a step farther than those provided in the new WIPO treaties. Namely, the WIPO treaties regulate the removal or alteration of already-existing electronic rights management information and the distribution of copyrighted works in which rights management information has been removed or altered, but in Japan, besides that, the addition of false information as electronic rights management information and the distribution of copyrighted works to which false information has been added are also subject to regulation, such acts being deemed as copyright infringement. The extension of regulation even to the addition of false information in this way was thought to be necessary for completely preventing the possibility of using false electronic rights management information, in order to completely ensure the rights of right holders.

With the revision of the law this year, Japan has fully set in place the domestic laws

required for the ratification of the WIPO Copyright Treaty. At present, preparations are advancing for the approval procedures in the Diet necessary for the ratification of the treaties, and it can be foreseen that Japan will ratify it early in the next year.

5. Subjects to be Studied

Keeping in mind steps that correspond with the advancement of electronic commercial transactions, the following kinds of subjects should be examined.

(1) Scope of Liability for ISPs

For the stabilization and promotion of the distribution of copyrighted works through the Internet, the scope of liability of Internet service providers (ISPs) in the event of unlawful actions on the Internet should be examined.

(2) Dealing with System Cashing and the Like

In order to promote electronic commercial transactions in copyrighted works it will be necessary to look into the dealing with system cashing and the like in copyright systems.

(3) Providing for the Rights of Broadcasting Organizations, etc.

In adapting to the Internet era, along with protecting the rights of copyright holders, performers and producers of phonograms it will also be necessary to provide for the rights of broadcasting organizations and others in comparable businesses.

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