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Copyright 2025

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Expert Analysis Chapter

Q&A Chapters

Japan

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1 Copyright Subsistence

1.1 What are the requirements for copyright to subsist in a work?

There is no requirement for copyright to subsist in a work.

1.2 Does your jurisdiction operate an open or closed list of works that can qualify for copyright protection?

Our jurisdiction operates an open list. Any work can qualify for copyright protection.

1.3 In what works can copyright subsist?

Copyright can subsist in any kind of work. A "work" is defined as a creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic or musical domain.

1.4 Are there any works which are excluded from copyright protection?

The following works can qualify for copyright protection: (i) a work by a Japanese national; (ii) a work that is first published in Japan; and (iii) a work which Japan is under the obligation to protect pursuant to an international treaty. On December 8, 2011, in a case where the plaintiffs alleged that the films produced in North Korea fell under (iii) above, the Supreme Court of Japan held that Japan was not obligated to protect works of nationals of North Korea, which Japan did not recognise as a State under the Berne Convention, and therefore that the said films could not qualify for copyright protection.

1.5 Is there a system for registration of copyright and, if so, what is the effect of registration?

There is no general system for registration of copyright. There are several specific rules for registration in relation to copyright. As a general rule, the transfer of a copyright cannot be asserted against a third party unless it is registered. Other than this: (i) the author of the work that has been made public anonymously or pseudonymously may have the author's true name registered to that work. The person whose true name has been registered is presumed to be the author of the work; (ii) the copyright owner or the publisher of an anonymous or pseudonymous work may have the date of first publication or the date first made public registered for that work. If the date of first publication of a work or the date it was first made public is registered, it is presumed that the work was first published or first made public on the registered date; and (iii) the author of a work of computer programming may have the date of creation of the work registered. If the date of creation of a work of computer programming has been registered, it is presumed that the work was created on the registered date.

1.6 What is the duration of copyright protection? Does this vary depending on the type of work?

The copyright subsists for a period of 70 years after the death of the author (or, as for a joint work, the death of the last surviving co-author), except in the following cases: (i) the copyright of an anonymous or pseudonymous work subsists for a period of 70 years after the work is made public (there are some exceptions for this); (ii) the copyright of a work the authorship of which is attributed to a juridical person or other organisation subsists for a period of 70 years after the work is made public (there are some exceptions to this); and (iii) the copyright of a cinematographic work subsists for a period of 70 years after the work is made public. It should be noted that, for the purpose of calculation of the end of the period of copyright protection, the starting point for the calculation should be the year after the year in which the author dies or the work is made public or created (depending on the relevant circumstances).

1.7 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?

There could be an overlap because the protection of copyright and that of other intellectual property rights are based on different concepts. Therefore, a design can be protected both by copyright and a design right.

1.8 Are there any restrictions on the protection for copyright works which are made by an industrial process?

There is no statutory restriction. However, it is generally understood that an "applied art", which means a work of art for practical or industrial use, can be protected only when the part of the work that possesses an aesthetic characteristic for aesthetic appreciation can be separated from the part that is necessary for practical purposes.

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1.9 Would Copyright subsist in a work which is created by a Generative AI tool?

An AI application itself cannot be an author under Japanese copyright law. A person who has created a work using AI can be considered the author of such work if the person has made creative contributions to the work through prompting. It should be noted that inputting prompts containing only ideas that are not considered as creative expressions is not regarded as making a creative contribution. In cases where such person is considered to be an author, copyright subsists in such work.

2 Ownership

2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?

The author of the work would be the first owner of copyright, except in the case of a cinematographic work. If the author of a cinematographic work (there are some exceptions) has promised the producer of the cinematographic work that the author will participate in its production, the copyright to that cinematographic work belongs to the producer of the cinematographic work.

2.2 Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

Generally speaking, where a work is commissioned, the person who makes the work under commission would be the author and the owner of the associated copyright.

2.3 Where a work is computer-generated (whether or not using AI), who is the first owner of copyright?

In general, even when a computer program (not generative AI) is used when a work is created, it is merely used as a tool by a person to express his/her thoughts or sentiments. Thus, when a person who has created a work by making creative expression of his/her thoughts or sentiments using the aid of a computer program, that person is the author and is the first owner of the copyright. When generative AI is used, the person who created the work with the help of AI can be the author and the first owner of the copyright if the person has made creative contributions to the work through prompting. Otherwise, copyright cannot subsist in the AI output so there can be no first owner of copyright".

2.4 Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

Yes, there is a concept of joint ownership. A jointly-owned copyright cannot be exercised without the unanimous consent of the co-owners.

3 Exploitation

3.1 Are there any formalities which apply to the transfer/assignment of ownership?

No, there is no formality requirement. However, the transfer/assignment of ownership cannot be asserted against a third party unless the transfer/assignment is registered. In addition, when a transfer agreement does not specify the right set forth in Article 27 of the Copyright Act (the right of translation, adaptation, *et al.*) and the right set forth in Article 28 of the Copyright Act (the right of the original author in connection with the exploitation of a derivative work) as the subject matter of the transfer, it is presumed that such rights are retained by the transferor. Thus, if the parties intend to transfer the copyright of a work as a whole, they should specify in the transfer agreement that the rights set forth in Articles 27 and 28 of the Copyright Act are included in the rights to be transferred.

3.2 Are there any formalities required for a copyright licence?

No, there is no formality requirement.

3.3 Are there any laws which limit the licence terms parties may agree to (other than as addressed in questions 3.4 to 3.6)?

No, there are no applicable laws.

3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?

As of September 1, 2023, there are 29 organisations that are registered as Copyright Management Business Operators. The types of copyright works managed by the Copyright Management Business Operators are, among others, literary works, musical works, phonograms, works of fine art, diagrammatic works, photographic works, and cinematographic works. For example, the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC) handles copyright management of musical works.

3.5 Where there are collective licensing bodies, how are they regulated?

Collective licensing bodies are regulated by the Act on Copyright Management Business. In summary, "Copyright Management Business" is defined as an act of business to authorise the exploitation of works or otherwise manage copyright under a management consignment contract. A person who intends to operate a Copyright Management Business shall be registered by the Commissioner of the Agency for Cultural Affairs. A Copyright Management Business Operator must prepare the standardised terms and conditions of management consignment contract and report it to the Commissioner of the Agency for Cultural Affairs in advance. A Copyright Management Business Operator must make a public notice of such standardised terms and conditions of a management consignment contract.

3.6 On what grounds can licence terms offered by a collective licensing body be challenged?

A Copyright Management Business Operator must prepare royalty rules and report the rules to the Commissioner of the Agency for Cultural Affairs in advance. A Copyright Management Business Operator must, when intending to prescribe royalty rules, endeavour to hear opinions from users or groups thereof in advance. Further, the Commissioner of the Agency for Cultural Affairs may designate the Copyright Management Business Operator that collects a considerable share of royalty compared with the total amount of royalty collected by all the Copyright Management Business Operators with respect to any of the Exploitation Categories, i.e., categories by classification of works and by distinction of exploitation means, as a Designated Copyright Management Business Operator. When a representative of users requests a Designated Copyright Management Business Operator to discuss the relevant royalty rules, the Designated Copyright Management Business Operator must discuss the relevant royalty rules with the said representative.

4 Owners' Rights

4.1 What acts involving a copyright work are capable of being restricted by the rights holder?

A copyright includes a right of reproduction, a right of stage performance, a right of musical performance, a right of on-screen presentation, a right of transmitting to the public, a right of recitation, a right of exhibition, a right of distribution, a right of transfer, a right to rent out, and a right of adaptation.

4.2 Are there any ancillary rights related to copyright, such as moral rights, and, if so, what do they protect, and can they be waived or assigned?

While copyright is classified as a property right, moral rights are classified as personal rights. Moral rights consist of: (i) the right to make a work public; (ii) the right of attribution; and (iii) the right to integrity. The right to make a work public is the right to make a work not yet made public available or present to the public. The right of attribution is the right to decide whether to use the author's true name or pseudonym to indicate the name of the author on the original work or in connection with the work at the time it is made available or presented to the public, or to decide that the author's name will not be indicated in connection with that work. The right to integrity is the right to preserve the integrity of the work and its title. Moral rights cannot be assigned. Instead of a waiver of moral rights, ancillary agreements not to exercise moral rights are commonly used and it is generally understood that such agreements are valid. Other than such moral rights, performers, producers of phonograms, broadcasters and cablecasters have specific rights, which are called neighbouring rights. The neighbouring rights of a performer include, among others, the exclusive right to record the sound and visuals of the performer's performance and the exclusive right to make the performer's performance available for transmission. Neighbouring rights can be waived or assigned.

4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

The right of transfer cannot be exercised against the original work or copies that have been transferred to the public by the person that owns the right of transfer or a person authorised thereby. This only means that the original work or copies that have been transferred to the public by the owner of the right of transfer or a person authorised thereby can be transferred to a third party without the consent of such owner of the right, and it does not mean that a person who possesses such original work or copies thereof can reproduce the work without the consent of the owner of the right.

5 Copyright Enforcement

5.1 Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

No, there are no applicable statutory enforcement agencies.

5.2 Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

An exclusive licensee may be able to bring a claim for infringement of the copyright in certain situations.

5.3 Can an action be brought against 'secondary' infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

A person who abetted or aided the infringer is deemed to be a joint tortfeasor and should be liable to the compensation of damages incurred by the infringement jointly with the infringer. The Copyright Act provides that some specific acts fall under a deemed infringement, but other than such specific acts, an act that aids the infringement, such as sale of equipment that makes the purchaser easily infringe the copyright, does not constitute copyright infringement and is not subject to injunction.

5.4 Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

There are general exceptions and specific exceptions that can be relied upon as a defence. General exceptions are as follows: in summary, (i) a work can be exploited in such a manner that humans cannot perceive the content of the work, (ii) a work can be exploited as an ancillary or supplementary exploitation to exploitation of the work on a computer, and (iii) a work can be exploited to a minor extent incidentally to services that contribute to facilitating the exploitation of a work through computerised data processing. Examples of specific exceptions are as follows: (i) a work can be reproduced for personal use; (ii) a work can be exploited by way of quotation in accordance with fair practices and to the justifiable extent for the purpose of the quotation; and (iii) a work can be printed in an authorised textbook for public education.

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5.5 Are interim or permanent injunctions available?

In regular litigation proceedings, when the court finds that the copyright is infringed, the court will grant a permanent injunction. A copyright owner may file a request for a preliminary injunction as a separate proceeding from a regular litigation.

5.6 On what basis are damages or an account of profits calculated?

A copyright owner can obtain compensation of damages at the amount of (i) the profit per product that the copyright owner could have earned from the sale of the copyright owner's products multiplied by the number of the products sold by the infringer, (ii) the profit gained by the infringer from the activity of infringement, or (iii) a reasonable royalty. A copyright owner can choose a calculation method that he/she likes, or can claim the greatest amount among the amounts obtained from multiple calculation methods.

5.7 What are the typical costs of infringement proceedings and how long do they take?

It largely depends on the volume of infringed work and the number of the disputed legal issues, but the typical attorneys' fees for infringement proceeding would be around JPY 7–14 million. The filing fee to be paid to the court depends on the amount or the value of the claim. When the amount of the claim is JPY 100 million, the filing fee to be paid to the court for the first instance is JPY 320,000. It will take 12–20 months from the date of filing until the judgment at first instance is rendered.

5.8 Is there a right of appeal from a first instance judgment and, if so, what are the grounds on which an appeal may be brought?

Yes, any party who loses in the first instance has a right of appeal. An appeal may be brought on the grounds that, for the plaintiff, some of the claims are dismissed, and for the defendant, some of the claims are granted.

5.9 What is the period in which an action must be commenced?

When there is copyright infringement, the copyright owner can commence an action to seek injunction. A right to compensation in damages is extinguished three years from the time the copyright owner becomes aware of the damage and the infringer. Thus, a copyright owner cannot get compensation for damages that occurred before three years prior to the commencement of the litigation.

6 Criminal Offences

6.1 Are there any criminal offences relating to copyright infringement?

Yes, intentional copyright infringement constitutes a criminal offence.

6.2 What is the threshold for criminal liability and what are the potential sanctions?

Any copyright infringement is subject to a criminal penalty. Prosecutors have discretion to decide whether to bring a case to the criminal courts. A person who infringes a copyright is subject to imprisonment for a term of up to 10 years, a fine of up to JPY 10,000,000, or both.

7 Current Developments

7.1 Have there been, or are there anticipated, any significant legislative changes or case law developments?

On June 12, 2020, the Copyright Act was amended and the key portions of the amendment came into force on October 1, 2020 or on January 1, 2021. The first key portion relates to the provisions to deal with so-called "leech websites", which provide users with hyperlinks to a large amount of pirated materials, especially comics. Such acts do not constitute copyright infringement under the pre-amendment Copyright Act and are not subject to injunction or criminal penalty. The amended Copyright Act provides that an act of providing a hyperlink by such "leech websites" constitutes copyright infringement so long as such "leech websites" particularly induce the public to pirated materials or are primarily used for the purpose of exploiting pirated materials by the public. Thus, such act is subject to injunction and criminal penalty. In addition, the act of operating such "leech websites" and the act of the provision of computer programs having a similar function to that of such "leech websites" constitute a criminal offence under the amended Copyright Act. This amendment came into force on October 1, 2020. The second key portion is the provisions to prohibit downloading a work that was illegally uploaded knowing that such work was illegally uploaded. Before the amendment, only the act of downloading an audio-recording or video-recording was subject to the provision. The amendment broadens the subject matter of the work to be protected. Such act is subject to injunction and liability to compensate damages. Such act is also subject to criminal penalty if a person continuously or repeatedly conducts such act. This amendment came into force on January 1, 2021. The third key portion is the provisions to deal with the protection of licence in the case where copyright is transferred. Before the amendment, the licence is just a contractual relationship between the copyright owner and the licensee, the licence is not effective against the transferee of the copyright. The amendment enables the licensee to exploit the work even when a copyright is transferred. This amendment came into force on October 1, 2020. Further, on July 21, 2020, in a case where a photographer sought disclosure of the information of a Twitter user who retweeted a tweet of another Twitter user who used the photograph of the said photographer as the profile image without authorisation on the grounds that the user who retweeted the photograph infringed the right of attribution because the photograph originally indicated the name of the photographer but it was trimmed by retweeting so that the name of the photographer was cut off, the Supreme Court of Japan held that the right of attribution was infringed by the act of the retweet.

On June 2, 2021, the Copyright Act was further amended. Such amendment is relatively minor and makes it easier to distribute broadcast programs online at the same time as the programs are broadcast or within a week from the time of the

broadcast. For example, under the Copyright Act before such amendment comes into force, when a work is exploited in a broadcast program, the broadcaster is required to obtain both a licence for broadcasting and a licence for online distribution from the copyright owner of the work, however, after this amendment, the copyright owner who has granted a licence for broadcasting is presumed to have also granted a licence for online distribution. This amendment came into force on January 1, 2022.

On October 24, 2022, the Supreme Court of Japan rendered a judgment on a case where music school operators had filed a declaratory judgment action against the largest collective licensing body, the Japanese Society for Rights of Authors, Composers and Publishers (the "JASRAC"), seeking a judgment declaring that the said music school operators were not obligated to make compensation for damages on the grounds that they had (allegedly) infringed on the copyright related to musical works managed by the JASRAC. In this case, the JASRAC argued that the music school operators had infringed on the copyright of the musical works; in this regard, the infringing conduct was not only (i) the performance by the teachers, but also (ii) the performance by the students. Further, the JASRAC argued that the performance of musical works by the students during the lesson should be deemed to be a performance by the music school operators, in accordance with the "karaoke doctrine", which deems a vocal performance by customers in a bar to be a performance by the bar operator. Consequently, the main issue adjudicated by the Supreme Court was whether the performance of musical works by the students during the lesson should be deemed to be a performance by the music school operators. In this regard, the Supreme Court of Japan ruled that a performance of musical works by students in a lesson should not be deemed to be a performance by music school operators. However, it should be noted that, unless the music school operators have obtained the relevant licence, a performance of musical works by them would be considered an infringement of the copyright related to musical works.

7.2 Are there any particularly noteworthy issues around the application and enforcement of copyright in relation to digital content (for example, when a work is deemed to be made available to the public online, hyperlinking, in NFTs or the metaverse, etc.)?

In relation to NFTs, it is important to be aware that NFTs have nothing to do with copyright, and regardless of what is written in the terms and conditions of NFT trading markets, a legal relationship with any third party is not bound by such terms and conditions.

In relation to the metaverse, the determination of the governing law will be a big issue. However, no one has established a conclusive answer on this issue at this point in time.

7.3 Have there been any decisions or changes of law regarding the interaction between copyright law and the creation and deployment of artificial intelligence systems? In particular, please reference any pending (or decided) disputes where copyright owners have challenged AI developers in relation to the use of works in the development of AI tools.

The 2018 amendment of the Copyright Act dealt with the use of artificial intelligence. As explained in the answer to question 5.4 above, a work can be exploited in such a manner that humans cannot perceive the content of the work. Under Article 30-4 of the Copyright Act after the 2018 amendment, a work may be exploited in any way and to the extent considered necessary, in cases where it is not the purpose of the exploiter to personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in that work (the "Non-Enjoyment Purpose Requirement"). However, this exception does not apply if the act would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work or the circumstances of the exploitation (the "Article 30-4 Proviso"). Whether Article 30-4 defence applies to the exploitation of a work for use in data analysis for training generative AI is widely discussed. With respect to whether the exploitation of a work for use in data analysis for training generative AI meets the "Non-Enjoyment Purpose Requirement, it should be noted that the Non-Enjoyment Purpose Requirement is not satisfied (i.e., it can constitute copyright infringement) when the purpose of enjoyment and the purpose of non-enjoyment co-exist. In this regard, a report titled "Perspectives Regarding AI and Copyright" dated March 15, 2024 (the "Report") published by the Legal System Subcommittee of the Copyright Subdivision of the Cultural Council, a body established under the Agency for Cultural Affairs, provides examples of cases in which the purposes of enjoyment and non-enjoyment are deemed to co-exist: where (i) a work is reproduced in order to perform additional training to intentionally output all or part of the creative expression of the copyrighted work contained in the training data as it is, for example, when an AI developer or AI service provider intentionally overfits a model, and (ii) a database with the contents of works converted into a vector is created for the purpose of outputting all or part of the creative expression of copyrighted works contained in an existing database or data posted on the Internet. With respect to the Article 30-4 Proviso, whether the interests of the copyright owner would be unreasonably prejudiced is determined by considering whether the subject act(s) conflict with the market for the use of the copyrighted works of the copyright owner or whether the act(s) will hinder potential future sales channels for the copyrighted works. The Report states that the reproduction of database works for the purpose of data analysis will be deemed to unreasonably prejudice the interests of the copyright owner if the database works include a large amount of information organised in such a way that it may be easily used for data analysis and is on sale. At present, there is no reported dispute where issues related to AI and copyright are discussed.

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- Ownership
- Exploitation
- Owners' Rights
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