

# ALAI Congress 2017 in Copenhagen

## Copyright, to be or not to be

---

Questionnaire *ALAI Japan*

### **The traditional justifications for copyright and related rights**

In your country, which justifications for copyright have been presented in connection with your national legislation, for example in the preamble of the Statute or in its explanatory remarks or similar official documents?

[Answer]

Article 1 of the present Copyright Act indicates as follows: The purpose of this Act 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.

After breaking away from so-called privilege system controlled by the government, in 1899 Japan adopted the Copyright Act and acceded to the Berne Convention. In the final year of 1800, Japan, in keeping with the Berne Convention, established the modern Copyright system. After that, in 1970, going along with new developments of technologies and legislations in other developed countries, we adopted the newly revised Copyright Act, which has been indeed bit by bit revised, but is the present Act.

Basically the 1970 Act belongs to the author's right legislation combined with Continental approach, but this Act has a few uniquely different provisions from European legal tradition. For instance, authorship of a work created by an employee in the course of employment shall be attributed to the legal person or other employer(Art.15). That provision came from a traditional entrepreneurial spirit of the lifetime employment in Japan, which is quite

different from European Continental philosophy and simultaneously different from works made for hire in the United States.

Are there any similar justifications for related rights? Are the arguments the same as for copyright in literary and artistic works or are there different or additional justifications?

[Answer]

Our neighboring system was already introduced into the 1970 Act without joining the Rome Convention of 1961, to which Japan acceded in 1989. Our neighboring rights system covers rights of performance, phonogram, broadcast and wire diffusion, which are protected, without any formality, respectively, when the performance took place, for performances, when the first fixation of sounds was made, for phonograms, when the broadcasting took place, for broadcasts and when the wire diffusion took place, for wire diffusions.

Differently from authors' right, the owner of neighboring rights is not always looking after common interests. In particular between performers and the owners of other neighboring rights such as broadcasting organization there might be occasionally a conflict of interests..

Is it possible with any certainty to trace the impact of such justifications in the provisions of the law, or is their influence more on a general (philosophical) level?

[Answer]

Article 2 of the Act defines, "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, and "author" means a person who creates a work. As indicated above, the Act is on the assumption that the creator stands at the beginning point, and not the producer of phonogram, broadcasting organization etc. The only exception is legal person or other employer, as indicated above, in the course of employment.

According to Article 17 of the Act, the author shall have author's personality rights(moral rights) and copyright(economic right). Those rights shall not be subject to any formality.

Moreover, the performer shall have not only economic rights, but also moral rights(Article 90bis).

Are there similar, or different or supplementary justifications for copyright and related rights expressed in the legal literature?

[Answer]

From Industry and some scholars put emphasis on economic aspect of copyright system and hence their opinion tends to strengthen the limitation and exception of copyright. Such user oriented tendency is inevitably apt to look down on authors' moral rights.

In respect of neighboring rights there are a few opinions that performers hold a unique position different from other neighboring rights holders. They focus their attention on performers', natural persons' creativity.

## **Economic aspects of copyright and related rights**

Has there in your country been conducted research on the economic size of the copyright-based industries? If yes, please summarize the results.

[Answer]

Every four or five years since 2001, Japan Copyright Institute attached to Copyright Research and Information Center has published "Copyright White Paper—A view from the perspective of copyright industries—" According to the latest edition, October 2013, the total value added by Japan's copyright industry reached, in 2010, 18.01 billion Euros(in American way 18.01 trillion Euros), representing 4.1% of Gross Domestic Product(GDP). The industry's share in the national economy has grown over the last decade by 0.7

percentage points and its market size positions the copyright industry as a pillar of economic activity.<sup>1</sup>

Has the research been conducted in accordance with a generally accepted and described methodology in order to make it comparable to similar research abroad?

[Answer]

For statistics and data we have used two methodologies; JCI (Japan Copyright Institute)-Classification and WIPO-Classification. Between those methodologies classified industries are different. Compared with JCI-Classification, WIPO-Classification does not include “Transmission”, “Entertainment facilities”, “Design”, “Architecture” and “Art Museums”, which are indicated as follows.

Scale of JCI-classified industries not included in WIPO-classified core copyright industries (FY2010)<sup>2</sup>  
(Euro billion)

Industry	Value of products	Total value added
Transmission	2.33	0.75
Entertainment	0.95	0.35
Design	0.48	0.36
Architecture	0.54	0.33
Libraries and Museums	0.02	0.01
<b>Total</b>	<b>4.32</b>	<b>1.80</b>

(Market prices, in calendar year 2005)

<sup>1</sup> Copyright White Paper – A view from the perspective of copyright industries (Vol.4)

October 2013, p.12

<sup>2</sup> The White Paper indicated above, p.203, the following 3 figures, p.202~204

Changes in WIPO-classified core copyright industries (total value added)

(Euro billion)

	2001	2007	2010	Annual Average Growth
WIPO-classified	12.02	15.45	16.21	3.4%
GDP	399.88	436.93	437.63	1.0%
GDP share	3.0%	3.5%	3.7%	

(Market prices, in calendar year 2005)

Source: GDP, “Annual Report on National Income” (Economic and Social Research Institute, Cabinet Office, Government of Japan) (fixed for FY2012)

Has there been any empirical research in your country showing who benefits economically from copyright and related rights protection? If yes, please summarize the results and the methodology used.

[Answer]

Scale of WIPO-classified core copyright industry (FY2010)

(Euro billion)

	Value of production	Total value added		
		Value	Share	
1	Press and Literature	5.01	1.29	7.9%
2	Music, Theatrical Productions, and Opera	0.64	0.16	1.0%
3	Motion Pictures and Videos	0.93	0.44	2.7%
4	Radio and Television	2.87	1.15	7.1%
5	Photography	0.27	0.17	1.1%
6	Software and Databases	24.70	12.28	75.7%
7	Advertising Services	3.070	0.71	4.4%
8	Copyright Collective Management Societies	0.02	0.09	0.0%
WIPO-classified core copyright industries		37.513	16.21	100.0%

(Market prices, in calendar year 2005)

Changes in WIPO-classified core copyright industries (total value added)

(Euro billion)

		2001	2010	Value added increase	Value added increase component rate
1	Press and Literature	1.49	1.29	-0.21	-5.0%
2	Music, Theatrical Productions, and Opera	0.22	0.16	-0.06	-1.3%
3	Motion Pictures and Videos	0.36	0.44	0.08	1.9%
4	Radio and Television	1.05	1.15	0.10	2.3%
5	Photography	0.26	0.17	-0.09	-2.1%
6	Software and Databases	8.12	12.28	4.16	99.1%
7	Advertising Services	0.50	0.71	0.21	5.0%
8	Copyright Collective Management Societies	0.01	0.01	-0.00	0.0%
WIPO-classified copyright		12.01	16.21	4.20	100.0%

(Market prices, in calendar year 2005)

Analyzing industry-wise growth in the copyright industry reveals that nearly all growth (99.1%) is derived from “Software and Databases,” followed by “Advertising Services” (5.0%) and “Radio and Television” (2.3%) of total growth.<sup>3</sup>

---

<sup>3</sup> The White Paper, p.204

## **Individual and collective licensing as a means of improving the functioning and acceptance of copyright and related rights**

Is there a wide-spread culture of collective management of copyright and related rights in your country, or is it limited to the 'core' areas of musical performing rights and reprography rights? Please describe the areas where collective management is used.

[Answer]

In Japan a culture of collective management of copyright and neighboring rights has been gradually spread. The Act on Intermediary Business concerning Copyright remained in force for a long time since 1934. Generally such an intermediary business had been strictly regulated by the Act. Under the Act , JASRAC had been active for the domestic members as well as the members of sister societies around the world. On the other hand, the Act on Management Business of Copyright and Neighboring Rights of 2000 drastically eased restrictions on establishment of collective management society.

Are there legislative provisions in your national law aiming at facilitating the management of copyright and related rights? If yes, please summarize.

[Answer]

As indicated above, the Act on Management Business of Copyright and Neighboring Rights had opened the door to management business of various kinds of rights including neighboring rights. Even a profit-making company has been able to do such management business.

Which models for limitations and exceptions have been implemented in your national law? Such as free use, statutory licensing, compulsory licensing, obligatory collective management, extended collective management, other models? Please provide a general overview.

[Answer]

We would indicate only a general view.

Provisions (Articles 18 to 20, 90bis., 90ter.) on moral rights of authors and performers include limitation or exception. Regarding limitations on copyright, there are many provisions (Articles 30 to 50). Moreover we can indicate exploitation of works under compulsory license (Articles 67 to 70), limitations on the right of publication (Article 86), limitations on the neighboring rights (Article 102) and compensation for private recording (Article 104 to 104decies.).

The principle of 3-Step-Test is present as an undercurrent of our legislation, but

I must say a few words, the importance of this principle has not yet been fully recognized in our country.