



TERRALEX®

# CROSS-BORDER COPYRIGHT GUIDE 2018



# Japan

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## 1. Legislation and regulation

### 1.1 What are the main sources of copyright law?

Copyright law in Japan is governed by the Copyright Act (Act No. 48 of 6 May 1979 as amended). In 1899, Japan joined the Berne Convention. The Copyright Act (Act No. 39 of 1899) [the Old Copyright Act] was enacted.

## 2. Subsistence of copyright

### 2.1 What type of works can be protected by copyright?

“A production in which thoughts or sentiments are creatively expressed and which falls within the literary, academic, artistic or musical domain” is the definition for copyrightable work. This excludes simple data, ideas, imitations or industrial products. In addition, the Copyright Act provides a non-exhaustive list of significant examples of copyrightable works:

- novels, scenarios, articles, lectures and other literary works
- musical works
- works of choreography and pantomime
- paintings, woodblock prints, sculptures and other works of fine art
- works of architecture
- maps and other diagrammatic works of an academic nature, such as plans, charts and models
- cinematographic works
- photographic works
- works of computer programming.

## 2.2 What is required for works to qualify for copyright protection?

To be protected as a copyright work, in addition to satisfying the definition of copyrightable work set forth above in 2.1, it is necessary for work to fall into one of the following categories (but this does not require any specific registration or procedure):

- (i) a work by a Japanese national (including a corporation established based on Japanese law or regulations or a corporation with a principal office in Japan; the same applies hereinafter)
- (ii) a work that is first published in Japan (including one first published abroad and published in Japan within 30 days from the date of its first publication) or
- (iii) a work other than one set forth in the preceding two items, which Japan is under an obligation to protect pursuant to an international treaty.

The international treaties as provided in (iii) above now comprise the Berne Convention, the Universal Copyright Convention, WIPO Copyright Treaty and TRIPs Protocol. Under the coverage of such international treaties, a foreign national who is not a Japanese citizen can enjoy copyright protection in Japan.

## 2.3 What rights does copyright grant to the rights holder?

The following are copyrights as property rights under the Copyright Act. These rights should be protected in any copyright works, either in analogue or digital form.

- right of reproduction
- stage performance rights and musical performance rights
- right of on-screen presentation
- right to transmit to the public
- right to publicly communicate the work being transmitted to the public through a receiver
- recitation rights
- exhibition rights
- right of transfer
- right to rent out
- distribution rights
- rights of producing derivative works
- rights of using derivative works

## 2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

Yes. Moral rights include the following:

- right to make a work public
- right of attribution
- right to integrity.

## 2.5 What is the duration of copyright for protected works?

The duration of copyright begins at the time the work is created. A copyright subsists for a period of 50 years after the death of the author (or the death of the last surviving co-author, for a joint work).

The copyright to an anonymous or pseudonymous work is protected for a period of 50 years after the work is released to the public. Copyright in a work whose authorship is attributed to a corporation or other organisation exists for a period of 50 years after the work is released to the public. The copyright to a cinematographic work survives for 70 years after the work is made public.

These durations equally apply to foreigners' copyright works under the principle of National Treatment as provided by the Berne Convention and the Universal Copyright Convention. However, some exceptions of extension exist due to wartime, the duration of translation rights and reciprocity, etc.

## 2.6 For how long do moral rights subsist in copyright works?

A moral right exists for the lifetime of an author. In addition, even after the death of the author, it is prohibited for a person who offers or presents the author's work to the public to engage in conduct that would be prejudicial to the moral rights of the author if the author were still alive.

## 3. Ownership

### 3.1 Who is the first owner of a copyright work?

The first owner of a copyright work is usually the first person who actually created the work. Therefore, if someone asks for such creation of a work from another party, the other party (ie the party actually doing the creating) must become the first owner of a created copyrightable work even though they can obtain monetary consideration for their creation. Therefore, it is necessary for the party who placed the order of creation to specifically clarify the transfer of the ownership in contractual terms if they would like to retain the ownership of the copyrightable work, rather than it being automatically granted to the creator. An exception can be found in copyrightable works which are made under an employment relationship supervised by the appropriate direction and guidance of an employer.

### 3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

There are two types of joint ownership of a copyright. In the first, in a work created by two or more persons whose contributions to the work cannot be separated so as to allow each part of the work to be used independently, the copyright is jointly owned by such persons. In this case, the copyright work itself is considered as the joint work. Therefore, the joint owners mandatorily own all copyrights, including moral rights, and must enforce such copyrights by their unanimous consent.

In the second, the ownership of copyright can be partly assigned by contract and jointly succeeded by the inheritance of individuals/merger of organisations. The content of joint ownership by contract and the inheritance of individuals/merger of organisations depends on the contractual terms and conditions and/or other terms of inheritance/merger.

### 3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

Yes. The following (in the table below) can be registered to the Copyright Registry as provided by the Cultural Affairs Bureau as an affiliate agency of the Ministry of Culture, Sports, Science and Technology (MEXT). This Copyright Registry aims to encourage the public notification of copyright transactions and transfer of ownership by public recognition. Any application for copyright registration as set forth below assumes that the copyright work was already placed in the public and dealt with in

the transfer referred to, etc except for copyrights of computer programs.

<b>Types of registration</b>
Registration of true names
<b>Benefits</b>
A person whose true name has been registered is presumed to be the author of the work to which the registration pertains.
<b>Types of registration</b>
Registration of the date of first publication, etc
<b>Benefits</b>
A work whose date of first publication or date first made public is registered is presumed to have been first published or first made public on the registered date.
<b>Types of registration</b>
Registration of the date of creation
<b>Benefits</b>
A work of computer programming that has been registered is presumed to have been created on the registered date.
<b>Types of registration</b>
Registration of transfer, etc of copyright & neighbouring rights of copyright
Registration of establishing a pledge on copyright & neighbouring rights of copyright
<b>Benefits</b>
Secured effects of such transactions against third parties.
<b>Types of registration</b>
Registration of establishment, transfer, etc of the right of publication
Registration of establishing a pledge on the right of publication
<b>Benefits</b>
Secured effects of such transactions against third parties.

## 4. Infringement

### 3.4 What steps should you take to validly transfer, assign or license copyright?

No formality is required to transfer, assign or license if this is done by contractual terms and conditions between the copyright owner/rights holders and transferee/assignee/licensee, etc. The contract can be made not only in writing but also verbally under the Civil Code. However, in reality, most business persons execute a written contract as evidence of an agreement in the usual course of business. Payment and non-payment of such transactions also depends on the terms and conditions of the contract. Registration as mentioned above is not required but protects the secured effect of transfer, assignment, licensing etc against third parties.

### 3.5 Can moral rights be transferred, assigned or licensed?

No. Moral rights of copyright are not assignable.

### 4.1 What acts constitute direct infringement of copyright?

If a suspicious work is created i) by relying upon another copyright work and ii) shows similar expression to the copyright work and iii) is not authorised to utilise such expression in the suspicious work, it is a direct infringement of copyright.

Reliance on another copyright work means that the suspicious work is based on that copyright work. There is no infringement if a similar expression to a copyright work is coincidentally found, without any access to that copyright work.

Similarity of expression should be an identical or similar expression to another's copyright work.

'To utilise' means each type of conduct which needs to have authorisation by the copyright owner/rights holder as provided and specified by the Copyright Act. For example, reproduction, public play and performance, public view, public transmission, broadcasting of TV/radio programmes, streaming or on-demand on the internet, adaptation and arrangement, translation, movie making, transfer and rental to the public, utilising a derivative work, etc.

### 4.2 What acts constitute indirect infringement of copyright?

The following do not create a direct infringement but are considered an 'infringement' by the Copyright Act. These are so-called 'indirect infringements'.

- the importation, for the purpose of distribution in Japan, of an object that is made through an act that, were the object to be made in Japan at the time of its import, would constitute an infringement of the moral rights of the author, the copyright, the print rights, the moral rights of the performer, or the neighbouring rights
- the distribution, possession for the purpose of distribution, offering for distribution, exportation in the course of trade, or possession for the purpose of exportation in the course of trade, of an object made through an act that infringes the moral rights of the author, the copyright, the print rights, or the neighbouring rights (including an object imported as referred to in the preceding item), with knowledge of such infringement
- the use of a copy made through an act that infringes the copyright to a work of computer programming on a computer in the course of business is deemed to constitute an infringement of the copyright, but only if the person using such copy had knowledge of such

infringement at the time that the person acquired the title to use the copy

- the intentional addition of false information as rights management information
- the intentional removal or alteration of rights management information
- the distribution, importation, or possession for the purpose of distribution, of copies of a work or performance, etc with the knowledge that an act referred to in one of the preceding two items has been carried out on such work or performance, etc; or the transmission to the public or making available for transmission of such work or performance, etc with knowledge of such an act
- the import, distribution, or possession of commercial-use music CDs, which are identical to music CDs of others already placed in the local market, with an awareness of the statutory prohibition against such conduct
- the exploitation of a work in a way that is prejudicial to the honour or reputation of the author is deemed to constitute an infringement of the author's moral rights.

#### 4.3 What acts are permitted with respect to copyright works (ie what exceptions apply)?

Use
Private use, etc
Conditions
Reproduction for private use, reproduction or adaptation of a minor shot object in photos, etc
Use
Education
Conditions
Reproduction or transmission to the public in schools and other educational institutions, reproduction as examination questions, printing of works in textbooks, etc
Use
Reproduction in libraries or museums etc
Conditions
Reproduction in libraries, production of electronic records of materials of the National Diet Library, etc

Use
Welfare works
Conditions
Reproduction in Braille for persons with visual impairments, reproduction of a visual work with the aural sounds for persons with hearing impairments, etc
Use
Press reports
Conditions
Exploitation for the purpose of reporting events in the news, exploitation for disclosure pursuant to the Act on Access to Administrative Organs' Information, etc
Use
Legislative, judicial or administrative organs
Conditions
Reproduction of a work for internal use of a legislative, judicial or administrative organ, etc
Use
Stage performances for non-commercial purposes
Conditions
Stage performances, musical performances, on-screen presentations, or recitations etc for non-commercial purposes and without charging fees.
Use
Quotations or printing
Conditions
Quotations in a manner consistent with fair practices, reprinting of public relations materials, etc
Use
Artistic, photographic or architectural works
Conditions
Exhibition of an artistic work by the owner of the original, exploitation of an artistic work which is permanently installed in an outdoor location, etc
Use
Computers or networks

Conditions
Reproduction by the owner of a copy of a work of computer programming, temporary reproduction for the purpose of maintenance or repair, reproduction for the prevention of difficulty in transmission, etc
Use
Broadcasting stations or cable outlets
Conditions
Making an ephemeral sound or visual recording of a work by a broadcasting station or a cable outlet for its own broadcasts

#### 4.4 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

The act of providing a hyperlink does not constitute any infringement of copyright under normal conditions. On the other hand, the act of framing has the potential to infringe the rights of reproduction, the adaptation rights, or the moral rights of authors.

#### 4.5 Is a licensee of copyright able to bring an infringement action?

Generally, no. A licensee of copyright has no right to take an injunction against the infringer. However, it is possible for a copyright licensee to be able to claim damages under tort on his/her rights endorsed by the licence contract.

## 5. Remedies

### 5.1 What remedies are available against a copyright infringer?

Civil remedies, damages, injunctions, measures against unjust enrichment and rebuilding social trust are available under the Copyright Act and the Civil Code. Based on these, the copyright owner/rights holder can file a civil law suit and a preliminary injunction at the court.

Criminal punishments are also available according to the Copyright Act. Please see 5.3 below.

As a form of alternative dispute resolution, the Cultural Affairs Bureau of the Ministry of Education, Sports & Science provides a dispute resolution mediation procedure, while the Japan Intellectual Property Arbitration Centre also provides arbitration and mediation rules and procedures.

### 5.2 Are there any specific remedies for online copyright infringement?

No. There are no specific or special remedies under the Copyright Act regarding online copyright infringement aside from the general remedies as set forth in 5.1. However, a copyright owner/rights holder can urge an internet service provider (ISP) to review and take down an infringer's website that is committing copyright infringement.

### 5.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

These criminal punishments apply only to intentional conduct. Unintentional conduct is not subject to criminal penalties. Some require a private complaint by the copyright owner/rights holder.

Criminal Act
A person or a corporation that infringes a copyright, print rights, or neighbouring rights. (119 I)
Penalty
Imprisonment for a term of up to 10 years, a fine of up to ¥10 million, or both. (A fine of up to ¥300 million in the case of a corporation.)
Criminal Act
<ul style="list-style-type: none"> <li>A person who infringes the moral rights of an author or the moral rights of a performer. (119 II ①)</li> <li>A person who, for commercial purposes, sets up an automated duplicator for use by the public and causes it to be used to reproduce a music CD, etc (which constitutes an infringement of a copyright, etc.)</li> </ul>

<b>Penalty</b>
Imprisonment for a term of up to 5 years, a fine of up to ¥5 million, or both.
<b>Criminal Act</b>
A person or a corporation that imports products infringing a copyright, etc for the purpose of distribution in Japan, that distributes such products with knowledge of such infringement; that possesses such products for the purpose of distribution, that exports such products in the course of trade or that possesses such products for the purpose of exportation. (119 II③)
A person or a corporation that uses a copy of a work of computer programming on a computer. (119④)
<b>Penalty</b>
Imprisonment for a term of up to 5 years, a fine of up to ¥5 million, or both. (A fine of up to ¥300 million in the case of a corporation.)
<b>Criminal Act</b>
A person or a corporation that infringes the moral rights after the death of authors or performers. (120)
<b>Penalty</b>
A fine of up to ¥5 million. (A fine of up to ¥300 million in the case of a corporation.)
<b>Criminal Act</b>
A person who distributes, manufactures, imports or possesses a device or a computer program whose principal function is to circumvent technological protection measures of works, or who uploads such computer program onto the net. (120-2①)
A person who circumvents technological protection measures, etc in the course of trade. (120-2②)
A person who engages in an action that is deemed to constitute infringement of copyrights, etc for commercial purposes. (120-2③④)
<b>Penalty</b>
Imprisonment for a term of up to 3 years, a fine of up to ¥3 million, or both.
<b>Criminal Act</b>
A person who downloads a work delivered illegally for the purpose of private use. (119II③)

<b>Penalty</b>
Imprisonment for a term of up to 2 years, a fine of up to ¥2 million, or both.
<b>Criminal Act</b>
A person who distributes copies of a work that use the fake name of the author. (121)
A person who reproduces or distributes a commercial phonogram produced from a master. (121-2)
<b>Penalty</b>
Imprisonment for a term of up to 1 year, a fine of up to ¥1 million, or both.

#### 5.4 Is there a time limit for bringing a copyright infringement claim?

A damages claim shall expire in accordance with the statute of limitations if it is not exercised within three years from the time of acknowledgment of the infringing conduct and the infringer, or within 20 years from the time of the infringing conduct. A claim for unjust enrichment shall expire in accordance with the statute of limitations if it is not exercised within 10 years from the time of the infringing conduct. There is no provision regarding injunction claims.

#### 5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

According to the majority view of the Copyright Act and the Civil Code, there is no specific provision for the recovery of legal costs incurred. Only a small amount of attorney fees can be recovered if they are considered as part of the damages arising from the infringer's intentional conduct.

## 6. Enforcement

### 6.1 What courts can you bring a copyright infringement action in, and what monetary thresholds, if any, apply?

Any district courts at a trial level can be the venue of copyright infringement if the court has proper regional and subject jurisdiction under the Civil Procedure Code. If the amount of a claim is ¥1.4 million or less, the case should be filed to a summary court. The appealed case is brought to the Intellectual Property High Court (IP H. Ct.), which is an appellate court specialising in intellectual property.

### 6.2 Are there any other ways in which you can enforce copyright?

As set forth above in 5.1, if the parties of a dispute agree, mediation and arbitration procedures are available via the Cultural Affairs Bureau and Japan Intellectual Property Arbitration Centre.

### 6.3 What agency bodies are responsible for promoting and/or enforcing copyright? What do they do?

As mentioned above in 6.1 and 6.2, the court is the primary agency of the government responsible for promoting/enforcing copyright, except for a few alternative dispute resolutions offered by the Cultural Affairs Bureau and the Japan Intellectual Property Arbitration Centre. The Cultural Affairs Bureau, as an affiliate agency of the Ministry of Education, Sports & Science, is in charge of copyright registry and other promotional government activities relating to copyright protection. The Bureau as an administrative agency is also handling a legislation bill and international treaty matters regarding copyrights.

### 6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

JASRAC is the most well-known collective rights management agency for the authors/copyright owners of sound recordings, media and musical works. It represents the sound recording industry, composers, lyricists, arrangers and novelists.

APG-Japan is the collective rights management agency for artistic works, photography and graphical art. Its members include artists, photographers and graphic designers.

In addition to these conventional major agencies, NexTone (formerly JRC and E-License) is on the rise as a leading agency for all types of digital content on TV, the internet, CDs and DVDs, including movies, karaoke sound, etc.

### 6.5 Are copyright levies payable? By whom, and in what circumstances?

A copyright levy is adopted for digital recording media and machines of video and sound contents under the Copyright Act. The levy applies to each type of media and machines of mainly analogue technology including DAT, MD, CD-R, DVD-RW, DVD-R, DVD-RAM and Blu-ray disc. The manufacturer of the machine is obliged to pay the levy to the collective rights management agency depending on the nature of the technology.

This means that no digital media and machines fall within the subjects under the Act and this was confirmed by court precedents of the Intellectual Property High Court and the Supreme Court. Therefore, any sound and video recording from one type of digital media to another type of digital media is beyond the scope of this levy system. With the recent boom in the digital media and machines market, this system no longer works and is suspended in de facto situations while SARAH, which was designated as a collective agency, has been dissolved. As of 2017, the system is under serious discussion regarding its reform or abolishment at the governmental council for copyright policy hosted by the Cultural Affairs Bureau.

## 7. Copyright reform

### 7.1 What do you consider to be the top recent copyright developments?

The amendment of the Copyright Act in 2012 became effective on 1 January 2013 and has been enforcing the following additional illegal conduct and criminal penalties:

- digital protective measures as provided by the Copyright Act can include not only the additional signal pattern for VHS media etc but also the encryption technology used for DVDs, etc. Any technical conduct to break down these protective measures is illegal
- a criminal penalty was adopted for the illegal downloading of digital content which, while available on the internet, normally requires payment.

### 7.2 What do you consider to be the top copyright developments in the next year?

After the Trans-Pacific Partnership (TPP) is ratified, will the criminal penalty be stricter than before due to the non-private complaint requirement? Under the current criminal penalty of the Copyright Act, the burden is on a private complainant to start a criminal prosecution.

Derivative works of digital content on the internet are currently illegal. This issue is currently under discussion by the governmental council.

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