



## Copyright 2011

**Contributing editors:**

Stuart Sinder, Jonathan Reichman  
and James Rosini  
Kenyon & Kenyon LLP

**Business development managers**

Alan Lee  
George Ingledew  
Robyn Hetherington  
Dan White

**Marketing managers**

Ellie Notley  
Sarah Walsh  
Alice Hazard

**Marketing assistants**

William Bentley  
Sarah Savage

**Subscriptions manager**

Nadine Radcliffe  
Subscriptions@  
gettingthedealthrough.com

**Assistant editor**

Adam Myers

**Editorial assistant**

Lydia Gerges

**Senior production editor**

Jonathan Cowie

**Chief subeditor**

Jonathan Allen

**Subeditors**

Davet Hyland  
Sarah Morgan  
Caroline Rawson

**Editor-in-chief**

Callum Campbell

**Publisher**

Richard Davey

**Copyright 2011**

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
© Law Business Research Ltd  
2011

No photocopying: copyright licences  
do not apply.

ISSN 1748-8257

The information provided in this publication  
is general and may not apply in a specific  
situation. Legal advice should always  
be sought before taking any legal action  
based on the information provided. This  
information is not intended to create, nor  
does receipt of it constitute, a lawyer-  
client relationship. No legal advice is being  
given in the publication. The publishers  
and authors accept no responsibility for  
any acts or omissions contained herein.  
Although the information provided is  
accurate as of July 2011, be advised that  
this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112

Law

Business

Research

<b>Overview</b> <i>Stuart Sinder, Jonathan Reichman and Aaron Johnson</i> Kenyon & Kenyon LLP	<b>3</b>
<b>Australia</b> <i>Kristin Stammer, Helen Macpherson and Orana Swan</i> Freehills	<b>4</b>
<b>Austria</b> <i>Axel Anderl</i> Dorda Brugger Jordis Rechtsanwälte GmbH	<b>9</b>
<b>Canada</b> <i>Keri A F Johnston and Andrea Long</i> Johnston Wassenaar LLP	<b>13</b>
<b>Chile</b> <i>Claudio Magliona</i> Garcia Magliona y Cia Limitada Abogados	<b>19</b>
<b>Colombia</b> <i>Eduardo Varela Pezzano</i> Cavelier Abogados	<b>26</b>
<b>Denmark</b> <i>Terese Foged</i> Lassen Ricard	<b>32</b>
<b>Dominican Republic</b> <i>Sylvio Hodos and Julissa Matias</i> Castillo & Castillo	<b>38</b>
<b>Finland</b> <i>Minna Aalto-Setälä</i> Benjon Oy	<b>43</b>
<b>France</b> <i>Catherine Mateu</i> Armengaud & Guerlain	<b>48</b>
<b>Germany</b> <i>Stephan Dittl and Karoline Brandi</i> Salger Rechtsanwälte	<b>54</b>
<b>Greece</b> <i>Alkisti-Irene Malamis</i> Malamis & Malamis Ltd	<b>60</b>
<b>India</b> <i>Jagdish Sagar</i> Anand and Anand	<b>65</b>
<b>Japan</b> <i>Chie Kasahara</i> Atsumi & Sakai	<b>70</b>
<b>Korea</b> <i>Cheol Hwan Kim and Hojin Chang</i> Yulchon, Attorneys at Law	<b>75</b>
<b>Malaysia</b> <i>Benjamin J Thompson</i> Thompson Associates	<b>80</b>
<b>Mexico</b> <i>Luis C Schmidt del Moral</i> Olivares & Cía SC	<b>85</b>
<b>Netherlands</b> <i>Martin Hemmer</i> AKD	<b>91</b>
<b>Nigeria</b> <i>Olugboyega Kayode</i> David Garrick, Kayode & Co	<b>95</b>
<b>Poland</b> <i>Monika Chimiak</i> JWP Attorneys at Law in association with JWP Patent & Trademarks Attorneys	<b>99</b>
<b>Romania</b> <i>Ana-Maria Baciú, Delia Belciú and Iulia Ghita</i> Nestor Nestor Diculescu Kingston Petersen	<b>105</b>
<b>Russia</b> <i>Yuriy Korchuganov and Ekaterina Ermakova</i> MGAP Attorneys at Law	<b>110</b>
<b>Spain</b> <i>José A Suárez and Daniel Pérez-Orive</i> Suárez de la Dehesa Abogados	<b>115</b>
<b>Switzerland</b> <i>Brendan Bolli, Sven Capol, Barbara Gehri and Felix Locher</i> E Blum & Co AG	<b>121</b>
<b>Turkey</b> <i>Ömer Yiğit Aykan</i> Çağa & Çağa	<b>127</b>
<b>United Kingdom</b> <i>David Cran and Jeremy Drew</i> Reynolds Porter Chamberlain LLP	<b>136</b>
<b>United States</b> <i>Jonathan Reichman and Stuart Sinder</i> Kenyon & Kenyon LLP	<b>142</b>
<b>Venezuela</b> <i>Magdaly Sanchez-Aranguren and Patricia Hoet</i> Limbourg Hoet Pelaez Castillo & Duque	<b>148</b>

# Japan

**Chie Kasahara**

Atsumi & Sakai

---

## Legislation and enforcement

### 1 What is the relevant legislation?

Relevant legislation includes the Copyright Act (Act No. 48 of 1970), the Act on Registration of Program Works (Act No. 65 of 1986), the Act on Management Business of Copyright and Neighbouring Rights (Act No. 131 of 2000), the Intellectual Property Basic Act (Act No. 122 of 2002), the Act for Improvement of Creation, Protection and Utilisation of Contents (Act No. 81 of 2004), and relevant regulations relating to these statutes.

### 2 Who enforces it?

Copyright-related legislation is enforced by district courts, the Intellectual Property High Court (for civil cases), other high courts (for criminal cases and civil cases having jurisdiction other than the Tokyo High Court), and the Supreme Court of Japan. The Intellectual Property High Court was established on 1 April 2005 as a special branch of the Tokyo High Court which exclusively hears intellectual property cases.

## Agency

### 3 Is there a centralised copyright agency? What does this agency do?

The Agency of Cultural Affairs (ACA) is the primary agency for handling copyright-related issues. The ACA registers copyrighted works – although registration is not mandatory in Japan – with the exception of program works registered at the Software Information Center (SOFTIC).

## Subject matter and scope of copyright

### 4 What types of works are copyrightable?

Works in which thoughts or sentiments are expressed in a creative way, and which fall within the literary, scientific, artistic or musical domain, are copyrightable. Novels; play or film scripts; dissertations, lectures and other literary works; musical works; choreographic works and pantomimes; paintings, engravings, sculptures and other artistic works; architectural works; maps and diagrammatical works of a scientific nature, such as drawings, charts and models; cinematographic works; photographic works and computer programs are all copyrightable.

### 5 What types of rights are covered by copyright?

Rights of reproduction, performance, screen presentation, public transmission, recitation, exhibition, distribution, ownership transfer, rental, translation, and adaptation are covered by copyright.

### 6 What may not be protected by copyright?

The Constitution and other laws and regulations; public notices, instructions, circular notices and the like issued by public entities; judgments, decisions, orders and decrees of courts; rulings and judgments made by government agencies; translations and compilations prepared by public entities; current news reports and miscellaneous reports having the character of mere communication of fact may not be protected by copyright.

Ideas without any creative expression may not be protected by copyright, even if the idea is unique.

In addition, utility articles, applied arts and designs for utilities in which thoughts or sentiments are not expressed in a creative way and which fall within the literary, scientific, artistic or musical domain may not be protected by copyright.

### 7 Do the doctrines of 'fair use' or 'fair dealing' exist?

While there is no general doctrine of 'fair use' in Japan, there are some equivalent exemptions provided by the Copyright Act, such as: quoting from and exploiting a work already made public fairly and to the extent justified by the purpose of the quotations; private use, to a limited extent; reproduction in libraries; reproduction in school textbooks, schools and other educational institutions; use for those with disabilities; reproduction for judicial proceedings, etc.

### 8 What are the standards used in determining whether a particular use is fair?

As there is no general 'fair use' doctrine in Japan, rather than applying general standards, specific special exemptions set out the terms under which a work may be used legally.

### 9 Are architectural works protected by copyright? How?

Yes. Architectural works in which thoughts or sentiments are expressed in a creative way, and which fall within the literary, scientific, artistic or musical domain, are protected by copyright.

Architectural works protected by copyright may have general rights as copyright (see questions 5 and 12), except the right to maintain integrity. The author of an architectural work is required to accept modification of an architectural work by way of extension, rebuilding, repairing or remodelling. In addition, exploiting of architectural works located permanently in open space shall be permissible except for the (imitative) reproduction of an architectural work and the offering of such reproduction to the public by transferring ownership of it.

**10** Are performance rights covered by copyright? How?

Yes. A performer has the moral right to indicate his or her name and to preserve integrity; the right to make sound or visual recordings; the right to broadcast and to wire-broadcast; the right to make his/her performance transmittable; the right to transfer ownership; and the right to offer his or her performance to the public by rental as neighbouring rights. In addition, a performer has the right to receive secondary use fees from broadcasting organisations or wire-broadcasting organisations using commercial phonograms incorporating a sound recording of the performance through designated organisations (this right is not deemed to be a neighbouring right).

**11** Are other 'neighbouring rights' recognised? How?

Yes. Producers of phonograms, broadcasting organisations and wire-broadcasting organisations also have neighbouring rights.

**12** Are moral rights recognised?

Yes. An author shall have the right to make the work and derivative work thereof public; to determine how the author's name is shown (whether it is his or her true name or a pseudonym); and to maintain the integrity of his or her work and its title, without distortion, mutilation or other modification against the author's will.

#### Copyright formalities

**13** Is there a requirement of copyright notice?

No. However, many authors do put copyright notices on their works to help prevent copyright infringement.

**14** What are the consequences for failure to display a copyright notice?

Not applicable.

**15** Is there a requirement of copyright deposit?

No.

**16** What are the consequences for failure to make a copyright deposit?

Not applicable.

**17** Is there a system for copyright registration?

Yes. A work may be protected by copyright without any copyright registration. However, the transfer (other than by inheritance or other succession) of copyright or a restriction on the disposal of the copyright, and the establishment, transfer, modification or termination of a pledge on a copyright or a restriction on the disposal of a pledge established on the copyright, may not be asserted against a third party unless it has been registered. In addition, the author of a work that is made public, anonymously or pseudonymously, may have his or her true name registered with respect to said work, regardless of whether he or she actually owns the copyright therein; the copyright holder of any work, the publisher of an anonymous or pseudonymous work, may have registered said work's date of first publication or the date when the work was first made public. Furthermore, the author of a computer program may have the date of the creation of his work registered within six months of the work's creation.

**18** Is copyright registration mandatory?

No.

**19** How do you apply for a copyright registration?

With the exception of computer software, the author or rightholder of a work applies for copyright registration to the Agency for Cultural Affairs (ACA), using the forms designated by the Agency. For computer software, the author or creator or other person provided in the Act, such as the holder of copyright, may apply for copyright registration by application to the Software Information Center (SOFTIC).

**20** What are the fees to apply for a copyright registration?

The fee for registration of the date of first publication and the date of creation is ¥3,000. The fee to register the true name of a work (including computer software) is ¥9,000. The fee for registration of transfer of copyright is ¥18,000. The fee for registration of transfer of neighbouring rights is ¥9,000. The fee for establishment of the right of publication is ¥30,000. In addition to the above, a registration fee of ¥47,100 per software applies in the case of computer software.

**21** What are the consequences for failure to register a copyrighted work?

The rightholder or author may not assert his or her rights against a third party unless registered.

#### Ownership and transfer

**22** Who is the owner of a copyrighted work?

The author of a copyrighted work is its owner. Since copyright may be transferred, the assignee may become the owner of the work; this excludes moral rights, which may not be transferred.

Exemptions to this principle are: authorship of a work made by an employee (see question 23); and authorship of a cinematographic work.

Authorship of a cinematographic work shall be attributed to those who, by taking charge of producing, directing, filming, art direction, etc, have creatively contributed to the creation of such cinematographic work as a whole, with the exception of authors of novels, play and film scripts, music or other works adapted or reproduced in such cinematographic work.

**23** May an employer own a copyrighted work made by an employee?

Yes. With the exception of computer programs, the authorship of a work which, on the initiative of a juridical person (such as a company) or other employers, is made by an employee in the course of the performance of his or her duties in connection with the employer's business and is made public by the employer as a work under its own name, shall be attributed to the employer unless there are contract or work regulations which provide that the work should be attributed to the employee who created the work. As for computer programs, the authorship of a computer program work which, on the initiative of a juridical person or other employers is made by an employee in the course of his or her duties in connection with the employer's business, shall be attributed to such the employer unless otherwise stipulated by contract, work regulations or the like at the time of the making of the work.

**24** May a hiring party own a copyrighted work made by an independent contractor?

Yes. Such ownership must be expressly agreed to; although it is not strictly necessary to have a written agreement, it is customary to have one in order to prevent copyright disputes.

**25** May a copyrighted work be co-owned?

Yes.

**26** May rights be transferred?

Yes.

**27** May rights be licensed?

Yes.

**28** Are there compulsory licences? What are they?

No.

**29** Are licences administered by performing rights societies? How?

Yes. Japanese performing rights societies include the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC), the Japan Writers' Association, the Writers' Guild in Japan and the Japan Writers Guild. Owners of copyrighted works may either entrust administration of their copyright to the entity of their choice, or manage their rights personally in whole or in part. If a copyright owner chooses to entrust his or her copyright to an administrator, this entity and the owner will execute an entrustment agreement.

**30** Is there any provision for the termination of transfers of rights?

No.

**31** Can documents evidencing transfers and other transactions be recorded with a government agency?

If the transfer and other transactions are registered, yes. The ACA or SOFTIC requires such documents in order to register the transfer or transaction and to summarise the fact in the registration.

### Duration of copyright

**32** When does copyright protection begin?

Copyright protection begins at the time of the creation of the work.

**33** How long does copyright protection last?

Protection will last for 50 years after the death of the author or, in the case of a jointly authored work, for 50 years after the death of the last surviving co-author (in principle). The copyright in a work which bears the name of a juridical person or other corporate body as its author shall continue to subsist until the end of the 50-year period following the work being made public. The copyright in a cinematographic work shall continue to subsist until the end of the 70-year period following the making public of the work; or, if the work was not made public within the 70-year period following its creation, until the end of the 70-year period following the work's creation.

**34** Does copyright duration depend on when a particular work was created or published?

Yes. There are special copyright durations pursuant to the Act on Special Provisions of Duration of Copyright of the Allies, for works created during World War II (this time frame runs from 8 December 1941 to the day before each peace pact).

**35** Do terms of copyright have to be renewed? How?

No.

### Copyright infringement and remedies

**36** What constitutes copyright infringement?

Reproduction, performance, screen presentation, public transmission, recitation, exhibition, distribution, rental, translation or adaptation without the copyright owner's approval constitute copyright infringement.

**37** Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

Yes. If the representative, an agent, an employee or any other worker of a juridical person (such as a company) or a person (individual) commits copyright infringement in connection with the business of that person shall be jointly or vicariously liable for the infringement under the Copyright Act and civil law, and may have criminal liability in accordance with the Copyright Act.

**38** What remedies are available against a copyright infringer?

Remedies available include injunction, compensation, measures for the restoration of honour and reputation – such as a public apology – and the collection of unjust enrichment.

**39** Is there a time limit for seeking remedies?

Compensation in accordance with the Civil Code must be sought within three years of the infringement and infringer becoming known, or within 20 years of the infringement.

**40** Are monetary damages available for copyright infringement?

Yes.

**41** Can attorneys' fees and costs be claimed in an action for copyright infringement?

Yes, although it is rare that the amounts awarded in a judgment will cover attorneys' fees and the costs of an action.

**42** Are there criminal copyright provisions? What are they?

Yes. A person who infringes on copyright, right of publication or neighbouring rights (excluding some exemptions provided in the Act) shall be punished by imprisonment with work for a term not exceeding 10 years, a fine of not more than ¥10 million, or both. A person who infringes on the author's moral rights, a person who, for profit-making purposes, causes a machine that has a reproduction function (provided in the article) to be used to reproduce works or performances (eg, automated bulk video copying), or a person who commits an act deemed to constitute copyright infringement shall be punished by imprisonment with work for up to five years, a fine of up to ¥5 million, or both. A person who infringes an author or performer's moral rights after the author or performer's death shall be punishable by a fine of up to ¥5 million. There are also criminal provisions against the illegal reproduction of a computer program; circumvention of technological protection measures, illegal reproduction of a person's true name or widely known pseudonym; the reproduction, distribution, or possession of a commercial phonogram without any authority; etc.

**43** Are there any specific liabilities, remedies or defences for online copyright infringement?

Yes. When copyright is infringed by information distribution through the internet, a person alleging that his or her copyright has been

### Update and trends

The Japanese Supreme Court judged that services that record TV programmes and provide recorded programmes through the internet could infringe copyrights, and sent the cases back to the IP High Court that had previously dismissed them.

#### **TV stations v Maneki TV**

The third division of the Japanese Supreme Court, on 18 January 2011, judged that the service that provides TV programmes in Japan to customers in foreign countries through the Internet infringes copyrights, and sent the case back to the IP High Court (Heisei 21 (Ju) No. 653). Maneki TV, provider of the 'Location Free' service, used a device to digitalise and distribute TV programmes automatically to its customers.

Tokyo District Court and the IP High Court judged that this service did not infringe the copyrights of TV stations, especially the right to make transmittable works (in this case, TV programmes), mainly because making transmittable supposes use of an automatic public transmission server. However, the device that sends TV programmes to a specific server (not to the public) used for this service is not the above automatic public transmission server.

On the other hand, the Supreme Court judged that automatic public transmission is a kind of public transmission, and that the Copyright Act prohibits public transmissions provided in accordance with request by the public, that even if a device to send information (in this case, digitalised TV programmes) to a fixed single device, transmission to the device is automatic public transmission, and that the subject to send information is the person who inputs information to the above devices (in this case, the service provider), not a customer.

#### **TV stations v Rokuraku II**

The first division of the Japanese Supreme Court, on 20 January 2011, overruled the decision by the IP High Court that copyright was not infringed by a service offering the recording and distribution of TV programmes over the internet. The case was sent back to the IP High Court (Heisei 21 (Ju) No. 788).

Tokyo District Court judged that the defendant, which manufactures, sells and leases Rokuraku II equipment and maintains the Rokuraku base unit, infringed copyrights of the plaintiffs, TV stations, by considering the service the defendant provided to their customers as a whole. The IP High Court judged that this service did not infringe the copyrights of TV stations because copying TV programmes and receiving the copied programmes as data through the internet were reproduction for private use.

The Supreme Court judged that the subject making the copy should be decided based on the target, method, participation and extent of copy, etc, and ruled against the defendant.

The above two cases were sent back to the IP High Court. The subsequent judgments will receive intense attention because if the IP High Court obeys the Supreme Court judges, any similar services to transmit works may not be allowed under Japanese law.

#### **Digital media broadcasting**

Terrestrial digital media broadcasting will replace analogue broadcasting on 24 July 2011 in Japan (although the Japanese government is considering an exception for Iwate, Miyagi, and Fukushima prefectures because of damage by the earthquake of 11 March 2011). In addition, the Broadcast Act was amended on 26 November 2010 after an interval of 60 years in order to reorganise broadcasting waves and broadcasting services. Use of 'white space' will be attractive and a new type of provider of broadcasting will appear; an increase in the use of works should be expected.

infringed may request a telecommunications service provider such as an internet service provider to prevent such infringed information from being transmitted to unspecified persons in practice (under civil laws); and to disclose identification information of the sender pertaining to the infringement if there is evidence that the copyright was infringed by the distribution through the internet, the identification information of the sender is necessary for the rightholder demanding the above disclosure to exercise his or her right to claim damages and there is justifiable ground for the rightholder to receive the disclosed identification information of the sender in accordance with the Act on the Limitation of Liability for Damages of Specified Telecommunication Service Providers and the Right to Demand Disclosure of Identification Information of the Senders (Act No. 137 of 2001). When a telecommunication service provider has received a request

to prevent the infringement, such service provider shall be liable for loss incurred from such infringement if it is technically possible to take measures for preventing such information from being transmitted to unspecified persons; and the service provider knew that the infringement was caused by the information distribution through the telecommunications provided by the provider or the service provider had knowledge of the information distribution by their service and there is a reasonable ground to find that the service provider could know the infringement was caused by information distribution through their service. On the other hand, if such a service provider takes measures to block transmission of information, the provider shall not be liable for any loss incurred by a sender of such information alleged infringement so far as the measures are taken within the limit necessary for preventing transmission of the infringement to



Atsumi & Sakai

**Chie Kasahara**

**chie.kasahara@aplaw.jp**

Fukoku Seimei Building  
2-2 Uchisaiwaicho 2-chome, Chiyoda-ku  
Tokyo 100-0011  
Japan

Tel: +81 35501 2111  
Fax: +81 3 5501 2211  
www.aplaw.jp

unspecified persons and there is a reasonable ground to believe the infringement or there is no notice of acceptance of blocking the information from the infringer who receives an inquiry from the service provider within seven days after the above inquiry is reached.

---

**44** How may copyright infringement be prevented?

Copyright infringement may be prevented in Japan by: putting a copyright notice on the work; education; appropriate measures against infringement, such as issuing a warning immediately after infringement is recognised; and legal action against the infringer. Japanese copyright holders have suffered a number of copyright infringements by individuals and corporations based in foreign countries (for example, counterfeit software and cartoon books being translated and printed without approval); government-level action against countries in which many copyright infringers exist should be a critical factor in helping to prevent future copyright infringement.

---

**Relationship to foreign rights**

**45** Which international copyright conventions does your country belong to?

Japan belongs to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act); the Universal Copyright Convention (Paris Act); the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; the WIPO Performances and Phonograms Treaty (WPPT); and the Agreement on Trade-Related Aspects of Intellectual Property Rights.

---

**46** What obligations are imposed by your country's membership of international copyright conventions?

Principles of national treatment in accordance with the Berne Convention for the Protection of Literary and Artistic Works (Paris Act), the Universal Copyright Convention (Paris Act), and the Principle of Reciprocity in accordance with Berne Convention (Paris Act) are imposed.



## Annual volumes published on:

Air Transport	Life Sciences
Anti-Corruption Regulation	Merger Control
Arbitration	Mergers & Acquisitions
Banking Regulation	Mining
Cartel Regulation	Oil Regulation
Climate Regulation	Patents
Construction	Pharmaceutical Antitrust
Copyright	Private Antitrust Litigation
Corporate Governance	Private Equity
Dispute Resolution	Product Liability
Dominance	Product Recall
e-Commerce	Project Finance
Electricity Regulation	Public Procurement
Enforcement of Foreign Judgments	Real Estate
Environment	Restructuring & Insolvency
Foreign Direct Investment	Right of Publicity
Franchise	Securities Finance
Gas Regulation	Shipping
Insurance & Reinsurance	Tax on Inbound Investment
Intellectual Property & Antitrust	Telecoms and Media
Labour & Employment	Trademarks
Licensing	Vertical Agreements

**For more information or to  
purchase books, please visit:  
[www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com)**



The Official Research Partner of  
the International Bar Association



Strategic research partners of  
the ABA International section