

Copyright

in 28 jurisdictions worldwide

Contributing editors: Stuart Sinder,
Jonathan Reichman and James Rosini

2010



Published by
Getting the Deal Through
in association with:

- Aavik & Partners Law Office
- AKD
- Anand and Anand
- Atsumi & Sakai
- Awapatent AS
- Beachcroft LLP
- Benjon Oy
- Cabinet Bruno Ryterband
- Caga & Caga Law Firm
- Cavelier Abogados
- David Garrick, Kayode & Co
- Dorda Brugger Jordis Rechtsanwälte GmbH
- E Blum & Co AG
- Fernandez Secco & Asociados
- Freehills
- Garcia Magliona y Cia Limitada Abogados
- Hoet Pelaez Castillo & Duque
- Johnston Wassenaar LLP
- Kenyon & Kenyon LLP
- Kim & Chang
- Malamis & Malamis
- Marx Van Ranst Vermeersch & Partners
- MGAP Attorneys at Law
- Olivares & Cia
- Rapisardi Intellectual Property
- Salger Rechtsanwälte
- Sár and Partners Attorneys at Law
- Thompson Associates



Copyright 2010

Contributing editors:

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

Business development manager

Joseph Samuel

Marketing managers

Alan Lee
George Ingledew
Robyn Hetherington
Dan White
Tamzin Mahmood
Ellie Notley

Subscriptions manager

Nadine Radcliffe
Subscriptions@
GettingTheDealThrough.com

Assistant editor

Adam Myers

Editorial assistant

Nina Nowak

Senior production editor

Jonathan Cowie

Chief subeditor

Jonathan Allen

Senior subeditor

Kathryn Smuland

Subeditors

Ariana Frampton
Charlotte Stretch
Kristy Barker

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

Copyright 2010

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
2010

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. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of July 2010, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0870 897 3239

Law
Business
Research

Overview Justin Kyal, Stuart Sinder and Jonathan Reichman <i>Kenyon & Kenyon LLP</i>	3
Australia Kristin Stammer and Helen Macpherson <i>Freehills</i>	4
Austria Axel Anderl <i>Dorda Brugger Jordis Rechtsanwälte GmbH</i>	9
Belgium Jan Ravelingien and Pieter De Grauwe <i>Marx Van Ranst Vermeersch & Partners</i>	13
Canada Keri A F Johnston and Andrea Long <i>Johnston Wassenaar LLP</i>	18
Chile Claudio Magliona <i>Garcia Magliona y Cia Limitada Abogados</i>	24
Colombia Carlos Castro, Natalia Tobón and Daniel Peña <i>Cavelier Abogados</i>	31
Denmark Thorbjørn Swanstrøm <i>Awapatent AS</i>	36
Estonia Elise Vasamäe <i>Aavik & Partners Law Office</i>	41
Finland Minna Aalto-Setälä and Johanna Kauhanen <i>Benjon Oy</i>	47
France Bruno Ryterband <i>Cabinet Bruno Ryterband</i>	52
Germany Stephan Dittl and Karoline Brandi <i>Salger Rechtsanwälte</i>	59
Greece Alkisti-Irene Malamis <i>Malamis & Malamis</i>	65
Hungary Katalin Horváth <i>Sár and Partners Attorneys at Law</i>	70
India Jagdish Sagar <i>Anand and Anand</i>	78
Italy Sonia Fodale and Margherita Banfi <i>Rapisardi Intellectual Property</i>	82
Japan Chie Kasahara <i>Atsumi & Sakai</i>	87
Korea Jay Young-June Yang, Jai-Wook Lee and Chang-Hwan Shin <i>Kim & Chang</i>	91
Malaysia Benjamin J Thompson <i>Thompson Associates</i>	95
Mexico Luis C Schmidt <i>Olivares & Cia</i>	99
Netherlands Martin Hemmer <i>AKD</i>	105
Nigeria Olugboyega Kayode <i>David Garrick, Kayode & Co</i>	109
Russia Yuriy Korchuganov and Ekaterina Ermakova <i>MGAP Attorneys at Law</i>	113
Switzerland Brendan Bolli, Sven Capol, Barbara Gehri and Felix Locher <i>E Blum & Co AG</i>	118
Turkey Omer Yigit Aykan <i>Caga & Caga Law Firm</i>	124
United Kingdom Robin Fry <i>Beachcroft LLP</i>	132
United States Jonathan Reichman and Stuart Sinder <i>Kenyon & Kenyon LLP</i>	138
Uruguay Agustina Fernández Giamb Bruno and Lucía Salaverry <i>Fernandez Secco & Asociados</i>	144
Venezuela Magdaly Sanchez-Aranguren and Patricia Hoet Limbourg <i>Hoet Pelaez Castillo & Duque</i>	148

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 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 the same general rights as copyright (please 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.

10 Are performance rights covered by copyright? How?

Yes. A performer has (i) the moral right to indicate his or her name and to preserve integrity; (ii) the right to make sound or visual recordings; (iii) the right to broadcast and to wire-broadcast; (iv) the right to make his/her performance transmittable; (v) the right to transfer ownership; and (vi) the right to offer his/her performance to the public by rental as neighbouring rights. In addition, a per-

former 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 (i) to make the work and derivative work thereof public; (ii) to determine how the author's name is shown (whether it is his/her true name or a pseudonym); and (iii) to maintain the integrity of his/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, (i) the transfer (other than by inheritance or other succession) of copyright or a restriction on the disposal of the copyright, and (ii) 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/her true name registered with respect to said work, regardless of whether he/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/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 (except for computer software) is ¥3,000; to register the true name of computer software, the fee is ¥9,000. The fee for registration of transfer of copyright and neighbouring rights is ¥18,000. The fee for establishment of the right of publication is ¥30,000. In addition to the above, a registration fee of ¥47,100 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/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/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/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.

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 civil law, and may have criminal liability.

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 (i) the illegal reproduction of a computer program; (ii) circumvention of technological protection measures, (iii) illegal reproduction of a person's true name or widely known pseudonym; (iv) the reproduction, distribution, or possession of a commercial phonogram without any authority; etc.

43 Is online copyright infringement actionable?

Yes.

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.

Update and trends

Amendments to the Copyright Act (Act No. 52 of 2009) became effective on 1 January 2010. The amendments seek to facilitate the circulation of digital content and to ease access to and use of copyrighted works by (i) facilitating the exploitation of copyrighted materials on the internet; (ii) preventing the illegal circulation of copyrighted materials; and (iii) providing physically disabled persons with the opportunity of accessing copyrighted materials.

In order to achieve the first aim, the amendments make it legal to create a digital copy of material for the purposes of (i) backup in case of delivery error on the internet, (ii) provision of information search services on the internet, or (iii) information analysis. Previously, making temporary digital copies to stabilise websites risked violating the provisions of the Act; the amendments confirm the legality of such copying.

The amendments permit digitalisation of the collection of materials held by the National Diet Library of Japan, in order to preserve them. Making electronic copies of books has been controversial in Japan and the amendments only cover making electronic copies of the books held by the National Diet Library.

In order to facilitate the sale of copyrighted works via the internet (eg through online auctions), the amendments permit making copies of copyrighted materials, including works of art, for the purpose of

selling such materials, provided that the copy is of limited quality (eg, less than 32,400 pixels unless copy-protected).

In order to achieve the second aim, the amendments make it illegal to download – rather than stream – audio or visual recordings of copyright materials through internet sites such as YouTube even for private use, should the person downloading the material know that the material was uploaded without a licence. However, it is unlikely that many people will be deterred from such conduct by its being made illegal, as there is no penalty.

In order to achieve the third aim, the amendments expand situations in which certain entities, such as libraries, NPOs and so on, are permitted to make copies of copyrighted materials in formats that can be accessed by people with disabilities (such as recording audio versions of books for blind people). Previously, such copies could only be made available to blind or legally deaf people; but the amendments have expanded the scope of the exemption to include copies made for access by people with colour perception defects or difficulty in hearing. However, the amendments place restrictions on who can be allowed to make such copies (ministerial consent is required), thus mitigating against the risk that unscrupulous people might take advantage of the exemption in order to make a commercial gain from the distribution of copyrighted materials.

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.



Atsumi & Sakai

Chie Kasahara

chie.kasahara@aplaw.jp

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

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



GETTING THE DEAL THROUGH®



Annual volumes published on:

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

**For more information or to
purchase books, please visit:
www.gettingthedealthrough.com**



Strategic research partners of
the ABA International section



THE QUEEN'S AWARDS
FOR ENTERPRISE
2006



The Official Research Partner of
the International Bar Association