

JAPANESE MEDIA LAW UPDATE REPORT

MEGUMI OGAWA¹

THE NEW COPYRIGHT MANAGEMENT BUSINESS LAW

[243] Last year Japan decided to revise its law on the collective administration of rights. The *Copyright Management Business Law* will come into effect on 1 October 2001. The *Law* replaces the *Law on Intermediary Business Concerning Copyright* which has been in force for 62 years. This Update Report outlines the earlier law and its replacement.

The Law on Intermediary Business Concerning Copyright and its problems

The meaning of 'intermediary business' in the *Law on Intermediary Business Concerning Copyright* is an activity undertaken as an occupation where a person works as an agent or trustee of authors to contract the use of their works. The Law is usually regarded as a law dealing with the collective administration of rights. However, the Law has regulated intermediary business irrespective of the number of authors with which the business deals. Where an intermediary business deals with only one author, it is not a collective administration of rights. The Law, however, applies to that situation.

The Law mainly targets the control of the type of intermediary business which is based on a trust or agency relationship between authors and intermediaries. The person who intends to conduct an intermediary business has to obtain permission regarding the scope of business and the methods of conducting it from the Commissioner of the

¹ Research Fellow, Media Network Centre, Waseda University.

Agency for Cultural Affairs.² The intermediary has to obtain approval concerning the rules for royalty rates from the Commissioner of the Agency for Cultural Affairs.³ The Law regulates intermediaries including those who do not have authority to act on behalf of authors but simply intermediate between authors and clients to establish a contract.

When an intermediary is neither a trustee nor an agent, authors hold the right to authorise exploitations and to decide royalties. This situation is not much different from the situation where authors themselves manage their copyright.

[244] Further, an Imperial Ordinance determines the categories of works with which intermediary business can deal.⁴ An Imperial Ordinance is the order of the Emperor which was made without the collaboration of the Diet under the *Meiji Constitution*.⁵ The imperial ordinance provides for novels, scenarios, lyrics with music and music as the categories.⁶ This categorisation might have been adequate 62 years ago. However, the categories can no longer be adequate since more and more kinds of works are being exploited.

The intermediaries permitted to act by the Commissioner of the Agency for Cultural Affairs are set out in the table below. It is not intermediaries but collecting associations designated by the Commissioner of the Agency for Cultural Affairs under the *Copyright Law*,⁷ which are allowed to collect remuneration for secondary use or rental of commercial phonograms for performers and phonogram producers.

² Article 2.

³ Article 3.

⁴ Article 1.

⁵ From 1889 to 1947, it was the Constitution of Japan.

⁶ Imperial Ordinance No 835.

**The intermediaries permitted by the
Commissioner of the Agency for Cultural Affairs**

Categories	Intermediaries
Lyrics with music, music	Japanese Society for Rights of Authors, Composers and Publishers (JASRAC)
Novels	Nihon Bungei Chosakuken Hogo Domei (Japan Federation for the Protection of Copyright in Literary Works)
Scenarios	Nihon Kyakuhonka Renmei (Writers Guild of Japan), Shinario-sakka Kyokai (Writers Guild of Japan)

Among these intermediaries, the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC) is a large organisation comprising approximately 12,000 authors. Some of its members have expressed their dissatisfaction with its administration.

To be a member of JASRAC, an author has to create a trust over the whole copyright of a work. The author is also required to create a trust over copyright in all works which the author will produce in future. JASRAC's contracts are not flexible on this point.⁸

JASRAC's administration fee rate is also controversial. Usually, the cost of collecting royalties of performing rights is much more than that for collecting royalties of reproduction rights. JASRAC deducts 30 per cent of the royalty in respect of performing rights whereas 15 per cent of the royalty is deducted in relation to reproduction rights. Despite the distinction, authors who depend on the royalty derived

⁷ Art 95(4), Art 97(3), Art 95vis(4) and Art 97vis(4).

⁸ In contrast to JASRAC, the other three intermediaries allow contracts which deal with a specific right or with a specific copyright work.

from their reproduction rights tend to feel that the rate is unacceptable.

For these reasons, some authors conclude the monopoly enjoyed by JASRAC causes problems. They consider the monopoly should be abated to introduce free competition, which may allow the existence of intermediaries with more flexible rules. This idea is in accordance with the Japanese Government's deregulation policy. This, together with the anachronistic categorisation of works, provides the background of reforming the law on the collective administration of rights.

[245] *The Copyright Management Business Law*

To solve the problems discussed in the previous section, the *Copyright Management Business Law* was enacted in November 2000. The Law will provide rules on the business of managing copyright and neighbouring rights.

There is no categorisation in this Law of what objects the management business can deal with, unlike the *Law on Intermediary Business Concerning Copyright*. The Law broadly regulates businesses which manage any kinds of works, performances, phonograms, broadcasts and cable distribution.

If there is a contract to establish a trust or agency by which:

- (1) an author appoints a management to administer his/her copyright; and
- (2) the author does not determine the royalty;

the *Copyright Management Business Law* is applied.

However, the Law is not applied when an author reserves control over the determination of the royalty. Also, where a relationship beyond that of a usual contract

between an author and a management is found — for example, the author is an investor in the copyright management business — the Law is not applied.

The Law provides for a registration system for those who commence a copyright management business. Any legal person can be registered provided that they do not fall within the disqualification provisions. Thus, new entrepreneurs are expected to enter the field. It is a distinctive feature of the Law that companies for profit, for example companies limited by shares, are not excluded from registration.

The new Law includes the provisions concerning:

- the notification system of royalties;⁹
- the obligation for a management to authorise the exploitation of works;¹⁰
- the obligation for management to maintain financial statements and allow access to them by its members;¹¹ and
- the arbitration procedure concerning a royalty rule for management and users.¹²

Anticipated Problems after the New Law on Collective Administration of Rights

The *Copyright Management Business Law* appears to aim at deregulating the restrictions on starting copyright management business and introducing free competition. The intention is to ensure increased efficiency in copyright management and the flexibility of rules about accepting copyright management. Accordingly, the *Copyright Management Business Law* is not the law for protecting culture. However, copyright is recognised by the *Copyright Law* of Japan, which states:

⁹ Article 13.

¹⁰ Article 16.

¹¹ Article 18.

¹² Article 24.

The purpose of this Law is, by providing for the rights of authors and the rights neighbouring 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.¹³

[246] The *Copyright Management Business Law* displays an intention to restructure the copyright management industry. A related issue should be considered as to whether management activities seeking profit should be allowed without limits. Since the law allows companies for profit to undertake copyright management business, they certainly will do so.

If a company for profit is established which only accepts copyright works in high public demand, the company's royalty will be increased while other bodies may have to reduce their royalties to compete. Once competition becomes fierce and these other bodies can no longer earn enough to enable all of their authors to keep producing works, what will be done? Should this situation be allowed since it is the result of free competition? Or, must the protection of authors whose works cannot earn much but may have much cultural value also be considered?

If all authors choose companies for profit to manage their copyright, non-profit organisations which have acted as intermediaries will be likely to disappear. JASRAC, a non-profit organisation has conducted public activities to disseminate the idea of copyright. As a result of disappearing non-profit organisations, would it be acceptable

¹³ Article 1. Copyright Research Information Centre, *Copyright Law of Japan Translated by Oyama Y et al.* <www.cric.or.jp/cric_e/ecolj/index.html> (2/6/2001).

for such activities to disappear? Even though non-profit organisations may remain, is it possible to expect them to continue offering public activities in such competitive circumstances? Or, should the termination of public activities be accepted?

These controversial issues cannot be resolved here, but in any event the *Copyright Management Business Law* will be in force shortly.¹⁴

¹⁴ Further useful references are: Panel of Experts, Subcommittee of Collective Administration of Rights, Copyright Council, *Summary of Discussion* (1st Session, 1995-21st Session, 1999); Subcommittee of Collective Administration of Rights, *Report of the Subcommittee of Collective Administration of Rights* (2000); Agency for Cultural Affairs, *Overview of the Midterm Report of the Panel of Experts, Subcommittee of Collective Administration of Rights*, Copyright Council (1999); T Goji, 'The Overview of the Copyright Management Law' (2001) 705 *NBL* 26.