

**QUESTIONNAIRE – ALAI CONGRESS 2018 – MONTREAL**

Since the congress theme should attract many copyright practitioners, the Canadian group has chosen to develop a questionnaire which you are asked to complete with succinct answers, in either **French, English or Spanish**. The answers will be compiled in an analytical table that will be given to congress participants so that they can leave with a document allowing them to quickly compare the situation prevailing in several countries.

It is therefore essential to complete the table below by briefly answering each question. We invite you to refer to the legal provisions that apply in your country, if any.

For national groups who would also like to provide additional information related to certain questions, we ask you:

1) to indicate "\* see also answer No. X below" after the short answer that you have provided in the table.

2) to put your more detailed answer after the table.

Please note, however, that only the answers to the table will be compiled in the practical tool that will be given to the participants.

<p><u>Japan</u></p> <p>Name of the person(s) answering the questionnaire</p> <p><u>Prof. Makoto NAGATSUKA</u></p> <p><u>Prof. Tatsuhiro UENO</u></p> <p><u>Dr. Hiroshi SAITO</u></p>											
QUESTIONS FOR THE SUMMARY TABLE	1) Are statutory damages available? If so, please indicate the criteria for awarding them and the amount of such damages.	2) If punitive damages are available, indicate the criteria for awarding them.	3) Are class actions or class remedies available in copyright matters? If so, indicate in what circumstances they are used.	4) If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them.	5) Are there in your country 1) criminal remedies; 2) customs measures, in connection with copyright? If so, which ones?	6) Describe how circumvention of technological protection measures is dealt with, if such is done.	7) Is there a mandatory notice and notice regime or notice and take down regime for intermediaries in the case of alleged copyright infringement? If so, describe it briefly, and indicate if how it is dealt with differs based on which rights holder requests it.	8) Does the notion of secondary copyright infringement in the digital world exist in your country? If so, describe it briefly.	9) Indicate for which rights collective management is available.	10) With respect to collective management, indicate who sets the tariffs and how they are set.	11) Indicate whether copyright remedies are within the power of specialized courts or common law courts, and in the case of a mixed system, please specify in which cases an action should be brought before one rather than the other.
ANSWERS TO QUESTIONS FOR THE SUMMARY TABLE	Statutory damages are not yet available. But for recent legislative developments, see	Punitive damages are not yet available. But for recent legislative developments, see	Class actions are not available nor class remedies.	Seizures before judgment like French law, specialized in intellectual	Both exists. 1) a) Imprisonment up to 10 years or fine up to 10 million yen, or both will be charged	Any person who does acts of manufacture, distribution, etc. of a device, etc. for the circumvention	The "safe harbor" provisions concerning the liability against a subscriber for Japanese	Under the Copyright Act, there is no explicit provision or interpretation which allows a	Almost all branches of copyright (especially melodies and lyrics, literary	In principle, a management business operator can set the tariffs on condition that it makes a previous	Copyright remedies are within the power of common jurisdiction. There are no specialized

	also ANSWER 1 A) below.	also ANSWER 1 A) below.		property, is not available.	<p>against infringements of economic rights (Art. 119(1) of the Copyright Act, Act No. 48 of May 6, 1970).</p> <p>b) Imprisonment up to 5 years, fine up to 5 million yen, or both will be charged against infringements of moral rights (Art. 119(1) of the same Act).</p> <p>2) a) Goods shall not be imported nor exported which infringe copyright and neighboring rights etc. (Art. 69-11(1)(iii) and Art. 69-2(1)(ix) of Customs Act, Act No.61, of April 12, 1954).</p> <p>b) The customs authorities shall confiscate and destroy such goods, or issue an order to reship to the importer (Art. 69-3 and followings of the same Act).</p>	of technological protection measures shall be punishable by imprisonment for a term not exceeding three years or a fine not exceeding 3 million yen, or both. Any person who, as a business, circumvents technological protection shall also be punishable in the same way (Art. 120-2(i)(ii) of the Copyright Act).	ISPs, include a notice and takedown regime that provides a chance for a subscriber to explain and respond to the claims from copyright owners, before the ISP terminates its files/activities (Art. 3 and followings of Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders, Act No. 137 of November 30, 2001).	copyright holder to demand an injunction against intermediaries, while an injunction against a primary infringer is permitted under Art. 112 of the same Act. Against this background, case law has held several online platforms liable for injunctive relief by expanding the substantive scope of a primary “infringer” based on the normative interpretations including the so-called “Karaoke theory” justified with control on their clients and business profits; an online video sharing platform, a P2P file sharing service and an online electronic bulletin board. For further information, see NOTE 1 below.	works, scenarios, fine arts and photographs) and neighboring rights (especially performances and sound recordings). See <a href="https://pf.bunka.go.jp/chosaku/ejigyo_u/script/ipzenframe.asp">https://pf.bunka.go.jp/chosaku/ejigyo_u/script/ipzenframe.asp</a> (in Japanese) for the exhaustive list of registered management business operators in accordance with the Act on Management Business of Copyright and Neighboring Rights (Act No.131, of November 29, 2000).	report thereof to the Commissioner of the Agency for Cultural Affairs (Art. 13 of the Act on Management Business of Copyright and Neighboring Rights). But for some management business operators with a considerable share (ex. JASRAC), there is a specific rule about consultation and arbitration by the Agency for Cultural Affairs between users of the managed works (Art. 23 and 24 of the same Act).	courts. Japanese Constitution Art. 76(2) prohibits them. But there are some special IP Divisions in some big courts in Tokyo and Osaka who have exclusive or selective jurisdictions in some Copyright cases. For further information, see NOTE 2 below.
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**FURTHER QUESTIONS (OPTIONAL)**

QUESTION 1: Are there recent legislative or jurisprudential developments in your country that would be interesting to share with the ALAI public?

ANSWER 1: A) In the ordinary Diet session in 2018, Article 1 of the Supplementary Provisions of the amendment on the Copyright Act in 2016 was amended, so that the below-mentioned amendments come into force on the date of entry into force of the “TPP 11” Agreement which may be in 2018 the soonest.

The TPP Agreement stipulates that each Party shall also establish or maintain a system that provides for “pre-established damages, which shall be available on the selection of the right holder” and/or “additional damages” (including punitive damages) (Art. 18.74(6) of the TPP Agreement). To catch up with this article, the Copyright Act was amended in 2016 to introduce the provision under which the copyright holder may claim compensation for damages that is calculated based on the tariff established by CMOs (collective management organizations) registered under the Act on Management Business of Copyright and Neighboring Rights (amended Art.114(4)).

The amendment was intended to come into force on the date of entry into force of the TPP Agreement (Article 1 of the Supplementary Provisions). Although there seems almost no possibility of the original TPP Agreement entering into force, eleven of the twelve countries which had signed the original TPP Agreement (all except for U.S.A.) were able to reach an agreement in principle for the so-called the “TPP 11” Agreement on November 9, 2017 (which was subsequently signed on March 8, 2018).

The same 2016 amendment of the Copyright Act contains 2 other important topics. One is prolongation of the term of copyright protection. It will be 70 years, in the place of 50 years, after the death of the author (amended Art. 53(2)). Another is that prosecution will be instituted for some limited offences referred to in Article 119 without an accusation by the injured party (amended Art. 123) while, before amendment, the accusation is necessary for all offences referred to in Article 119.

B) The Japanese Government submitted a bill to the 196th ordinary Diet session on 23 February 2018 containing many amendments of the Copyright Act. The bill was passed on 18 May 2018 and will come into force, some exception apart, on 1 January 2019. The main points are as follows.

(1) Flexible provisions on copyright exceptions and limitations

The 2018 amendments introduce some new flexible provisions on copyright exceptions and limitations, although they are different from the general fair use provisions in the U.S., Singapore, Taiwan or Korea. Among them, based on the amended provision (Art. 30-4), it shall be permissible to exploit a work by any means to the extent deemed necessary where the exploitation is not aimed at enjoyment or at having other persons enjoy the thought or sentiment expressed in a work, provided that such exploitation does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of that work as well as the form of the exploitation.

(2) ICT utilization for education

It has been proposed to update the copyright exception provision (Art. 35) to promote the utilization of ICT (Information and Communication Technology). This amendment will come into force within three years.

(3) Digital archives

It has been proposed to update an existing copyright exception provision (Art. 47) to permit a person who conducts a public exhibition of the originals of artistic works or photographic works to publicly display and transmit these works for the purpose of explaining or introducing them to the visitors, if and to the extent deemed necessary.

(4) Provisions for visually impaired persons and persons with print disabilities

Discussions were ongoing in relation to the ratification of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled, which was adopted in 2013 and came into force on June 30, 2016. An update of the Copyright Act to catch up with the Treaty is included in the 2018 amendments.

QUESTION 2: Are there any special remedies in your jurisdiction that, to your knowledge, are less or not available in other jurisdictions?

ANSWER 2: Art. 115 of the Copyright Act stipulates as follows: An author or performer may file a claim against a person that, intentionally or due to negligence, has infringed said author's or performer's moral rights, demanding that such a person take the appropriate measures to ensure that the author or performer is identified as the author or performer, to correct modifications to the work or performance, or to restore the author's or performer's honor or reputation, either in lieu of or in addition to claiming damages.

NOTE1: On the other hand, intermediaries that are not deemed primary infringers are not liable for injunctive relief in Japan, which is quite a contrast to Art. 8(3) of the Information Society Directive (2001/29/EC). In fact, it has not been permitted in Japan for a copyright holder to seek a blocking injunction against an internet access provider ordering it to prevent its customers from accessing copyright-infringing websites, an injunction against a free Wi-Fi provider and an injunction against a website containing hyperlinks to copyright-infringing websites, on the ground that they cannot be deemed primary infringers even by using the Karaoke theory.

NOTE 2: A set of IP Special Divisions of Tokyo High Court are reorganized into The IP High Court since April 2005. But the latter is never a special court prohibited by the Constitution. It is rather a special branch of The Tokyo High Court. The District Courts of Tokyo and Osaka, as well as Osaka High Court, have also their IP Special Divisions. See <http://www.ip.courts.go.jp/eng/aboutus/history/> for detail.

In an action involving an author's right to a work of computer programming, the action is under the exclusive jurisdiction of either Tokyo or Osaka District Court (Art. 6(1) of the Code of Civil Procedure, Act No. 109 of June 26, 1996). An appeal to the court of second instance against a final judgment of Osaka District Court in the case of Art. 6(1) is under the exclusive jurisdiction of the Tokyo High Court (Art. 6(3) of the same Code).

With regard to an action involving author's rights (excluding author's rights to a work of computer programming), publishing rights, neighboring rights, if a court has a common jurisdiction pursuant to the provisions of Article 4 or Article 5, the action may also be filed with either Tokyo or Osaka District Court (Art. 6-2 of the same Code).