

Visions of an ideal society through an international comparative study of copyright law

Copyright law is an integral part of intellectual property law

First, please take a look at the two examples of product packaging here. Anyone would say that these two products more or less resemble each other. Picture one is the Ritz cracker from the famous company YN, and picture two is a similar product made in the Philippines. I bought the Filipino product about 10 years ago from a nearby



shop to use as an illustrative example in class, but some people might have bought it thinking that it was the real Ritz. Looking at the situation from YN's perspective, no doubt, this similar product is profiting from an improper use of Ritz's brand image, which has been established by YN.

YN, through its quality management and advertising, is entitled to protection under the Unfair Competition Prevention Act. Furthermore, the company has trademark rights once it has registered a trademark. These rights are referred to as intellectual property rights. In Japan, with these rights, you can sue the similar product, requesting an injunction to block its sale along with compensatory damages. When that happens, the maker of the similar product will most probably argue that these similarities are not deliberate, presenting evidence of differences between the two products. For example, the company might say that the products look similar only because "the use of red on the box is too eye catching," "there are only two common letters, I and T, in the names of the two products," "yellow characters against a blue background are the most visually appealing combination," or "the seven holes in the cracker are unavoidable due to manufacturing processes." In reality, the similar product will eventually lose its market share even without a trial. Nevertheless, if the issue was fought in court, we might have reached a totally different conclusion. In the world of

intellectual property rights, the line between a monopoly and public domain is often blurred. This is an interesting fact about this field of law that calls for further study.

Laws related to intellectual property rights (such as patent and trademark laws) are very different from copyright law and industrial property law under the Unfair Competition Prevention Act. I came to Hitotsubashi University in April 2014 as the first faculty member teaching intellectual property law at the Kunitachi campus. My research specialization was the comparative study of Japanese and French copyright law. French copyright law seeks to preserve a unique culture of critique and satire by stating that "after a work is published, the author cannot prohibit its parody, pastiche, and caricature." At the foundation of this provision is the idea that a person invested with power must also have equal capacity for accepting criticism from others. In this manner, by comparing different provisions and precedents from copyright laws of different countries and studying how they have come into existence, we become better able to identify the nature of each country's society or culture.

Furthermore, a work is essentially an international property. Paintings and motion pictures, even literary works through translation, can be appreciated in foreign countries. The spread of the Internet has also dramatically increased the degree and speed with which a work can be distributed across borders. Within such an environment, especially in Europe, copyright is seen as a way to protect the work of each individual so that the creator can retain financial independence, making it an important factor in the preservation of cultural diversity.

The conflicting theories of expanded free use and reinforced regulation of copyright

There are two conflicting schools of thought on Internet copyrights at this time. One side argues that more leeway should be granted for the free use of any work, whereas the other side believes that the jurisdiction of copyright protection should be expanded and that penalties against violators should be reinforced. It is good to exchange opinions, but if we lean too much toward one side, allowing copyright protection to expand out of control and punishing every little violator, this might negatively impact the society. Over the past year, I have been talking about the latest disputes surrounding copyright in lectures and with my research group. Let me give an example.

There is an award-winning popular comic called "High Score Girl." It is a romantic comedy regarding a group of teenagers who love video games, and thus the actual screen displays of numerous video games are depicted in



this comic. Indeed, video games are moving images with colors, and comics are made up of still pictures. At this instance, although the comic was not totally innocent in terms of the number of theoretical conflicts it created, it had not violated anything in the eyes of the law, even if no permission had been granted by the video game makers. However, the author of the comic, as a precaution, asked the game makers for permission to use the images. The comic series continued to run despite the fact that one of the makers would not grant this permission. Subsequently, there were talks about turning the comic into an animation. In that case, the images would become moving pictures with colors. That particular video game maker could no longer tolerate the situation. It immediately took legal action and put an end to that comic series.* A group of copyright law scholars issued a joint statement protesting this decision. Furthermore, I believe in standing up for what one considers to be right, so I gave my support to this statement, just as I had done many times previously.

My reason for doing so was that too much emphasis on copyright protection can seriously undermine diversity of speech. For example, a politician can use an alleged violation of copyright law as an excuse to conduct a raid or similar actions against the author of any work that satires or parodies his own book. The “High Score Girl” controversy may have been about corporations fighting over profits; but what would happen if powerful people started to use criminal charges as a weapon? As a scholar specializing in copyright law, I believe that we should actively prevent the use of such laws as a means of suppressing speech. Even if “High Score Girl” contained some other existing work, the comic itself is still a highly original creation. Nevertheless, as soon as it became involved in a criminal case, the author, who proclaimed innocence, was denied any further opportunity to create. We are in danger of becoming an oppressed society if such things continue to occur.

Even though copyright law should also protect the rights of those with money and power, in my view, it

should not be a privilege but a law that enables each individual to display his or her talent as well as to make a living, through the creation or performance of his or her works. In this sense, copyright issues must be included when we consider the future of an ideal society.

We welcome students wishing to write about Japanese laws in French!

I have been talking about modern Japanese patent and copyright laws and its interpretation in my lectures. By doing so, I wish to show the students the world of intellectual property rights, and I hope that this will provide them with the opportunity to get to know various other fields. For example, when we talk about a dispute over a patented product, students not only have to know the laws but also must familiarize themselves with the technology behind such a dispute as much as possible. As for my research group, I encourage students to exercise originality in their graduation thesis by applying their own life experiences and interests to the theories of intellectual property law without trying to look for a right answer. I can also give consultation assistance to students wishing to write their thesis on Japanese intellectual property law in French. Indeed, the academic study of Japanese law requires a certain level of understanding of the Japanese language, but if you can overcome this barrier, Japan is a fascinating country for the comparative study of law. In this regard, the Graduate School of Law at Hitotsubashi University is definitely an excellent choice.



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In 1991, graduated from the Faculty of Law at Hitotsubashi University. In 1996, withdrew from the Graduate School of Law at Hitotsubashi University, after obtaining enough credit for the doctoral program. From 1996 to 2003, worked as an associate professor at Department of Law, Faculty of Commerce, Otaru University of Commerce. From 2001 to 2002, was a visiting researcher at Research Centre on International Legal Cooperation, University of Poitiers, France. From 2003 to 2014, worked as an associate professor at Dokkyo University. From 2011 to 2012, was a visiting researcher at Lyon’s Institute of East Asian Studies, Ecole Normale Supérieure de Lyon. From April 2014, Nagatsuka has been working as a professor at Graduate School of Law, Hitotsubashi University, specializing in intellectual property law.

* The case surrounding the “High Score Girl” controversy was settled in August 2015.