

Copyright law in France and Japan

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The concept of copyright law is not only found at the junction of law and art, but is also the crossroads of the major branches of law: public and private.

Published justifications come in two forms: those from constitutional law and those from administrative law. Because the author's freedom of expression depends on the individual liberty granted to each citizen by his or her country's constitution, the rights of authors are based solely on a society's recognition of human rights.

This freedom of expression, aka the essence of any copyright, also faces the notion of public policy and therefore is subject to administrative law. We find censorship at the meeting point of these two rights and the legislature must decide between the freedom of the author and the protection of society.

On the other hand, copyright law is a private matter, and is but not limited to the transfer of financial rights, the transmission of the moral rights of the author after the death of the latter, and/or the ownership of works created during a marriage. The literary and artistic property is also based largely on commercial law when it foresees the detention of moral rights in a work and labour law when it foresees the influence of labour contracts on the creative activity of an employee, and finally, copyright law draws on the concepts of criminal law to provide protection for the author and punish violations of his rights.

Copyright law is subject to borders, which can polarize challenges faced in the modern world, but tends to be particularly favourable when we make the comparison between **France and Japan because law and art have caused reciprocal influences between these two countries**. Indeed, during the second half of the nineteenth century, while a "Japanese mania" was blowing through the workshops of Paris, Gustave Boissonade and other French lawyers were involved in the Japanese introduction of a modern French-inspired law, at the request of Emperor Meiji.

If the future of copyright law is, in France, the fruit of a slow development, which finds its sources in the *Ancien Regime*, its affirmation under the Revolution, and its consecration in the twentieth century, we must, when referring to Japan, speak rather of incorporation, more specifically in international treaties. Similarly, the current regime is the result of an evolution that has been strongly influenced by contemporary history. Nevertheless, the current copyright law is positively and similarly translated into these two cultures because of history.

The rights over works

The rights granted to authors over their works reflect a society's legal mechanisms for

moral and pecuniary

rights. When one compares France and Japan on this issue, the result is striking because despite their different conceptions of art and the status of artists, the laws of these two countries similarly recognize that "copyright should protect the creations of form and not the ideas" and that in order for the form to be protected it must be "original".

These findings point to many surprising similarities between the two countries, however, it turns out that the differences are the most interesting.

Authorship

The attribution of authorship and the resulting protection depends on changing social criteria and the place of artists in society as well as the social conception of the use of the right, for economic purposes or protection of the individual.

In France as in Japan, all those who participated in the creation of the work will have authorship. However, a real difference between the two cultures arises concerning the possibility for a company to hold the copyright, which is allowed by Japanese law (Article 15 of the 1971 Act) and prohibited in France.

Moral Rights

Moreover, if France and Japan recognize the moral rights of authors in their works, it is not as extensive.

Disclosure Rights

Article L121-2 of the Code of Intellectual Property (ICC) French, like Article 18.1 of the Japanese law of 1971, gives the author alone the right to disclose his work. However, in French law, when dealing with the third party, the copyright is given to the creator. In contrast, Japanese law provides for limits on the discretionary nature of the right of disclosure, limits imposed by the presumption of authority over disclosure and public order.

Finally, there is a limit to the right of disclosure of the author, which has no equivalent in French law, because Japanese law contains a provision on censorship. Indeed, Article 175 of the Penal Code punishes the Japanese release, sale and public display of obscene works. Thus, the right to disclosure is limited since there is a qualitative evaluation as a condition for obtaining legal protection.

Integrity rights

Based on copyright law, the right for respect for the work is characterized by safeguarding the integrity of the work. However, in Japan the protection of the integrity of the work is limited because changes in the work may be made without the consent of the author, under Article 20.2, if they are made for architectural or teaching purposes, or expansion, transformation or in connection with repairs, or finally a general case of modifications deemed unavoidable given the nature of the work and the purpose and mode of operation.

Paternity Law

The principle of the right to paternity is based on the idea that the author has the right to mention his name as that of the author's work. Under French law Article L121-1 of the ICC gives the author the right of respect for his name and quality. This right exists for any kind of work. Japanese law considers the right of authorship in a temporal perspective by referring to the time as well as the name of the author. In Japan, the author has the right to mention his name as the author of the work, before disclosing of the work by affixing the original at the disclosure, or when a work drawn from his work is disclosed (art. 19.1).

However, if both systems impose a principle of freedom in the choice of the author's name, they do not envisage the same manner the case of anonymous works. Since the article L113-6 of the ICC maintains the French system of absolute freedom for the author, he can freely choose the form of publication (nominal, anonymous, or pseudonym), but it is not the same in Japan, where under Article 19.3, the system of anonymous works is a system of conditional permissibility. The anonymous work is legal in Japan if anonymity does not affect the interests of the author relating to the claim authorship of the work, "given the goals and method of operation and only to the extent that such omission is compatible with good practice. "

Pecuniary rights

Defining the content of pecuniary rights is extremely variable.

Copyright has historically been defined as the right of reproduction. This word is found in Japanese law due to the American influence, which was exerted, on institutions and legal conceptions Japanese after the Second World War. However the meaning of copyright has now evolved to cover all rights pertaining to authors. Japanese law has, moreover, differentiated the concept of copyright from that currently accepted in the Anglo-Saxon world, taking care to enumerate the rights included in copyright for major works and also for derivative works.

French legislation for its part considers patrimonial rights as distinctly different. But the difference is the consolidation of these rights in different concepts, only formal differences due to American influence in Japan and not a substantive difference: the representation is considered in both systems of law as the communication of the work to the public by any process, and Japanese law does specify that the modes of communication.

The mechanism of copyright on derivative works is conditioned by the notion of authorship. For article 15 of the Japanese law, if a work created on the initiative of a corporation by an employee, in the exercise of its functions, and made public under the name of the corporation, the author and the copyright holder is then the corporation unless the employment contract provides otherwise. In France, the legislature is very reluctant to admit that copyright of a work can be devoted to any one but their creator. The article L111-1 al. 3 of the ICC, states that although the author was bound by an employment contract and has performed his work under this contract that does not prevent him from owning the copyright.

This is strictly contrary to that of Japan where the corporation enjoys the status of author, unless otherwise stipulated in the contract. The corporation in Japan is thus in a much better position than in France. However, this opposition, in regards to moral rights, is only apparent in the field of economic rights. Indeed, both mechanisms make the situation of pecuniary rights comparable in France and Japan:

-A legal mechanism in respect of the software since the article L113-9 of the ICC provides that

the copyright of software created by the employee in the exercise of its functions is attributed to the employer,

-A practical mechanism that arises from the possibility left to the employer to include in the contract concluded with the author employed a clause in which he sells the economic rights of the work.

If the laws of Japan and French have diametrically opposed assumptions, it appears that in some cases the legal practices are similar.

Finally, in terms of films, according to Article 19 of Japanese law, the copyright belongs to a film producer, provided that the authors of the work will be undertaken to participate in its realization. In France, the legislation ensures that producers presume a transfer of their remuneration and the rights that were formerly the authors'. This special law in favour of a French producer shares the same legal position as the Japanese and enjoys a fiction of French law giving economic rights attached to that quality.

Conclusion

Copyright laws are very similar in France and Japan. However, we can identify **two types of structural differences**. It should be noted that the **French legal system is still marked by the principle of hierarchy of artistic genres, while Japan ignores this position** and adopts a broad conception what is considered art. On the other hand, another difference appears when one tries to disclose the divulgation of the work. There is a **heavy influence of censorship and moral public order in Japan**.

The other type of structural **difference relates to the authors**. It should be noted here that anonymous works are lawful in Japan only as exceptions, which shows a **lesser freedom to create than in France** and finally the economic nature of copyright is highlighted in Japan while in France it is a personal right, attached to the individual.

These differences reflect differing social backgrounds, which also influence the exercise the protection of copyright laws.

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