National Activities (JAPAN)

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Recent development in the Japanese Copyright Act ("JCA")

As a result of the amendment of JCA in 2009, Article 47-6 was added as one of the new limitations and exceptions to copyright, under which search engine companies may lawfully reproduce or record any copyrighted works made available on line for the purpose of making retrieval of the information on line possible.

Recent development in Japanese copyright cases:

(i) Maneki TV case (January 18, 2011) : legality of a place shifting service

The Japanese Supreme Court reversed the IP High Court decision, holding that the respondent's service which assists an owner of SONY device 'Location Free' in transmitting Japanese broadcast programs to the owner (i.e. a resident outside Japan) by maintaining that device on behalf of the owner constitutes an infringement of the right to make a broadcast transmittable and the right of the public transmission of a broadcast program, in a case where even if that device enables a transmission of the broadcast or the program only to the owner of the device, not to the public.

(ii) Rokuraku case (January 20, 2011): legality of place shifting service

The Japanese Supreme Court reversed the IP High Court decision, holding that the respondent's service that manufactures and sells or leases a device "Rokuraku II", by which a user can remotely record broadcast programs, digitize and transmit them via the internet to the user constitute a infringement of the right to reproduction of the broadcast programs notwithstanding that fact that the above record, digitization and transmission are directed by the user using Rokuraku device, because, in this case, the respondent not only provides an environment that facilitates the reproduction, but also plays an pivotal role in realizing the reproduction of the broadcast programs using Rokuraku device by receiving broadcasts and inputting information on the broadcast programs to the device under its management and control, as a result, the respondent can be deemed to be the actor of reproduction.

(iii) Copyright Criminal Case (December 19, 2011): indirect copyright infringement criminal liability

The Supreme Court turned down the appeal from the prosecutor and held that the

developer of the P2P file sharing software 'Winny', by which actually some users engaged in copyright infringement shall not be liable for the copyright infringement as a contributor to the infringement unless all persons, with extremely limited exception, who acquire Winny are highly expected to be engaged in copyright infringement activities by using Winny and moreover, the developer clearly recognize and acknowledge such a high probability of copyright infringement activities to be strongly promoted by Winny.

(iv) Private Recording Levies case (December 22, 2011): the scope of the current Japanese copyright levy system

The IP High Court denied the claims for levies to be allegedly imposed to a TOSHIBA' DVD tuner under the Cabinet Order by Society for the Administration of Remuneration for Video Home Recording ('SARVH'), because the TOSHIBA' DVD has no analog tuner inside the device and it does not meet the requirement under the Cabinet Order that analog-digital exchange component be included inside the device.

SARVH' argument is based upon the premise that the obligation to cooperate with a designated management association under Article 104-5 is legally and directly enforceable to a manufacturer but such argument was rejected by the IP High Court; provided, however, that the IP High Court admits that, under certain circumstances, non compliance with an established way to correct imposed levies may lead to the liability for any damage arising from such non-compliance.

For your reference:

Article 104-4 (1) A purchaser of a recording machine or a recording medium designated by the Cabinet Order set forth in Article 30, paragraph (2) (in this Chapter referred to below as a "designated recording machine" and a "designated recording medium", respectively) (limited, however, to the initial purchaser of a retailed designated recording machine or designated recording medium) shall, upon request by the relevant designated management association, at the time of purchase and as a lump-sum payment of the compensation for private sound and visual recordings to be made using said designated recording machine or designated recording medium, pay the amount fixed, pursuant to the provisions of Article 104-6, paragraph (1), as the compensation for private sound and visual recordings with respect to such designated recording machine or designated recording medium, in the event that said designated management association requests such payment.

Article 104-5 Where a designated management association requests compensation for private sound and visual recordings pursuant to the provisions of paragraph (1) of the preceding Article, any person engaged in the business of manufacturing or importing designated recording machines or designated recording medium (in paragraph (3) of the next Article, referred to as "manufacturer, etc.") shall cooperate with the designated management association in requesting and receiving such compensation for private sound and visual

recordings.

(v) North Korea movie case (December 8, 2011): legal protection of the movies originated in North Korea under the Japanese Law.

The Supreme Court reversed the IP High Court decision, denying the legal protection for the movie originated in North Korea (a member of Berne Convention but Japan does not regard it as a lawful sovereign country) under not only the JCA but also Section 709 of the Japanese Civil Code ('General Tort Provision') on the contrary to the IP High Court holding that the copyright protection is denied but the claim for actual damages, a remedy under Section 709 of the Civil Code is available.