



ALAI CONGRESS 2022 – ESTORIL, Portugal CENTRO DE CONGRESSOS DO ESTORIL 15-16 SEPTEMBER QUESTIONNAIRE & ANSWERS of the Korean Group

PANEL I – PERFORMER’S RIGHTS – A COMPARATIVE OVERLOOK

Q1. What types of performers are there according to your legal framework?

A1. Performers refer to persons who perform by expressing works or non-works, and persons who direct, produce, or supervise performances (Article 2(4) of the Korean Copyright Act). The former includes an actor, singer, or performer, and the latter includes a conductor who directs performances or directors who supervise performances.

Q2. Do all types of performers enjoy Neighbouring Rights protection?

A2. Yes, they do. All performers enumerated in A1 enjoy neighboring rights protection.

Q3. Does the law distinguish between featured/non-featured performers? How?

A3. There is no distinction between the featured performers and the non-featured performers under the Korean Copyright Act.

Q4. Which rights are awarded to each type of performer?

A4-1(I-Live performances)

- a) Fixation; O (It is classified as a reproduction of performance.)
- b) Broadcasting: O

A4-2(II Fixed performances)

- c) Reproduction; O (Article 69)
- d) Distribution; O (Article 70)
- e) Rental: O (Article 71)
- f) Making Available to the public; O (Article 74)
- g) Communication to the Public; X
- h) Public performance; O (Article 72)
- i) Broadcasting; O (Article 73)
- j) Retransmission; O (Article 74)
- k) Direct Injection; O



A4-3(III- Are moral rights attributed to performers? Which prerogatives does it comprehend?)

The Performers have two kinds of moral rights; the right of paternity (Article 66) and the right of integrity (Article 67).

Q5. What is the nature of those rights? – Statutory? Contractual?

A5. The above-mentioned rights except for retransmission and direct injection are statutory rights. Retransmission of broadcasts and direct injection are contractual rights under the contract between a CMO for music performers and users.

Q6. Which of them are exclusive rights/remuneration rights?

A6. The exclusive rights are the rights of reproduction, distribution, rental, public performance, broadcasting, and making available to the public. (Articles 69-74)

Persons who broadcast, transmit online, and perform using commercial phonograms shall pay remunerations to performers. (Article 75, 76, 76-2)

Q7. Which exceptions/limitations generate remuneration rights for performers?

A7. Remuneration rights allow users to exploit performances without prior permission and contribute to the circulation of performances by prohibiting performers from exercising their exclusive rights.

Q8. Which rights are transferred to music/audiovisual producers? For how long?

A8. There are no statutory provisions for transferring music performers' rights to music producers.

But, regarding audiovisual works, it shall be presumed that a performer who agrees with the audiovisual producer to cooperate in the production transferred his rights to reproduce, distribute, broadcast, and make available to the public to the producer unless otherwise expressly stipulated. There is no provision for the term of the transfer.

Q9. Are there any legal presumptions of transfer or is it voluntary/contractual?

A9. The rights transferred to the audiovisual producer mentioned in Q8 are subject to the legal presumptions that they are transferred, unless otherwise expressly stipulated.

In the music or audiovisual business, the performers may voluntarily transfer their rights to the producers under a contract pursuant to Article 88. Article 88 provides that performers may transfer their neighboring rights by assignment in whole or in part.

Q10. Are there any unwaivable and inalienable remuneration rights?

A10. The above-mentioned three remuneration rights for performers are interpreted as inalienable rights. Therefore, the CMO who collects remuneration from users directly



distributes it to the performers even if they are belonging to the entertainment agencies.

Q11. What type of compensation is paid in exchange? How is it set? For how long?

A11. There are two categories of compensation which are for statutory license for use of performances and for limitations on neighboring rights.

(1) Compensations for the statutory license

① Where performers cannot be found(Article 50).

Where any user cannot obtain permission from a performer whose performance the user wants to exploit by failing to identify who the performer is or to locate where he lives, the user may exploit the performance by paying compensation to the Copyright Commission designated by the Minister of Culture, Sports and Tourism (hereinafter MCST).

② Broadcasting of Works Made Public(Article 51)

Where a broadcasting company intends to broadcast a performance for the public interest, but the performer refuses to grant permission to the broadcasting company, the performance may be broadcast after paying or depositing the compensation determined by the MCST to the performer.

③ Production of Commercial Phonogram(Article 52)

Where a phonogram producer intends to produce a new commercial phonogram by using a performance fixed in the pre-existing commercial phonogram that is three years past the date of the first sale in Korea, but the performer refuses to grant permission to the producer, it may produce the phonogram after paying or depositing compensation determined by the MCST to the performer.

(2) Compensations for limitations on performers' rights

- Use for Purpose of School Education (Article 25)
- Reproductions in Libraries (Article 31)
- Reproduction by Cultural Facilities (Article 35-4)

There is no provision for how long the compensation is paid in the Copyright Act. It means the compensation is supposed to be paid until the expiry of the performers' right protection term.

Q12. How is "streaming" qualified in your Country for rights awarding purposes?

A12. "Streaming" of VOD is qualified as a right to making available to the public among the performers' rights. (Article 74) Live streaming of broadcast is contractually considered a right



of broadcasting.

Q13. Whose authorization is it required for the “streaming” of music/audiovisual content?

A13. The “streaming” of music requires authorization from CMOs because, in general, copyrights for songwriters and composers are assigned to the KOMCA(Korea Music Copyright Association) and neighboring rights for performers are assigned to FKMP(Federation of Korean Music Performers).

On the other hand, the “streaming” of audiovisual content requires authorization from the audiovisual producers.

Q14. What is the estimated level of copyright infringement in your Country?

A14. According to the 2022 Annual Report on Copyright Protection, the estimated level of copyright infringement has constantly decreased every year. Even during the pandemic period, the rate of online illegal copies decreased from '20.5% in 2020 to 19.8% in 2021.

Q15. What is the current level of disclosure on economic returns from digital platforms?

A15. Because digital platforms keep their economic profits a business secret, the current level of disclosure on economic returns is low.

Q16. How is performer’s compensation determined for each business model?

A16. The performer’s compensation regarding the statutory license for use of performances and limitations on neighboring rights is determined by the minister of MCST.

Q17. Are there minimum amounts due? Any other economic benefits?

A17. CMOs do not stipulate minimum amounts of compensation in the collection regulations. Instead, most copyright fees including streaming and download are calculated and collected on a blanket license based on a certain percentage of the annual sales of the business.

Q18. Do UGC platforms contribute to such compensation schemes? How?

A18. UGC platforms contribute to compensation schemes for the performers, For example, FKMP collects compensation through a contract with some UGC platforms like Naver TV, Kakao TV, Tiktok, Africa TV, Series On, and so on.

Q19. Has the Beijing Treaty been implemented in your Country, at least, in part?

A19. Korea joined the Beijing Treaty’s membership in WIPO on April 22, 2020, and it took effect on July 22, 2020. According to the Beijing Treaty article 11 and article 12 which delegate to members’ national law on the consideration of the interests of various countries surrounding audiovisual works, Korea did not need to implement it because Korea Copyright Act articles 99~101(Special Cases Concerning Cinematographic Works) is harmonized with the Beijing



Treaty.

Q20. Which rights are collected by Collective Management Organisations (CMOs)?

A20. Korea has a CMO for music performers and a CMO for broadcasting performers. The CMO for the music performers, FKMP (Federation of Korean Music Performers) manages the exclusive rights such as the rights of reproduction and making available to the public of the performers. In addition, it manages remunerations that the persons (broadcasting organizations to performers, digital sound transmission organizations, and persons doing public performances) using commercial phonograms pay to performers.

The CMO for the broadcasting performers, Korea Broadcasting Performers' rights Association, manages the exclusive rights of reproduction, broadcasting, and making available to the public of the performers.

Q21. Which CMOs represent performers in your Country?

A21. There are FKMP (Federation of Korean Music Performers) representing the music performers and KOBPRA (Korea Broadcasting Performers' rights Association) representing the broadcasting performers.

Q22. Do these CMOs comply with transparency principles?

A22. The MCST may demand CMOs to submit a necessary report on its duties, and if some problems regarding CMO's administration are found out, the minister of MCST may require public officials under his or her jurisdiction to investigate the affairs and financial standing of the CMOs (Article 108). As a result of it, the CMOs comply with transparency principles.

Q23. Is it possible to find out how much income is provided by each type of rights?

A23. All CMOs have to disclose all income from the previous year by rights type through the website in March every year, so it is possible to find out how much income is provided by each type of rights.

Q24. What is the current litigation level for performers' rights in your Country?

A23. So far, there have been very few litigations over performers' rights. For this reason, it is difficult to say what the current litigation level is.

Q25. Are there any relevant Court Decisions concerning performer's rights?

A25. There are cases concerning performer's rights as follows; a case concerning the scope of rights transferred to the audiovisual work producer (Supreme Court Decision 96Do2856 ruled on October 6, 1997) and a case concerning the performer's right to claim remuneration (Seoul District Court Decision 95 Gadan 16616 ruled on October 15, 1997)



Q26. Does the Principle of National Treatment apply to all foreign performers?

A26 The Principle of National Treatment applies to performers from member nations of the international treaties to which the Republic of Korea has acceded or which it has ratified. (Article 64(1))

On the other hand, the reciprocal principle applies to remuneration rights. (Articles 75, 76-2) So, remunerations are paid to only foreign performers whose countries pay remunerations to Korean performers.

Q27. Are there “appropriate and proportionate remuneration” provisions?

A27. Korea Copyright Act stipulates in Articles 75 to 76-2 that persons using a commercial phonogram shall pay "reasonable remuneration" to performers.

Q28. Are CMO’s mandates always exclusive and encompassing all rights?

A28. Performers assign their entire neighboring rights to CMO except for remunerations. So, CMO’s mandates are always exclusive and encompass all neighboring rights assigned by performers.

Q29. Are there any partial/global revocation of transfer of rights agreements provisions?

A29. The Copyright Act does not stipulate provisions about the revocation of transfer of rights agreements. But FKMP for music performers stipulates any revocation of transfer of rights agreements in its membership agreements.

On the other hand, Korea Broadcasting Performers’ rights Association does not have any provision for revocation of transfer of rights in its membership agreements.

Q30. Are there any provisions on contractual remuneration adjustments?

A30. There is a provision on contractual remuneration adjustments called an adjustment factor in a CMO’s collection regulation. CMOs and the relevant business entities negotiate the adjustment factor that will influence the amount of remuneration.

PANEL II – PHONOGRAM PRODUCERS’ RIGHTS

Q1.- Which rights are awarded to phonogram producers?

- a) Reproduction; O
- b) Broadcasting; X
- c) Communication to the public; X
- d) Distribution; O



- e) Rental; O
- f) Making available to the public; O
- g) Cable Retransmission; X
- h) Direct Injection; X
- i) Any other rights? remuneration rights

Q2. What is the nature of those rights? – Statutory? Contractual?

A2. The all rights answered in Question 1 are statutory rights.

Q3. Which of them are exclusive/remuneration rights?

A3. The exclusive rights are the rights of reproduction, distribution, rental, and making available to the public. On the other hand, persons who are broadcasting, transmitting digital sound, and performing in public by using commercial phonograms shall pay remunerations to the phonogram producers. (Articles 82, 83, 83-2)

Q4. Which exceptions/limitations generate remuneration rights for phonogram producers?

A4. Remuneration rights allow users to exploit phonograms without prior permission and contribute to the circulation of phonograms by prohibiting performers from exercising their exclusive rights.

Q5. Are there any legal presumptions of transfer or is it voluntary/contractual?

A5. Unlike performers, the Copyright Act does not stipulate the regulation for special cases concerning audiovisual works(Article100(3)) or other legal presumptions of transfer regarding phonogram producers. However, the phonogram producers may voluntarily transfer their rights to anyone in a contract pursuant to Article 88. Article 88 provides that performers may transfer their neighboring rights by assignment in whole or in part.

Q6. What type of compensation is paid in exchange? How is it set? For how long?

A6. There are two categories of compensation which are for statutory license for use of phonograms and for limitations on neighboring rights.

(1) Compensations for the statutory license

① Where phonogram producers cannot be found(Article 50)

Where any user cannot obtain permission from a phonogram producer whose phonogram the user wants to exploit by failing to identify who the phonogram producer is or to locate where he lives, the user may exploit the phonogram by paying compensation to the Copyright



Commission designated by MCST.

② Broadcasting of Works Made Public(Article 51)

Where a broadcasting company intends to broadcast a phonogram for the public interest, but the phonogram producer refuses to grant permission to the broadcasting company, the phonogram may be broadcast after paying or depositing the compensation determined by the MCST to the phonogram producer.

(2) Compensations for limitations on performers' rights

- Use for Purpose of School Education (Article 25)
- Reproductions in Libraries (Article 31)
- Reproduction by Cultural Facilities (Article 35-4)

There is no provision for how long the compensation is paid in the Copyright Act. It means the compensation is supposed to be paid until the expiry of the phonogram producers' right protection term.

Q8. Are there minimum amounts due? Any other economic benefits?

A8. CMOs do not stipulate minimum amounts of compensation in the collection regulations. Instead, most copyright fees including streaming and download are calculated and collected on a blanket license based on a certain percentage of the annual sales of the business.

Q9. Is digital piracy/stream ripping still a major concern for phonogram producers?

A9. Yes, it is. Digital piracy/stream-ripping is still a major concern for phonogram producers because new digital devices fostering illegal use of phonograms constantly emerge.

Q10. Which rights are currently being collected via CMOs?

A10. The rights of reproduction, making available to the public, and the remunerations are collected via CMOs.

Q11. Which CMOs represent phonogram producers in your Country?

A11. RIAK(Recording Industry Association of Korea) represents less than 10% of phonogram producers and manages the exclusive rights of phonogram producers.

On the other hand, Korea Entertainment Producers Association manages the remunerations of phonogram producers. (Refer to <http://www.riak.or.kr/>, <https://k-pops.or.kr/>)

Q12. Do these CMOs comply with transparency principles?

A12. MCST may demand CMOs to submit a necessary report on its duties, and if some problems regarding CMO's administration are found out, the minister of MCST may require



public officials under his or her jurisdiction to investigate the affairs and financial standing of the CMOs(Article 108). As a result of it, the CMOs comply with transparency principles.

Q13. Is it possible to find out how much income is provided by each type of rights?

A13. All CMOs have to disclose all income from the previous year by rights type through the website in March every year, so it is possible to find out how much income is provided by each type of rights.

Q14. What is the current litigation level for phonogram producers in your Country?

A14. So far, there have been some litigations over phonogram producers' rights. So the current litigation level is high.

Q15. Are there any relevant Court Decisions concerning phonogram producer's rights?

A15. There are relevant Court Decisions concerning phonogram producer's rights as follows; cases concerning phonogram production and licensing(Seoul Central District Court Decision 2004Gahap22068 ruled on November 25, 2004; Seoul Central District Court Decision 2003Gahap67675 ruled on December 2, 2004; Seoul Central District Court Decision 2004Gahap54935 ruled on January 1, 2005; Seoul Central District Court Decision 2004Gahap36876 ruled on May 20, 2005; Supreme Court Decision 2002Da10756 ruled on July 13, 2006; Supreme Court Decision 2006Da21002 ruled on December 22, 2006; Supreme Court Decision 2005Da74894 ruled on February 22, 2007), cases concerning who can become a phonogram producer with respect to a record(Seoul Central District Court Decision 2003Gahap66177 ruled on October 10, 2006; Supreme Court Decision 2013Da56167 ruled on April 28, 2016), and cases concerning what can be phonograms subject to royal fees or remuneration(Seoul Central District Court Decision 2008Gahap44196 ruled on September 29, 2009; Seoul Central District Court Decision 2012Gahap536005 ruled on April 8, 2013; Seoul High Court Decision 2009Na53224 ruled on September 9, 2010; Seoul High Court Decision 2013Na2007545 ruled on November 28, 2013; Supreme Court Decision 2013Da219616 ruled on December 10, 2015; Supreme Court Decision 2016Da204653 ruled on August 24, 2016).

Q16. Are there any revocation of transfer of rights' agreements provisions?

A16. The Copyright Act does not stipulate provisions about the revocation of transfer of rights agreements. Recording Industry Association of Korea does not have the regulation on reasons for revocation of transfer of rights agreements in its membership agreement, but it is stipulated that the association or the user may revoke the Agreement within 10 days if it enters into this Agreement and the User has not commenced the Service. (Refer to <http://www.riak.or.kr/>)

Q17. What is considered a “phonogram published for commercial purposes”?

A17. A “phonogram published for commercial purposes” means a phonogram published for



the purpose of providing the phonogram to the public in a transaction by means of sale or obtaining indirect profits related to the sale of the phonogram. A “phonogram published for commercial purposes” considers the following;

- ① The term “commercial purposes” means to provide the public with the phonogram in the transaction by means of sale, or to obtain indirect profits related to the sale of it.
- ② Under the Copyright Act, the term "publication" means making public or publishing a work and refers to a case where a phonogram is released online or sold by a CD, etc.
- ③ Under the Copyright Act, the term "phonogram" means the sound fixed to a material object, and means the sound itself fixed regardless of media such as cassette tapes, CDs, and digital storage devices.

Q18. Is there any type of phonograms that is published for non-commercial purposes?

A18. Phonograms produced mainly for the purpose of promoting and conducting programs are considered non-commercial.

Q19. Which rig

hts are involved in audiovisual synchronization (“production music”)?

A19. The right of reproduction is involved in audiovisual synchronization.

Q20. Which rights are involved in mood music/sound branding licensing?

A20. The right of reproduction and the right of the derivative are involved in mood music/sound branding licensing.

PANEL III – BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS

Q1. Which rights are awarded to broadcasters in your Country?

A1. The broadcasters have the exclusive rights to reproduction, simultaneous broadcasting, and public performance. (Articles 84, 85, 85-2)

Q2. What is the nature of those rights? – Statutory? Contractual?

A2. The rights listed in the answer of Q1 are statutory rights.

Q3. Which of them are exclusive/remuneration rights?

A3. Broadcasters have no remuneration rights. They have only exclusive rights answered in Q1.



Q4. Which exceptions/limitations generate remuneration rights for broadcasters?

A4. Because broadcasters have no remuneration rights there is no exceptions/limitations in connection with remuneration rights.

Q5. Are there any legal presumptions of transfer or is it voluntary/contractual?

A5. When a broadcaster is an audiovisual producer, the legal presumptions of transfer explained in PANEL I Q9., and PANEL II Q5., may be applied.

Q6. What is the relevance of copyright infringement in relation to broadcasters' rights?

A6. In relation to the infringement of the right to reproduction, taking a picture of the screen on TV, recording it as a video, and serving or selling it through Internet(etc.) may infringe the right of broadcasters.

In relation to the infringement of the right to simultaneous broadcasting, broadcasting an audiovisual work without the permission of the broadcasters simultaneously may infringe the right of broadcasters. And, in relation to the infringement of the right to public performance, if an admission fee is required for performing a broadcast in a theater or other place, a holder performing the broadcast must receive the license to right of public performance to a broadcaster. Otherwise, he may also infringe the right of a broadcaster.

Q7. Is digital piracy/stream ripping still a major concern for broadcasters?

A7. Digital piracy/stream-ripping is still a major concern for broadcasters because new digital devices fostering illegal use of broadcasts constantly emerge.

Q8. Do UGC platforms contribute to broadcasters' rights? How?

A8. Yes, they do. It is known that domestic online platforms are immediately blocking illegal broadcasting content in accordance with the regulation of "limitation on liability of online service providers" in case of requests from right holders to block infringing content.

Q9. What is the current litigation level for broadcasters' rights in your Country?

A9. The current level of litigation for broadcasters' rights in Korea is high.

Q10. Are there any relevant Court Decisions concerning broadcasters' rights in your Country?

A10. There is a Court Decision concerning the infringement of the simultaneous broadcasting rights of terrestrial broadcasters by general wire broadcasters(Seoul High Court Decision 2010Gadan97688 ruled on July 20, 2011)

Q11. Are broadcasters acting as One-Stop Shop in relation to retransmission operators?

A11. Broadcasters act as one-stop shops by providing real-time and replay broadcasting through IPTV or Streaming platforms.



Q12. Which rights are awarded to audiovisual producers in your Country?

A12. As a right to be transferred from a person who agreed to cooperate in the production of an audiovisual work, the audiovisual producer has the rights of reproduction, distribution, public presentation, broadcasting, interactive transmission, and others to exploit the audiovisual work. And, as a right to be transferred from a performer, he has the rights of reproduction, distribution, broadcasting, or interactive transmission. (Article 101)

Q13. What is the nature of those rights? – Statutory? Contractual?

A13. The rights listed above are statutory rights, unless otherwise expressly stipulated. (Article 100(1))

Q14. Which of them are exclusive rights? Which of them are remuneration rights?

A14. All rights answered in Q 12 are exclusive rights and there are no remuneration rights.

Q15. Which exceptions/limitations generate remuneration rights for audiovisual producers?

A15. The rights of a audiovisual producer are exclusive, there are no remuneration rights.

Q16. Which rights are transferred to audiovisual producers? For how long?

A16. Audiovisual producers take over the rights of reproduction, distribution, public presentation, broadcasting, interactive transmission, and other necessary rights to exploit the audiovisual work. There is no stipulation in the Copyright Act regarding the term of transfer. However, the period of transfer of rights may be determined by contract. (Article 101)

Q17. Are there any legal presumptions of transfer towards audiovisual producers?

A17. Yes, there is. Article 100 of the Copyright Act stipulates the presumption of transfer towards audiovisual producers.

Q18. What type of compensation is paid in exchange? How is it set? For how long?

A18. There are two categories of compensation which are for statutory license for use of broadcasts and for limitations on broadcasters' rights.

(1) Compensations for the statutory license

① Where broadcasters cannot be found(Article 50)

Where any user cannot obtain permission from a broadcaster whose broadcast the user wants to exploit by failing to identify who the broadcaster is or to find out its location, the user may exploit the broadcast by paying compensation to the Copyright Commission designated by



MCST.

② Broadcasting of Works Made Public(Article 51)

Where a broadcasting company intends to broadcast the third broadcasters' broadcast for the public interest, but the third broadcaster refuses to grant permission to the broadcasting company, the broadcast may be broadcast after paying or depositing the compensation determined by the MCST to the third broadcaster.

(2) Compensations for limitations on performers' rights

- Use for Purpose of School Education (Article 25)
- Reproductions in Libraries (Article 31)
- Reproduction by Cultural Facilities (Article 35-4)

There is no provision for how long the compensation is paid in the Copyright Act. It means the compensation is supposed to be paid until the expiry of the broadcaster's right protection term.

Q19. How is audiovisual producer's compensation determined for each business model?

A19. The audiovisual producer's compensation regarding the statutory license and limitations on rights is determined by the minister of MCST.

Q20. Are there minimum amounts due? Any other economic benefits?

A20. There is no CMOs for broadcasters, so there is no regulation for minimum amounts to be mentioned.

Q21. Do UGC platforms contribute to such compensation schemes? How?

A21. UGC platforms do not contribute to the compensation schemes for audiovisual producers. The platforms just play a role in blocking illegal content.

Q22. Is digital piracy/streamripping still a major concern for audiovisual producers?

A22. Digital piracy/stream-ripping is still a major concern for audiovisual producers because new digital devices fostering illegal use of audiovisual works constantly emerge.

Q23. What is the most recent estimation of rights' loss on account of digital piracy in your Country?

A23. According to the '2022 Annual Report on Copyright Protection' published by Korea Copyright Protection Agency regarding digital piracy, 25.9% out of the total amount of broadcasting content and 38% out of the total amount of movie content were illegal.

Q24. What is the current rule in terms of audiovisual exploitation windows in your



Country?

A24. A person who wants to use broadcast may get permission from a broadcaster or a producer where the broadcast was made by the third producer. And, a person who wants to use movie may get permission from the audiovisual producer or a CMO where the producer consigned its rights to the CMO.

Q25. Which CMOs represent audiovisual producers in your Country?

A25. Korean Film Producers Association represents the film producers, however there is no CMO representing broadcast producers.

Q26. Do these CMOs comply with transparency principles?

A26. The MCST (Minister of Culture, Sports and Tourism) may demand CMOs to submit a necessary report on its duties, and if some problems regarding CMO's administration are found out, the minister of MCST may require public officials under his or her jurisdiction to investigate the affairs and financial standing of the CMOs (Article 108). As a result of it, the CMO, Korean Film Producers Association, also comply with transparency principles.

Q27. Is it possible to find out how much income is provided by each type of rights?

A27. It is difficult to find out how much income is provided by each type of rights for audiovisual producers, but it is possible to find out the total income KFPA collects for a year through its website.

Q28. What is the current litigation level for audiovisual producers' rights in your Country?

A28. There have been a few litigations over audiovisual producers' rights, but the litigation level is low.

Q29. Are there any relevant Court Decisions concerning audiovisual producer's rights?

A29. There is a Supreme Court Decision regarding whether songwriters can conclude a contract with audiovisual producers to create OST music. In this case, because all creators' rights are transferred to the CMO, KOMCA argued that the contract between the creator and the producer was invalid. But the court ruled that the contract was valid.

Q30. Are audiovisual producers acting as One-Stop Shop in relation to retransmission operators?

A30. Where broadcasters produce audiovisual works as audiovisual producers, the audiovisual producers act as one-stop shops by providing real-time and replay broadcasting through IPTV or Streaming platforms.



PANEL IV – DATABASE PRODUCERS’ AND PUBLISHERS RIGHTS

Q1. Are Databases legally protected in your Country? How?

A1. Databases are legally protected in the Copyright Act.

Q2. Is there a *Sui Generis* Database producers’ right or equivalent protection in your Country?

A2. Database producers shall hold the rights of reproduction, distribution, broadcasting or interactive transmission the whole or considerable parts of relevant database. (Article 93)

Q3. Is it possible to evaluate its efficiency and level of enforcement?

A3. It is not easy to evaluate its efficiency and level of enforcement.

Q4. Is there any different form of protection for Database producers or for ownership of data?

A4. There is a different form of protection for database producers or for ownership of data. Database producers are protected under Copyright Act, on the other hand, ownership of data is protected under ‘Unfair Competition Prevention And Trade Secret Protection Act’ or ‘Basic Act on the Promotion and Utilization of the Data Industry’.

Q5. How does it work? Is it effective?

A5. In accordance with Copyright Act, a right holder may claim the suspension or prevention, and indemnification for damage. And, in accordance with Unfair Competition Prevention And Trade Secret Protection Act, he may claim prohibition or prevention, indemnification for damage, and regaining the impaired reputation. It is meaningful that the copyright holder can receive protection of rights from various acts. (Refer to Articles 123, 125 of Copyright Act and Articles 4, 5, 6 of Unfair Competition Prevention And Trade Secret Protection Act)

Q6. How do the courts of your Country balance the *sui generis* right with freedom of information and freedom of competition?

A6. The courts try to balance the *sui generis* right with freedom of information and freedom of competition in accordance with Article 21 of the Constitution and Article 1 of the Copyright Act.

Article 1 of the Copyright Act stipulates “The purpose of this Act is to protect the rights of authors and the rights neighboring on them and to promote fair use of works in order to contribute to the improvement and development of culture and related industries.”

Q7. Is the *sui generis* right protected against circumvention of TPM designed for



controlling access?

A7. There is no *sui generis* right protected against circumvention of TPM. Instead, there is a provision for the prohibition of circumventing technological protection measures under the Copyright Act. If the TPM falls under the technical protection measures stipulated in the Copyright Act, it can be protected by Copyright Act. (Article 2 item 28 (a) and Article 104-2)

Q8. Is there special protection against online uses of press publications in your Country?

A8. There is no explicit provision for protecting online uses of press publications, which can be protected as a work under the Copyright Act.

Q9. Does it apply to scientific journals and hyperlinks? How does it work?

A9. There is no explicit provision for protecting online uses of press publications, which can be protected as a work under the Copyright Act. Therefore, if it falls under limitations on the author's economic rights, the subject of application may or may not be comprehensive. This may depend on whether it falls under 'quotation from works made public' or 'fair use of works' under the Copyright Act.