

# WORLD TRADE ORGANIZATION

RESTRICTED

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**Council for Trade-Related Aspects  
of Intellectual Property Rights**

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## REVIEW OF LEGISLATION ON COPYRIGHT AND RELATED RIGHTS

Japan

Addendum

By means of a communication from the Permanent Mission of Japan, dated 18 April 1997, the Secretariat has received the following responses to the questions that Brazil had put to Japan in the context of the follow-up to the review of legislation on copyright and related rights at the Council's meeting of 22 to 25 July 1996.

### **REPLIES TO QUESTIONS POSED BY BRAZIL**

1. *What are the prerequisites for the protection of a work, performance, phonogram and broadcasting by copyright and related rights under each category of subject matter? Does protection extend to the title of the work? Is there a special requisite for photographic works or to works of applied art?*

- (1) Copyright is granted automatically when a work is created (paragraph 2 of Article 17, paragraph 1 of Article 51).

Neighbouring rights of performers, producers of phonograms and broadcasting organizations are also granted automatically (paragraph 5 of Article 89, Article 101):

- (i) when the performance takes place, with respect to performers;
- (ii) when the first fixation of sounds is made, with respect to producer of phonograms;  
and
- (iii) when the broadcast takes place, with respect to broadcasting organizations.

- (2) As to the title of a work, it is also granted protection as copyright if it constitutes an independent work.

An author has a moral right to preserve the integrity of the title of his work against its modification (Article 20).

- (3) There exists no specific provision with respect to requisites either for photographic works or for works of applied art.

2. *What are the prerequisites for the protection of adaptations, translations, and other alterations of the original work, in particular cinematographic works?*

Derivative works created by adaptation, translation or cinematization of pre-existing works are protected automatically when they are created (subparagraph 11 of paragraph 1 of Article 2, paragraph 2 of Article 17, paragraph 1 of Article 51).

3. *Please indicate the legal provisions that ensure the protection of computer programs as literary works, according to Article 10(1) of the TRIPS Agreement. Does it incorporate source and object code?*

The Copyright Law clearly stipulates in Article 10 (Classification of works) that computer programs are entitled to copyright protection. Both object code programs and source code programs are protected.

4. *Who is considered to be the author and right holder of the protected work in respect to each category of subject matter? Can a legal person be considered the author of intellectual works? If so, under what circumstances?*

In principle, an author is a person who creates a work (subparagraph 2 of paragraph 1 of Article 2).

The authorship of a work which, on the initiative of a legal person, is made by its employee in the course of his duties and is made public in the name of the legal person as the author shall be attributed to that legal person unless otherwise stipulated in a contract, work regulation or the like in force at the time of creating the work. (In the case of computer programs, the requirement "made public" shall not be applied.) (Article 15)

5. *Please specify the types of licences available for works, performances, phonograms and broadcasting protected by copyright and related rights under the domestic law (voluntary, compulsory, etc.) and indicate the relevant legal provisions.*

Works, performances, phonograms and broadcasting may be exploited in the following cases:

- (i) when authorized by the right owner; or
- (ii) when permitted in accordance with the provisions on "the limitation of rights".

Works may be exploited when permitted based on "the compulsory license" which is issued by the relevant governmental organization (the Commissioner for Cultural Affairs).

Provisions on the compulsory license are as follows:

- (i) exploitation of works in cases where the copyright owner thereof is unknown (Article 67);
- (ii) broadcasting of works (Article 68); and
- (iii) recording on commercial phonograms (Article 69)

6. *Please specify the exceptions to the right of reproduction (Article 9 of the Berne Convention), particularly with respect to wire and wireless digital transmissions and browsing on the internet?*

- (1) In accordance with the scope of possible exceptions permitted under Article 9 of the Berne Convention, the Japanese Copyright Law has such exceptions as reproduction for private use (Article 30), reproduction in schools and other educational institutions (Article 35), etc.

- (2) As to the transmission of works, the Japanese Copyright Law grants to an author the right to transmit his work to the public, which covers both wire and wireless transmissions, both digital and analogue transmissions and both simultaneous and interactive transmissions (Article 23).
- (3) The Japanese Copyright Law has no specific provisions concerning browsing on the internet.