



NEWSLETTER

Research Center for the Legal System of Intellectual Property

❖<German-Japanese Science and Innovation Forum 2010>

Workshop 1: Global Competition and Intellectual Property Strategies: Are Germany and Japan Ready for Challenges in the Information Age? (2010/10/06)



【Moderator】

Prof. Toshiko Takenaka, Director, CASRIP, Univ. of Washington School of Law, Visiting Professor of Waseda University

【Speakers】

Mr. Takeshi Isayama, Carlyle Japan, Former Commissioner of Japan Patent Office and Former Vice Chairman of Nissan Motor Co. Ltd.

Prof. Theo Bodewig, Humboldt University

Prof. Dr. Hans Ullrich, Max Planck Institutes

【Panelists】

Mr. Felix-Reinhard Einsel, Sonderhoff & Einsel Law and Patent Office

Prof. Ryu Takabayashi, Waseda University

Dr. Martin Schaefer, Boehmert & Boehmert

On October 6, 2010, "German-Japanese Science and Innovation Forum 2010, Workshop 1: Global Competition and Intellectual Property Strategies: Are Germany and Japan Ready for Challenges in the Information Age?" was organized by RCLIP, German Academic Exchange Service, and Alexander von Humboldt Foundation and co-sponsored by Tokyo Medical Dental University.

A recent United States Supreme Court decision on *Bilski* in June 2010 highlights the difficulty of striking the balance between protecting inventors and authors and ensuring the freedom of independent intellectual exercise to others as to new creation occurring with development of the information age such as software and business methods.

Intellectual property as such is very significant in Japan and Germany which have limited natural resources unlike the US. It is urgent for them to establish IP policies responding to the information age. This workshop invited Mr. Isayama who has engaged with the protection and exploitation of intellectual property as a former JPO commissioner and Vice-Chairman of Nissan Motor, and Prof. Hans Ullrich of Max Planck Institutes and Prof. Theo Bodewig of Humboldt University who have worked as advisors of German government and the European Union for many years to speak on the urgent issues emerging along with the increasing value of intangible assets and market globalization including the review of territoriality principle on intellectual property right, and patent protection of technology standards and its limitation under competitive law. Based on the speeches, scholars and practitioners of Japan and Germany engaged in a panel discussion.

1. Keynote Speech: Intellectual Asset Management: How does a corporation survive in global competition in an era of great changes?

First, Mr. Isayama made his keynote speech titled "Intellectual Asset Management: How does a corporation survive in global competition in an era of great changes?"

Based on his experience at Nissan, Mr. Isayama pointed out that companies lost the opportunity to manage intellectual assets from the perspectives



of asset management, competitiveness evaluation, and alliance strategy because they normally let professionals such as inventors, IP division, or legal affairs handle intellectual property.

Then, he stated that, challenges in IP management would be sharing information and system establishment for that purpose as well as sharing strategies to exploit/protect IP and system establishment for that purpose. He stated that we should conduct IP management in a phased manner while establishing fundamental data and analyzing conditions. We should ensure whether intellectual property such as patents is evaluated as truly significant, share the information of IP value among related parties, make rules for strategic exploitation of IP, clarify contract conditions in asking external professionals to select related companies, and evaluate these processes on a regular basis.

2. “The Interaction of Intellectual Property Protection and Competition Law: Strategic Patenting and Patented Standards as a Common Global Concern”

Next, Professor Ullrich made a speech titled “The Interaction of Intellectual Property Protection and Competition Law: Strategic Patenting and Patented Standards as a Common Global Concern”.

First, as to the relations between private autonomy and the limitation of competition, Professor Ullrich explained about traditional understanding of contract in Europe and the relations among intellectual property right, competition law, and policies and so forth. Then, he stated that intellectual property was a means for competing in innovative markets and had a function to protect technology from imitation and to facilitate the competition of alternate technology. He sorted out these matters especially in terms of the relations with competition law.

Also he outlined the subject matter patent

requirements, and embodiments of protection of an invention that can be patented. Then, he pointed out that the future changes of competitive policies would have impact on IP system or corporate IP strategies because IP system was a means of competition and competition was greatly affected by competition law and policies.

Furthermore, he examined the possibility that IP system might have harmful effects, raising examples such as cross-selling or blocking access to standard technology. In addition, he concluded that it was necessary to review the current IP framework such as patent exhaustion or use of patent inventions in terms of IP system to facilitate competition.

3. “The Territoriality Principle and Global Competition”

Next, Professor Dr. Theo Bodewig, Humboldt University talked on “the Territoriality Principle and Global Competition”.

Professor Bodewig first mentioned various problems caused by territoriality principle which is a fundamental principle of IP system. The problems included country-specific applications, involvement of numerous patent attorneys, country-specific examination procedures and results, and country-specific procedures of infringement litigation and results.

Since the second half of the 19th century, the demand of IP protection has been increasing in each country. On the other hand, laws of each country have built trade barrier. That has led to the recognition that we need to facilitate globalization and international harmonization in IPR system to a certain extent. Professor Bodewig mentioned various efforts in the treaties to alleviate the obstacles caused by the territoriality principle including the Paris Convention, the Berne Convention and the Madrid Agreement, the Patent Cooperation Treaty, the European Patent Convention, the TRIPS Agreement, the Commercial Law Treaty, and the Patent Law Treaty.



In addition, he mentioned the issues necessary to be considered in the future such as the problem of the exhaustion theory and globalization - when the patent is exhausted for a product in a country, the patent is not always exhausted in other countries, and the problem of globalization and substantive legal standard different from country to country – investors cannot obtain uniform protection in major global markets. He also mentioned the necessity of territoriality principle and its positive aspects.

4. Panel Discussion and Q&A

Mr. Einsel made a comment as the first panelist. German patent description is characterized by the low numbers of working examples, conceptual expression, and no citation of effects. So he pointed out that applying a patent application from Germany to Japan would be disadvantageous when we considered it under the territoriality principle limited to the relations between Japan and Germany.

Next, Mr. Schaefer mentioned the issues of territoriality principle concerning copyright protection because today's discussions were relevant to not only patent but also copyright.

Last, as Director of the RCLIP, Professor Takabayashi explained about the RCLIP's approach of pursuing the ideal IP system. It is considered that IP precedents hold high internationality because they affect other countries and common problems occur in many countries. He introduced the RCLIP had collected IP precedents from Asian and European countries and examined what issues were occurring in those countries, responding the point that law systems, especially enforcements are not unified in reality.

After the subsequent panel discussion, many questions were raised from the floor.

(Research Associate Akiko Ogawa)

Fall Semester 2010 JASRAC Seminar

Copyright Law Special Lecture: Urgent Research Issues Concerning Copyright Infringement (No. 1 – No.8)

Following the same series last year, this seminar series invites practitioners and scholars who are at the forefront of IP law field as speakers to hold a lecture or symposium.

Organizer: Waseda Law School

Co-organizers: the RCLIP, Waseda University Institute for Interdisciplinary Intellectual Property Study Forum (IIIPS-forum), Waseda University

http://www.globalcoe-waseda-law-commerce.org/rcclip/reservation/kifukouza_form.html

JASRAC Seminar No.1: Current Issues of Limitations and Exceptions to Copyrights in UK (2010/10/2)



【Speakers】

Mr. Jonathan Griffiths, Senior Lecturer, Univ. of London, Queen Mary School of Law

Prof. Uma Suthersanen, Univ. of London, Queen Mary School of Law

【Moderator】 Associate Prof. Tetsuya Imamura, Meiji University

【Host】 Ryu Takabayashi, Professor of Waseda University

In the Part I of the JARAC Seminar on October 2, Senior Lecturer Jonathan Griffiths and Professor Uma Suthersanen from University of London, Queen Mary School of Law made a speech under the theme of “Copyright Exceptions in the United Kingdom – Current Developments”.



In the speech titled “Copyright Exceptions in the United Kingdom – Current Developments”, Mr. Griffiths spoke on the current reform program in the UK, especially, copyright exceptions.

Copyright exceptions in the UK are stipulated in Copyright Designs & Patents Act 1988, Part 1, Chapter 3 (ss 28-76) (CDPA Act) and typical form is highly detailed and context-specific. The similar condition is also found in Japan and the US. The speech pointed out general features of copyright exceptions in the UK such as the tendency of courts’ approach on interpretation, fair dealing provisions, and public interest principle. He also pointed out that fair dealing provisions were not open as much as fair use in the US because the purpose of research was limited to concrete purposes such as private study, criticism, review or news reporting.

Furthermore, he also mentioned the relationship between European Union framework and the UK Copyright Act. He explained the relationship with three-step test stipulated in Information Society Directive (2001/29/EC), Art 5) and especially elaborated the case of Infopaq (Infopaq International A/S v Danske Dagblades Forening [2009] ECDR 16).

Next, Gowers Review of Intellectual Property (HMSO, 2006) was introduced as an important literature concerning the reform of IP law system in the UK. Then, Mr. Griffiths elaborated the UK-IPO response to Gowers’ proposals on education, format-shifting, private copies for research, libraries and archives, and parody.

At the end of the speech, he also pointed out that three-step test was often used as a mechanism to persuade the government or as rhetorical use in submissions and the claims as such were sometimes fallacious.

In the speech titled “Copyright and Education: Lessons from the United Kingdom”, Professor Uma Suthersanen first pointed out that the 1709/1710 Statute of Anne had already adopted a certain public interest principle to seek a

balancing mechanism between different competing interests – ‘the Encouragement of Learning’ and authors’ right. Then, she referred to the reason why the notion of public interest as such had disappeared over time. The public interest principle has three elements: a limitation of term, a public deposit requirement and a control of the abusive and unfair pricing of books. The notion of public interest in the Statute of Anne could be seen in some diluted form over time. The report made theoretical explanations on the causes from various viewpoints.

Next, Professor Suthersanen explained lessons from the UK concerning educational usage. First, she pointed out that the fair dealing defense concerning educational usage changed to the framework of limiting defense in the Copyright Act 1911 and the CDPA Act 1988, responding the advent of reprographic technology or digital technology.

In addition, various associations of copyright owners have their own guidelines as to educational fair dealing. Examples were introduced including the Senate House Library, within the University of London. These examples show a certain amount of ambiguity and vagueness as to the main defense for private researchers. Also, she pointed out that it was difficult to find a clear line between commercial research and research for a non-commercial purpose as to the fair dealing defense limited to private study or research. Furthermore, she mentioned that the issue of educational exceptions was very complex.





Last, she explained the issue of “Blanket Licensing” used in educational purpose as the contractual mechanism employed by collecting society, referring to the case of *Universities U.K. v Copyright Licensing Agency (CLA)* (*Universities UK v Copyright Licensing Agency* [2002] RPC 36; [2002] EMLR 35).

Following the speech above stated, a QA session actively took place with the attendants.

(RC Tetsuya Imamura)

❖ JASRAC Seminar No.2: Intellectual Property Rights and Free Movement Policy in EU Market (2010/10/2)



【Moderator】

Prof. Toshiko Takenaka, University of Washington, Visiting Professor of Waseda University

【Keynote Speaker】

Dr. Martin Schaefer, Boehmert & Boehmert

【Panelists】

Prof. Dr. Hans Ullrich, Max Planck Institutes

Prof. Theo Bodewig, Humboldt University

Following the first part, JASRAC Seminar No.2: Intellectual Property Rights and Free Movement Policy in EU Market was held on October 2.

In the keynote speech titled “Current Legal Issues in Collective Rights Management in the EU – the Example of Licensing Music”, Dr. Martin Schaefer introduced the recent issues raised concerning online distribution and collective administration of music works in Europe where the cases asking for decisions of

the European Court of Justice (ECJ) are increasing over the conflict between the protection of IPR and the need for an unrestricted movement of goods and services based on the EU treaties.

First, Dr. Schaefer introduced the principle controlling an unrestricted movement of goods and services within the EU market that has been confirmed



the decisions of the ECJ and EU the Directive.

a) The principle of EU right exhaustion of distribution rights - Art. 9 II of the “EU Rental Directive” (2006/115/EC) stipulates that if an individual item of protected matter has been sold legally and with consent of the rights holder somewhere within the European Union, any retailer is free to resell this item throughout the European Union without restrictions. b) The country of origin principle in satellite broadcasting - for satellite broadcasting the country of origin principle applies, according to which within the EU only one license is needed (93/83/EEC). c) Equal treatment of EU citizens and EU enterprises within the EU (Phil Collins, 1993). Based on those, in the EU Copyright Directive of 2001 (2001/29/EG), which itself is the implementation of the 1996 WIPO Treaties of copyright and neighboring rights, the newly established “making available” right as to online use was exempted both from the principles of exhaustion and was explicitly not governed by the country of origin principle.

Next, he introduced the administration practice of collecting societies in the EU and the problems concerning the online use of music works, referring to the license practice at GEMA which is an authors’ collecting society in the field of music in Germany. He pointed out that no workable mechanism had been achieved for the music sector to provide centralized Pan-European



access to the full scope of licenses needed for on-demand offers of music and the reason would be insufficient transfer of the comprehensive licensing system for the online use of music works, compared to the neighboring rights.

According to the traditional practice, when right holders grant rights within Germany to GEMA, practically, GEMA can grant rights for the entire world by the reciprocal representation agreement with other collecting societies (the web of reciprocal authorization) just as right holders grant rights for the entire world to GEMA. Also, as a supplement of the system, any record company is free to choose by which national music authors' society it preferred to have its licensing of sales within the EU administered. This mechanism has played a vital role for the system of reproduction and distribution rights for physical sound recordings as e.g. CDs. However, different from the societies of neighboring rights, the copyright societies contained a restriction whereby only the society at which the user was located should be responsible (and qualified) for licensing. This restrictive policy led to antitrust investigations with the Directorate General (DG) Competition at the EU Commission and a lawsuit pending at the ECJ. For the time being, the future system is not yet apparent.

He also pointed out the problem of splitting up of what used to be administered collectively in a uniform manner into elements of individual and elements of collective administration concerning the same acts of use. In brief, in the case of CDs, the flow of rights in the field of primary exploitation was made up of a single line of authors, music publishers, collecting societies, record companies, and consumers (thus effecting exhaustion of distribution rights). However, nowadays the flow becomes diversified because the authors or recording companies license directly to the online music services such as iTunes. This fact has introduced greater complexity of license relations. Also he introduced a lawsuit pending at the Supreme

Court concerning the splitting up of mechanical rights and making available rights in the same work between a collecting society on one hand side and an individual rights owner on the other.

Last, as future developments, a reflecting paper of the EU Commission, "Creative Content in a European Digital Single Market: Challenges for the future" (2009/10/22) was introduced. The paper discussed to apply either the principle of exhaustion or a country of origin principle to the online sale of music. Dr. Schaefer explained that initiatives were being considered to create a system fit for pan-European central licensing in the music sector.

Next, Professor Ullrich made a comment titled "Patent Pools". Patent pools are developed aiming to decrease the transaction costs of "navigating the patent thicket" (Shapiro, 2001). Patent pools and copyright collecting societies have common concerns in terms of making complex IPR protection work in and for competitive markets. Then he explained about the main issues under competition law, referring to the criteria including the essential v. non-essential patents dichotomy used for assessing non-competitiveness of pooling agreement and the relations with third parties. In addition, he showed a skeptical view on the government initiative of open access and patentees' democratic procedures.

Last, he summarized common problems and basic differences of patent pools and copyright collecting societies. Common problems are: complex composition of repertoires and of technologies respectively; insufficient control of satisfactory internal self-regulation; intervention of competitive policies; certain abandonment of property rights. Differences are: collecting societies are national in contrast to pools which are international (issue of territoriality); authors typically depend on collective management while pools result from management of patents.

In the comment titled "Collecting Societies and Exhaustion", Professor Bodewig elaborated



theoretical background of the exhaustion doctrine on traditional distribution as tangible objects, and explained the question if the exhaustion doctrine could be applied to the digital distribution of copyrighted works which have no tangible objects – if yes – under what conditions. As his personal opinion, Professor Bodewig concluded that the exhaustion principle should be applied because the buyer receives a copyrighted work stored on a tangible medium, namely his hard drive through the digital distribution and he can use it the same way as a CD or a DVD. However, the buyer make copies despite the fact that only the distribution right is being exhausted not the right to copy. To this question, he concluded that this kind of copying was inherent for the distribution method and technically necessary to use the work (if the buyer creates a second copy such as a backup copy or sends the file to a different computer, this would not be covered by exhaustion). In addition, based on these discussions, he elaborated various cases including the case of streaming (the exhaustion doctrine should not be applied because such distribution is a rental) and the restrictions in license agreements for multiple licenses.

In the panel discussion, Professor Takenaka introduced that in the US, similar cases also are occurring such as the cases on the exhaustion of software copyright and the CAFC's decision on patent misuse in the case licenses of patent pools restrict development of substantive technology. In opinion exchanges with commentators, significant arguments mainly on application of the exhaustion doctrine to online distribution were developed questioning the ideal shape of IP law which is “in the midst of changes from hardware-based to knowledge-based world” In a QA session, Professor Kazuhiro Ando of Hokkaido University made a question about the possibility of exercising right of collective works by a representing publisher. Vigorous discussions took place as such.

(Research Associate Noriyuki Shiga)

❖JASRAC Seminar No.3: Creativity of Language in Copyrighted Works and Criteria for Infringement of Adaptation Right

(2010/10/16)



【Moderator】

Tetsuo Maeda, Attorney at law

【Speakers】

Koji Okumura, Associate Professor of Kanagawa University

Toshiya Kaneko, full-time lecturer of Meiji University

JASRAC Seminar No.3 on October 16 invited Koji Okumura, Associate Professor of Kanagawa University and Toshiya Kaneko, full-time lecturer of Meiji University as speakers to make a speech and have discussions on the theme of “Creativity of Language in Copyrighted Works and Criteria for Infringement of Adaptation Right” under the moderation of Attorney Tetsuo Maeda. Most of the parts, however, were spent on “the definition of copyrighted works and the concept of ‘idea’ concerning adaptation right (differentiation between idea and expression)” due to time constraints. This article also focuses on that point.

First, Attorney Maeda organized the discussion points. In judging copyrightability and infringement, the questions are “whether creativity in expression exists or not” and “whether the part of creativity has similarity”. If individuality exists in the part of idea, copyrightability is not recognized. If the part of idea has similarity, infringement is not found. As a judicial case highlighting these points, the case of Fujiya Hotel was introduced (the issue was



whether the part of “we can say he might have been married with Fujiya Hotel” in the defendant’s book infringes a copyright of the part of “Who Shozo got married to was rather Fujiya Hotel than Takako from the beginning” in the plaintiff’s work. IP High Court, July 14, 2010, http://www.courts.go.jp/search/jhsp0030?action_id=dspDetail&hanreiSrchKbn=07&hanreiNo=80461&hanreiKbn=06).

Then, Mr. Kaneko reported on how the concept of idea has been used and has functioned in Japan. According to his report, the idea can be categorized into two groups. In short, the first type is what clearly should not be protected under the copyright law (creativity should be rejected whatever it is concrete, e.g., academic ideology or natural laws) and the second type is what should be protected under the copyright law because it has a certain level of concreteness. As to what only has abstractiveness less than that, there are the ideas for which we should reject protection and the ideas which we should value (for example, stories of novels).

In his analysis, the dichotomy theory of idea/expression questions what information about quality and type (mainly the issue of the first type) and what level of information of concreteness and quantity (mainly the issue of the second type) copyright law should recognize as “creative expression” and whether the law should promote the creation of other expressions by prohibiting unauthorized use. Two perspectives were shown as a necessary view: ① what information with what kind of and what level of concreteness is enough to be protected as copyrighted works to enhance cultural development and information enrichment and ② what is that we recognize as copyrighted works in general.

Next, Associate Professor Okumura introduced the US laws. First of all, as to the point whether it is the subject copyright protection or not, Merger Doctrine is well known. In this doctrine, if the said expression is indispensable for describing

the said idea, or the way of expressing the said idea is only one or very limited, we should consider that the idea is “merged” with the expression and copyright protection is rejected. (For example, *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 387 F3d. 522(6th Cir. 2004)). Whether it is merged or not is judged as the following: ① consider the range of expressing an idea (options) → ② compare the options considered in ① and recognize those which have similarity in substantive parts as one option → ③ when the option after the process ② is only one (or very limited), we can conclude that the expression merges with the idea (LexisNexis Expert Commentaries :Rebecca K. Meyers on the 2nd Cir.’s with holding of Copyright Protection on Merger doctrine Grounds). The way of thinking such as ①~③ would be beneficial for considering creativity as the range of options in Japan.

In addition, as the criteria of substantive similarity, Abstractions Test is well known. The test has its roots in Judge Hand’s statement, “Upon any work, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out...but there is a point in this series of abstractions where they are no longer protected” (*Nichols v. Universal Pictures Co.*, 45 2d.119,121(2d.Cir 1930)). However, Associate Professor Okumura pointed out that was not a “test”.

Last, the following discussions took place using Soseki Natsume’s “Kokoro” as a subject. If, based on “Kokoro”, we create a novel which has similarity as the following level, will the novel constitute copyright infringement (we suppose the copyright still exists, of course)? “The main character is lodging with a best friend from his hometown at a house of a widow and her daughter. The main character and his friend fall in love with the daughter. His friend tells his love for her to the main character. The main character deceives his friend into giving up his love and on the other hand, has the widow on his side to make



her consent to his marriage with her daughter. His friend who discovered that kills himself. The main character gets married to the daughter but cannot tell the truth to his wife (the daughter). With deep remorse, he makes his mind to go on living as if he were dead. However, he decides to commit suicide when he hears the Meiji Emperor passed away”.

Attorney Maeda stated his opinion affirming infringement with the reason that each single part could be an idea, but only Soseki could turn out such a fine bundle of parts. In contrast, Mr. Kaneko and Associate Professor Okumura stated that infringement should be rejected because that could not be recognized as expression and we should allow free use.

Following the aforementioned discussion, vigorous discussions took place having opinions from the attendants.

(RC Shun Kuwahara)

❖JASRAC Seminar No.4: Public Copyright Licensing: Open Source Software License Schemes (2010/10/16)



【Speakers】

Prof. Robert Gomulkiewicz, University of Washington

Dr. Maria Cristina, Caldarola Corporate Intellectual Property, Robert Bosch GmbH

Attorney Yukihiro Terazawa, Morrison Foerster LLP, Tokyo Office

【Moderator】

Prof. Toshiko Takenaka, University of Washington, Waseda University

On October 16, 2010, JASRAC Seminar No.4: Public Copyright Licensing: Open Source Software License Schemes was held, organized by Waseda Law School, and co-organized by the RCLIP, Waseda University Institute for Interdisciplinary Intellectual Property Study Forum (IIIPS Forum), and Tokyo Medical Dental University IP Department

In this seminar, having the background that the movement of public license starting with Open Source Software (OSS) license is expanding to the open of intellectual property right other than copyright such as patent commons, professionals in Japan, the US, and Germany who are familiar with theories and practices of Open Source Software license examine the issues of Open Source Software license under the contract law and copyright law, and have discussions about the challenges in using Open Source Software license schemes for licensing IPR other than copyright.

After the opening remarks by Dean Kellye Testy, University of Washington School of Law and Dean Waichiro Iwasih, Faculty of Law, Waseda University, three speakers respectively presented on the current situation and challenges of Open Source Software license. Then, a panel discussion took place with the speakers.



1. Development of Open Source Software License in the US

Professor Robert Gomulkiewicz spoke on whether Open Source License Proliferation brings helpful diversity or hopeless confusion under the theme of “Development of Open Source Software License in the US”.



First Professor Gomulkiewicz introduced: what is Open Source Software, who makes it, who uses it, how licensing fits into the picture and what are popular Open Source Software license models.

Then, he stated that Open Source Software license had effect to foster business model innovation and competition because the license quality was improved by replacing hacker-drafted with lawyer-drafted licenses, fixing ambiguities, improving readability and so forth.

On the other hand, he pointed out adverse effect by license diversification. For licensors, choosing a “best fit” license became difficult and for licensees, understanding terms of multiple licenses became difficult.

2. Legal Issues of Open Source Software License under German and EU Laws

Next, Attorney Maria Cristina Caldarola spoke on “Legal Issues of Open Source Software License under German and EU Laws” as to legal risks of Open Source Software and proper actions to take at major corporations.

Ms. Caldarola stated that although intellectual property rights of Open Source Software were not different from general intellectual property rights, it was necessary to consider license obligations. Then she introduced and explained license obligations of Open Source Software such as supply of license, accompaniment of Source Code, copyright notice, disclaimer of warranty, prohibition to require license fees, prohibition to impose further restrictions, and modification note.

She also stated that it was becoming unrealistic for corporations to avoid Open Source Software and legal risks of Open Source Software were manageable with an effective coordination of suitable tools, infrastructure and processes such as defining a policy, controlling compliance of policy, scanning own and 3rd party Software with regard to Open Source Software components, fulfilling license obligations and so forth.

3. Japanese Legal Issues of Open Source Software

Attorney Yukihiro Terazawa spoke on “Japanese Legal Issues of Open Source Software”, from the perspective of the efficacy of open source software license.

He introduced that, as to Open Source Software license, there were two views such as “it is a license” and “it is relinquishment of right”. He also explained how the idea of “commons” that multiple subjects share intellectual property was affecting Open Source Software.

4. Panel Discussion

Last, moderated by Professor Toshiko Takenaka, a panel discussion took place with the three speakers. The discussions included existence and contents of precedents concerning Open Source Software license, corporate attitude toward adoption of Open Source Software, difference between patent and copyright in terms of utilizing commons, difference between universities and corporations, and difference among life science industries. The seminar successfully ended with a lively discussion.

(RC Motoki Kato)



JASRAC Seminar No.5: “the Protection of Literary Work in the Future—Copyright in the Age of Electronic Book—” (2010/10/30)



JASRAC Seminar No.5 was held on October 30, 2010, having the theme of “the Protection of Literary Work in the Future—Copyright in the Age of Electronic Book—”. As a lecturer, Mr. Makoto Mita who is a writer and serves as vice president of the Japan Writers’ Association and visiting Professor of Musashino University.

The lecture was held under the moderation of Attorney Eiji Tomioka who is Visiting Professor of Waseda University. Mr. Mita talked about the problems in the age of electronic book and concerns in publishing contracts as a novelist.

First, he mentioned that under the current business practice, authors grant reproduction rights and transfer rights to publishers for a certain period. Magazines disappear from the market after a certain period. In contrast, electronic books permanently remain in the server unless deleted. In this case, we lose benefits of publishing the work in printed book form. Mr. Mita pointed out that copyrighted works should be deleted after a certain period because authors’ benefits were threatened as such.

Next, he introduced the types of electronic book. What we call electronic book can be divided into three types. One is a hybrid electronic book in which we can view motion pictures. One is a text electronic book which can be written by a device called Kindle. The other is an electronic book which copied books by a scanner.

Old books are now being digitalized through the use of digital archives by Google of the US or

Japan’s National Diet Library. Sending digital books to local libraries as such might harm the authors’ right of public transmission. He proposed the adoption of a system that provides prints for a fee and offers a certain payment to publishers and authors.

In the US, there are practices that all the copyrights are transferred to publishers during the contract period. So the publishers can respond to the third party’s act of copying or transferring digitalized books. In contrast, unlike the US, all the copyrights are not transferred to publishers and the publishers cannot respond as such in Japan. It is necessary to transfer copyright to the publishers for a certain period. In some cases, after publishing a printed book, authors have an intention to publish an electronic book with new contents from a different publisher. Mr. Mita pointed out that it was necessary to keep the year of transfer short in the contract in such a case.

In the current Japanese publishing culture, whether the book actually sell or not, a publisher pays royalty to the author based on the number of the initial print. Authors do not need to consider contract money. In the case of electronic book, however, the concept of the initial print has gone. It is possible to pay royalty based on the number of sales. In short, if a book does not sell a single copy, there is a possibility that no royalty is paid to the author. Authors are at a great disadvantage in such a system. Mr. Mita suggested that authors should request a guarantee of a certain contract fee when closing a contract.

Following the above-mentioned speech, an active discussion took place responding questionnaires from the attendants.

(RA Fei Shi)



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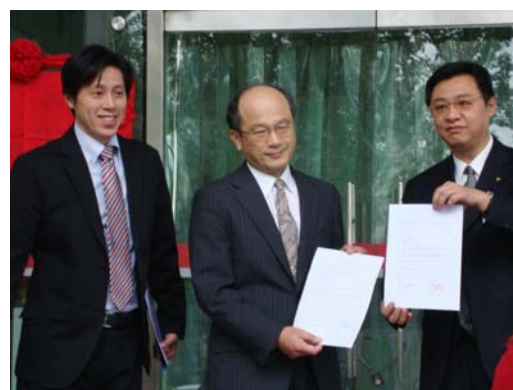
<The Opening of A Branch Office in China>

In order to establish a global IP law research base in China, we opened the China Research Center for the Legal System of Intellectual Property in Tianjin University of China, with the cooperation of Tianjin University.

Tianjin University is a national key university directly under the Ministry of Education and was established in 1985. It is the first university in modern Chinese education history and famous for its motto, "Seeking Truth from Facts". It became the sixth in the ranking of number of patent applications by Chinese universities in 2009 (653 cases). Currently it has cooperative relations with more than 146 universities in 36 countries in the world.

Professor Takabayashi visited Tianjin University in October and met Prof. LIU Jianping, Party Secretary and Chairman of Administrative Council of Tianjin University at the VIP room. Prof. LIU Jianping introduced the history and current situation of Tianjin University and showed his appreciation for the cooperation of IP research at Tianjin University. He expressed his resolve to obtain a higher research standard of IP law using the platform of this China Research Center.

Professor Takabayashi also showed his commitment to deepen mutual exchange, make contribution on the friendship of peoples of the two countries, and strengthen the cooperative relationship other than developing IP research between both universities, taking advantage of this occasion.





Then, with Prof. Li Xu, Dean of School of Liberal Arts and Law and related main members of science technology, Professor Takabayashi and came to the building 25. In front of the building 25, Professor Takabayashi and Prof. Li Xu unveiled the sign of the China Research Center. Professors from School of Law and 40 students attended.

In addition, Professor Takabayashi looked around the museum and the campus. He made an academic speech with the theme of “The Protection of International Intellectual Property Rights and Development of Human Resources in Law” at the Tianjin University mock courtroom. More than 150 people listen to the speech including professors, experts, undergraduate students, and graduate students.



Also, we met the person in charge of the English precedents database in China as well as collaborators in Peking University School of Law and Renmin University School of Law. We exchanged opinions as to the establishment of a full-fledged international research center that integrates the humanities and science taking advantage of the strength as a comprehensive university and asked Chinese professors for a help in order to enhance an appropriate cooperation. (Global COE Research Associate Yu Fenglei)

The IP Precedents Database Project

※ The database is available in English at:
<http://www.globalcoe-waseda-law-commerce.org/rcclip/db/>

❖IP Database Project: China

In 2010, we included Tianjin in addition Beijing, Shanghai and Guangzhou for the Chinese IP Database Project. We will complete the Chinese version for the six regions of China by the end of November.

(Global COE Research Associate Yu Fenglei)

❖IP Database Project: Indonesia

10 cases will be added to the database by March 2011 with the cooperation of the Supreme Court of Indonesia and Attorney Fiona Butar-Butar.

(Research Associate Noriyuki Shiga)

❖IP Database Project: Thailand

Currently 462 Thai precedents have already been placed at the database. More 50 cases will be added this year.

(RC Tetsuya Imamura)

❖IP Database Project: Taiwan

40 cases will be newly added to the database in 2010.

(RCLIP Director Ryu Takabayashi)



Events and Seminars

<RCLIP • JASRAC Seminar No. 8>

“Google Settlement and Copyright Reform”

Date: December 11, 2010, 13:00-14:30

Place: Bldg 8, Room B102, Waseda Campus

Moderator: Ryuta Hirashima, Associate Professor of Tsukuba University

Speaker: Iwao Kidokoro, Visiting Professor of Center for Global Communications, International University of Japan

Organizer: Waseda School of Law

Co-organizers: Center for the Legal System of Intellectual Property (RCLIP) and Waseda University Institute for Interdisciplinary Intellectual Property Study Forum (IIIPS Forum)

http://www.globalcoe-waseda-law-commerce.org/rclip/reservation/kifukouza_form.html

<RCLIP Workshop Series>

“Technology Standardization and Competitive Policies by Patent holders”

Speaker: Salil Mehra, Professor of Temple University School of Law

Date: May 16, 2011, 18:30-20:30

Place: Bldg 8, Waseda Campus (TBD)

Abstract: the workshop expounds the Federal Trade Commission (FTC)’s approach against technology standardization by Corporations like Dell, Unocal, Rambus, or N-Data, referring to the trend of recent precedents in the US. Especially, it examines the difference in burden of proof between Rambus case and Microsoft case as well as duty of candor under Antitrust Act in standardization.

<IIIPS-Forum hosted IP Symposium of the Integrating Humanities and Science>

“New Development of Global Health Integrating Humanities and Science: Education and Research for World-leading Healthcare”

Date: February 26, 2011, 13:00-17:30

Place: Bldg 8, Room 106, Waseda Campus

Organizer: IIIPS Forum

Co-organizers: Consolidated Research Institute for Advanced Science and Medical Care, Waseda University (ASMew), RCLIP, Global COE for “Practical Chemical Wisdom”, Doctoral Student Career Center, Waseda University

Collaborators: European Biomedical Science Institute (EBSI), Waseda University, Waseda Institute for Global Health, NPO Waseda Health Promotion Research Center

The details will be announced at the RCLIP’s website.

Editor/issuer

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http://www.globalcoe-waseda-law-commerce.org/rclip/e_index.html