

Outline of the Revised Copyright Act

Purpose of the Revision

In addition to taking steps to ensure the fair exploitation of copyrighted works, etc. to assist in the appropriate protection of copyrights, etc.: (i) take measures that include establishing a system of compulsory license for situations where it is not possible to confirm the will of the copyright owner, etc. regarding the propriety of the exploitation of copyrighted works, etc.; (ii) take measures to enable the transmission to the public of copyrighted works, etc. when determined to be necessary for internal use by legislative and administrative organs, and; (iii) specify measures to rationalize the calculation of the amount of damages for copyright infringement, etc.

Outline of the Revision

1. Establish a New System of the Compulsory License Regarding the Exploitation of Copyrighted Works, etc.

(i) Facilitate More Efficient Exploitation of Copyrighted Works, etc. For Which It Is Not Possible to Confirm the Will of the Copyright Owner, etc. Regarding the Propriety of Their Use

- Even though a person that intends to exploit *unmanaged copyrighted works, etc. that have been made public* (There is no centralized management, and they are copyrighted works, etc. for which there is no public information that would make it possible to efficiently confirm the will of the copyright owner, etc. regarding the propriety of their use) has taken steps to confirm the will of the copyright owner, etc., when confirmation cannot be made, the person may exploit *those unmanaged copyrighted works, etc. that have been made public* in the term provided for in a compulsory license issued thereto by the Commissioner of the Agency for Cultural Affairs, after depositing compensation for the copyright owner.
- In response to requests from copyright owner, etc., the Commissioner of the Agency for Cultural Affairs may revoke the compulsory license in response to requests from the copyright owner, etc. After the revocation of the compulsory license it will not be possible to use the new system of compulsory license, and the copyright owner, etc. may receive the compensation.

(ii) Procedures will be simplified through the conduct of the affairs of new systems by contact organizations (private sector organizations)

- In order to enable prompt exploitation of the copyrighted works, etc. , contact organizations (private sector organizations) that have been registered by the Commissioner of the Agency for Cultural Affairs will be able to conduct part of the affairs regarding the acceptance of applications for the new system of compulsory license, confirmation of requirements and determination of the compensation.
- Regarding compensation in the new system and the current system, the institution designated by the Commissioner of the Agency for Cultural Affairs will be able to conduct payment of the compensation, and depository procedures will not be necessary.

2. Measures to Enable the Transmission to the Public of Copyrighted Works, etc. in Legislative and Administrative Organ

(i) Transmission to the Public of Copyrighted Works, etc. for Internal Use By Legislative and Administrative Organs by Utilizing the Cloud and Other Transmission Devices

- When determined to be necessary for internal use by legislative and administrative organs, to the extent necessary, limited to the users of the materials for internal use, transmission to the public etc. of copyrighted works, etc. will be permitted.

(ii) Transmission to the Public in Administrative Procedures such as Patent Examination

- Regarding administrative procedures such as patent examination/procedures of administrative ruling*, to respond to digitalization, to the extent necessary, the transmission to the public and other transmission of copyrighted works, etc. will be permitted.

* Regarding judicial proceedings as well, together with the revision of various systems for the purpose of digitalization, provisions will be developed to enable the transmission to the public and other transmission of copyrighted works, etc. (Regarding civil suit procedures, measures arising from the partial amendment of the Code of Civil Procedure in 2022 have already been concluded)

3. Reconsideration of the Calculation Method of Compensation in Order To Achieve Effective Relief from Damage Caused by Pirated Editions

(i) Approval of a Reasonable Amount for the License Fees That are Related to Calculations Based on the Transferred Quantities of Infringing Items

- Even if the sales amounts of infringers exceed the selling or production capacity of the right holders, it will become possible to approve an amount of damages that represents the potential profits lost as a result of the loss of licensing opportunities.

(ii) Clarify the Consideration Factors Used to Determine Reasonable Licensing Fees

- In calculating the approved reasonable amounts of licensing fees that will represent the amount of damages, it will be clearly stated that they will be the amount that would likely be determined through negotiations based on the assumption of copyright infringement.

Effective
Date

Date specified by Cabinet Order not exceeding 3 years from the date of promulgation.
(The revised matters of 2. and 3. come into effect on January 1, 2024)

著作権法の一部を改正する法律案の概要

改正の趣旨

著作物等の公正な利用を図るとともに著作権等の適切な保護に資するため、①著作物等の利用の可否に係る著作権者等の意思が確認できない場合の著作物等の利用に関する裁定制度を創設する等の措置、②立法又は行政の目的のために内部資料として必要と認められる場合等に著作物等の公衆送信等を可能とする措置及び③著作権等の侵害に対する損害賠償額の算定の合理化を図る措置について定める。

改正の概要

1. 著作物等の利用に関する新たな裁定制度の創設等

① 利用の可否に係る著作権者等の意思が確認できない著作物等の利用円滑化

- ・未管理公表著作物等(集中管理がされておらず、利用の可否に係る著作権者等の意思を円滑に確認できる情報が公表されていない著作物等)を利用しようとする者は、著作権者等の意思を確認するための措置をとったにもかかわらず、確認ができない場合には、文化庁長官の裁定を受け、補償金を供託することにより、裁定において定める期間に限り、当該未管理公表著作物等を利用することができることとする。
- ・文化庁長官は、著作権者等からの請求により、当該裁定を取り消すことで、取消し後は本制度による利用ができないこととし、著作権者等は補償金を受け取ることができることとする。

② 窓口組織(民間機関)による新たな制度等の事務の実施による手続の簡素化

- ・迅速な著作物等利用を可能とするため、新たな裁定制度の申請受付、要件確認及び補償金の額の決定に関する事務の一部について、文化庁長官の登録を受けた窓口組織(民間機関)が行うことができることとする。
- ・新たな制度及び現行裁定制度の補償金について、文化庁長官の指定を受けた補償金等の管理機関への支払を行うことができることとし、供託手続を不要とする。

2. 立法・行政における著作物等の公衆送信等を可能とする措置

① 立法又は行政の内部資料についてのクラウド利用等の公衆送信等

- ・立法又は行政の目的のために内部資料として必要と認められる場合には、必要な限度において、内部資料の利用者間に限って著作物等を公衆送信等できることとする。

② 特許審査等の行政手続等のための公衆送信等

- ・特許審査等の行政手続・行政審判手続※について、デジタル化に対応し、必要と認められる限度において、著作物等を公衆送信等できることとする。

※裁判手続についても、裁判手続のIT化のための各種制度改正に併せて、著作物等を公衆送信等できるよう規定の整備を行う(民訴手続については令和4年民事訴訟法等の一部改正法により措置済み)

3. 海賊版被害等の実効的救済を図るための損害賠償額の算定方法の見直し

① 侵害品の譲渡等数量に基づく算定に係るライセンス料相当額の認定

- ・侵害者の売上げ等の数量が、権利者の販売等の能力を超える場合等であっても、ライセンス機会喪失による逸失利益の損害額の認定を可能とする。

② ライセンス料相当額の考慮要素の明確化

- ・損害額として認定されるライセンス料相当額の算定に当たり、著作権侵害があったことを前提に交渉した場合に決まるであろう額を考慮できる旨を明記する。

施行期日

公布日から3年を超えない範囲内で政令で定める日
(2.及び3.の改正事項は令和6年1月1日)