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# Copyright

## What is protected by copyright?

The Japanese Copyright Act (1970) protects all works "in which thoughts or sentiments are expressed in a creative way, and which falls within the literary, scientific, artistic or musical domain". Works entitled to copyright protection include literary and musical works, maps and drawings, cinematographic works and photographs. The Japanese Law has been amended to keep pace with technological change, most recently in 2006.

In addition to traditional works the Act expressly grants protection to computer programs and software and layout designs of integrated circuits. This protection does not extend to any programming language, rule or algorithm used for making software or computer programs. Since 1986 the Act has also included databases.

The Act protects works first published in Japan as well as works first published in Australia and later published in Japan. As a signatory to the Berne Convention, Japan provides reciprocal protection to works originating in Australia and all other signatory countries.

Derivative works are those that are created based on the original work, with or without the authority of the copyright owner thereof, by translating, arranging musically, or transforming, or dramatizing, cinematizing or otherwise adapting the original work. These works are protected independently, without affecting the protection of the original work. Compilations are also protected if the selection or arrangement of the contents is original.

## Is registration required?

Official registration is not required to obtain rights and protection. The Agency for Cultural Affairs (ACA) maintains a registration system to record the assignment of, or security interests over, target copyrights. The ACA is one of the administrative agencies in Japan which supervises the promotion of art, preservation of cultural property and protection of copyright. Registration of a copyright work requires a registration and license tax. The amount of the tax varies between AU\$10 to \$300 per registration. The process of the registration itself is not complicated, but applicants need to submit an application, a specification and other required documents. If you are contemplating protection of copyright works, Australian applicants are strongly advised to seek the help of professional advisors.

## What rights do copyright owners have?

The Japanese Copyright Act provides both economic and moral rights.

### Economic Rights

- Reproduction, including control of the reproduction of a work, such as photography, recording or downloading.
- Communication, including control of how a work is to be transmitted, communicated, broadcast, performed or exhibited.
- Adaptation, including control of the adaptation of a work through translation, dramatization, filming and the creation of derivative works in general.



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An author of a copyright work may freely transfer or relinquish economic rights. A person receiving the economic rights becomes the owner of the copyright but the author retains authorship and moral rights. Moral rights cannot be freely transferred or relinquished.

### Moral Rights

- **Divulgence:** the author can choose when and how a work will be made available to the public. This includes the right to publish it or perform it.
- **Authorship:** the author can specify how his authorship is represented in the work.
- **Integrity:** The author can control the modification of a work and object to derogatory treatment of the work.

Moral rights remain with the author until they expire. Although moral rights themselves cannot be waived, the exercise of moral rights is often restricted by contract in certain situations, such as when an employee or contractor creates a derivative work.

Amendments to the Japanese Copyright Law in 1999, provided for the rights of ownership transfer (subject to the *first sale doctrine*) to be given additionally to works other than cinematographic works, music, publications and computer software. The first sale doctrine provides a copyright owner's rights to control the change of ownership of a particular copy end once that copy is sold, as long as no additional copies are made.

### How long does protection last?

Copyright comes into effect when the work is created.

The copyright remains valid for the life of the author plus 50 years except for cinematographic works for which the period is 70 years following the making public of the work.

If the author used a pseudonym or is otherwise

unknown the period of fifty years is counted from the date of its publication. This includes works authored in the name of a juridical person or other corporate body, except where the individual author(s) of the work publishes it in his real name or in a well-known pseudonym within such period.

Neighbouring rights apply for 50 years after a performance is first made, sounds are first fixed on a recording medium, or a broadcast or a wire-broadcast is first performed. These rights are the rights of actors, performers, broadcasters and other individuals who do not author works, but play an important role in communicating them to the public. In Australia, 'performers rights' as they are known, are subject to complex provisions and generally only apply for 20 years after a performance yet may extend to 50 years where required by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

In the case of serial publications such as newspapers and magazines, the term of protection is calculated from the making public of each volume, issue or instalment. However, in the case of works that are gradually made public in parts such as novel serials in a magazine, the term of protection is calculated from the making public of the last part.

### Who owns the copyright in a work?

The right of transfer of ownership was established in 1999 in order to enrich the rights of authors. This means that authors and performers can exercise their right concerning the transfer of the ownership of the original or copies of their work, at the first legal transfer. After this the right will be extinguished.

The author's rights (moral and economic) are granted automatically to the author when a work is created. The author is, at the same time, the copyright owner. However while moral rights are not transferable, economic rights can be transferred from the author to other parties. Therefore the author of a work may be different



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from the owner(s) of the copyright.

“Author” means the person who has created a work. The Japanese Copyright Law allows ownership for employers such as a corporate body which employs the actual creators of works under the following four conditions:

- The work is created based on the initiative of the employer.
- The work is created by an employee as a part of his duties.
- The work has been or would be made open to the public under the name of the employee.
- There is no contrary stipulation in the contract of employment or in internal work rules.

### Unlicensed third party use of a copyright work

The Act allows for use of a copyright work within the following categories:

- Some private use - unlike Australia, downloading unauthorized material is currently permitted in Japan.
- Publishers of government-approved school textbooks - the Commissioner of the Agency for Cultural Affairs determines an appropriate amount of payment to the copyright owner for use of the work.
- Teachers at non-profit educational institutions for the purpose of teaching.
- The original of an artistic work or a photographic work may be publicly exhibited by its owner or by a person with authorization from said owner.
- Artistic works permanently located in public places can be exploited freely, as long as the author’s right is not unduly damaged.
- The reproduction of works in Braille, large print or as sound recordings for disabled people.

### How is copyright enforced?

#### Border controls

Customs Tariff Law dictates that goods that infringe copyright and neighbouring rights

cannot be imported. The Customs authorities may confiscate and destroy the infringing goods, or issue an order to reshipe them to the importer.

### Judicial channels

Unauthorized removal of copyright protection methods using software such as “Copyguard Cancellor” is a criminal offence. Criminal sanctions for infringement can include imprisonment for up to 10 years and / or fines of up to 10 million yen (AU\$10,000). An injunction order may be obtained against infringers. Damages caused by infringements may be recovered under the Civil Code.

For more information on any of these topics, you are advised to visit the JPO website or seek professional advice.

#### Further information:

Japanese Agency for Cultural Affairs  
[www.bunka.go.jp/](http://www.bunka.go.jp/)

Organisations protecting the interests of authors, composers etc:

[www.jasrac.or.jp](http://www.jasrac.or.jp)

[www.j-writersguild.org](http://www.j-writersguild.org)

[www.jrrc.or.jp](http://www.jrrc.or.jp)

[www.cpra.jp](http://www.cpra.jp)

[www.riaj.or.jp](http://www.riaj.or.jp)

[www.sarah.or.jp](http://www.sarah.or.jp)

Customs Agency

[www.customs.go.jp](http://www.customs.go.jp)

#### Disclaimer:

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