

2. LAW CONCERNING THE EXCEPTIONAL PROVISIONS TO THE COPYRIGHT LAW REQUIRED IN CONSEQUENCE OF THE ENFORCEMENT OF THE UNIVERSAL COPYRIGHT CONVENTION

(Law No. 86, of April 28, 1956, as amended up to December 14, 1994 by Law No. 112)

(Purpose)

Article 1. The purpose of this Law is to provide, in consequence of the enforcement of the Universal Copyright Convention, for the exceptional provisions to the Copyright Law (Law No. 48, of 1970).

(Definition)

Article 2. (1) In this Law, "the Universal Convention" means the Universal Copyright Convention.

(2) In this Law, "publication" means the publication as defined in Article 1 of the Universal Convention.

(3) In this Law, "right of translation" means the right of translation as defined in Article V of the Universal Convention.

(Exceptional provisions for the term of protection of a work)

Article 3. (1) In cases where an unpublished work of a national of a Contracting State or a work first published in a Contracting State which is protected under the Copyright Law in accordance with the provisions of Article II of the Universal Convention has ceased to be granted the protection at the expiration of the term of protection under the legislation of the Contracting State concerned, the term of protection for the work shall, notwithstanding the provisions of the Copyright Law, only last until the date of expiration of the term of protection under the legislation of the Contracting State.

(2) An unpublished work of a national of a Contracting State or a work first published in a Contracting State not belonging to the class of works protected under the legislation of the Contracting State shall not enjoy the protection otherwise granted under the Copyright Law in accordance with the provisions of Article II of the Universal Convention.

Article 4. (1) For the purpose of the provisions of the preceding Article, the work of a national of a Contracting State of the Universal Convention, first published in a non - Contracting State, shall be treated as if first published in the Contracting State.

(2) For the purpose of the provisions of the preceding Article, in case of simultaneous publication in two or more Contracting States of the Universal Convention, the work

shall be treated as if first published in the State which affords the shortest term of protection; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in the said Contracting States.

(Exceptional provisions for the right of translation)

Article 5. (1) If any of the following items is applicable in cases where, after the expiration of a period of seven years from the year following the year to which belongs the date of the first publication of a writing protected under the Copyright Law in accordance with the Universal Convention, a translation by the owner of the right of translation or with his authorization, of such writing has not been published in Japanese or has been so published but is out of print, a Japanese national may publish a translation of such writing in Japanese as prescribed by Cabinet Order, subject to a license of the Commissioner of the Agency for Cultural Affairs; provided that, prior to the publication thereof, a compensation which is just and conforms to international standards and which is approved by the Commissioner of the Agency for Cultural Affairs shall, in whole or in part, be paid to the owner of the right of translation or be deposited in behalf of him, as prescribed by Cabinet Order:

- (i) in cases where the applicant has requested, and been denied, the authorization by the owner of the right of translation to translate and publish the translation;
- (ii) in cases where due diligence exercised by the applicant has failed to find the owner of the right of translation.

(2) In the case falling under item (ii) of the preceding paragraph, the applicant for a license under said paragraph shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government of that State, and he shall also send to the Commissioner of the Agency for Cultural Affairs a report that the copies have been sent.

(3) The Commissioner of the Agency for Cultural Affairs shall not grant a license under paragraph (1) before the expiration of a period of two months from the date of the dispatch under the provisions of the preceding paragraph of the copies of the application.

(4) The Commissioner of the Agency for Cultural Affairs shall, when intending to grant an approval under the proviso to paragraph (1), consult the Culture Council.

Article 6. A licensee under paragraph (1) of the preceding Article shall not transfer the right to publish a translation under the relevant license.

Article 7. The original title, the name of the author of the work and other matters shall be printed on the copies of the translation licensed under paragraph (1) of Article 5, as prescribed by Cabinet Order.

Article 8. A translation licensed under paragraph (1) of Article 5 shall not be exported to a State other than the States parties to the Universal Convention as designated by Cabinet Order.

(Stateless persons and refugees)

Article 9. Stateless persons and refugees who have their habitual residence in a State party to the Protocol 1 annexed to the Universal Convention concerning the application of that Convention to the works of stateless persons and refugees shall, for the purpose of the provisions of Articles 3 to 5, be assimilated to the nationals of that State.

(Works protected under the Berne Convention, etc.)

Article 10. This Law shall not be applicable to the works whose country of origin, within the meaning of the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty or the Marrakesh Agreement Establishing the World Trade Organization, respectively is a member of the International Union established by the Berne Convention, a contracting State of the WIPO Treaty or a member of the World Trade Organization; provided that the provisions of Articles 5 to 8 shall be applicable to the licensee who has got the license under paragraph (1) of Article 5 or the translation which has been licensed under the said paragraph before the works become the work of which such member is the country of origin.

(Works protected under Article 12 of the Treaty of Peace with Japan) Article 11. The Allied Powers which are States defined in Article 25 of the Treaty of Peace with Japan and which are Contracting States of the Universal Convention on the effective date of this Law, and their nationals shall, insofar as the works enjoying the protection under the old Copyright Law (Law No. 39, of 1899) in accordance with the provisions of Article 12 of the said Treaty on the effective date of this Law are concerned, continue to enjoy the same protection and, insofar as the works enjoying such protection on the effective date of the Copyright Law are concerned, to enjoy after the enforcement of this Law.

(Mandate to Cabinet Order)

Article 12. Other than those provided for in this Law, necessary matters for the enforcement of this Law shall be prescribed by Cabinet Order.

Supplementary Provisions (Extract)

(Effective Date)

1. This Law shall come into force as from the day on which the Universal Convention becomes effective with respect to Japan.[This Law came into force as from April 28, 1956.]

(Transitional Provision)

2. This Law (except Article 11) shall not apply to unpublished works produced prior to the enforcement of this Law and works published prior to the enforcement of this Law.

Supplementary Provisions (Extract)

(Law No.160, of 1999)

Article 1. This Law (except Articles 2 and 3) shall come into force on January 6, 2001. However the following provisions shall come into force as from the day mentioned in each item concerned:

(i), (ii): [omitted]

Supplementary Provisions (Extract)

(Law No.56, of 2000)

(Date of enforcement)

1. This Law shall come into force on January 1, 2001. However, the amended provisions of Article 58 of the Copyright Law in Article 1 and the provisions of Article 2 shall come into force as from the day on which the WIPO Copyright Treaty becomes effective with respect to Japan.

Translated by CRIC (Copyright Research & Information Center, Japan)

http://www.cric.or.jp/cric_e/clj/clj.html

Source: World Intellectual Property Organization

<http://www.wipo.int>