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Overview of the charging situation for digital contents in Japan

~ From the viewpoint of compensation for private sound and visual recording~

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Abstract— Japanese copyright law consists of two parts. One has to do with the rights of the content holder. The other is concerned with limitations to the rights of the content holder, such as compensation for private sound and visual recording; that is, charges for copying media where it is difficult to charge individually, as is the case with Digital Rights Management (DRM). Such compensation permits the holders of the content to collect royalties through a special compensation arrangement. That is, the designated management associations impose the obligation for compensation on the manufacturers of recording devices. Despite the spread of such compensation arrangements, new challenges continue to arise, such the case of SARVH, the designated management association, brought against Toshiba, a manufacturer of DVD recorders. The Tokyo District Court ruled, “Compensation is not required under copyright law, but just that all possible efforts be made.” It remains unclear whether holders of content can receive sufficient royalties or not. An analysis of the latest decision regarding digital content, from the point of copyright law, clarifies the relationship between DRM and compensation for private sound and visual recording. To accommodate stakeholders’ requirements, a new regulation or structure for payment of royalties is proposed.

Keywords: *copyright law, DRM (Digital Rights Management), compensation, levy*

I. INTRODUCTION

Copyright law is the basis of regulations regarding the distribution of digital content[1]. Japanese copyright law consists of two parts: one is concerned with the rights of the content holder, and the other is concerned with limitations on the rights of the content holder. For example, the Act entitled, “Reproduction for Private Use,” is one which limits the rights of the content holder[2]. The Act permits users to copy any kind of content for private use. On the other hand, an additional act addresses copying of the material by the user and compensation for private sound and visual recording[3]. This compensation for private sound and visual recording charge for the media applies to situations in which it is difficult to charge individually, as with technology equipped with DRM.

The Act, “Compensation for private sound and visual recording,” targets specific media, such as MDs, CD-Rs, and DVD-Rs, and charges for them. For the first time, compensation was specified for private copying. In private use, individual charges for each copy are difficult to assess. Under this Act, content holders receive a royalty only one time from a music CD, for instance. But users can copy a CD or a record to an MD as many times as they want from a single music CD. Thus, content holders support the application of this system for emerging media. For example, the Japanese Council for Cultural Affairs is currently discussing charges for copying content onto iPods.

Despite increasing support for compensation, in the latest case to test this concept, the Tokyo District Court, on December 27, 2010, ruled against the Society for Administration of Remuneration for Video Home Recording (SARVH). Toshiba, a manufacturer of DVD recorders won the case. SARVH had asked TOSHIBA to pay compensation for DVD recorders, but was refused. The Court ruled, “Compensation is not a requirement under copyright law; the requirement is to make all possible efforts.” SARVH appealed the decision at once. However, the Act, “Compensation for Private Sound and Visual Recording,” has been incorporated into copyright law. The question is how to interpret this new Act. It remains unclear whether content holders will be able to receive sufficient royalties.

II. COMPENSATION FOR PRIVATE SOUND AND VISUAL RECORDING

“Compensation for private sound and visual recording” is established in Japanese copyright law. The compensation is a government-mandated scheme in which a special levy is charged on purchases of recordable equipment or media. The private copy which is the limitation of the copyright is considered as trivial loss of loyalty for the copyright holders before[4]. Digital copy technology enables to copy almost same quality as a original one. Copyright holders consider that they loss much loyalty because of digital copy. So they required “compensation for private sound and visual recording” , and the government established it in 1992 after 15 years discussion[5][6]. Now, Japanese copyright law has the act about this compensation, and the cabinet order can specify equipment and media. Fig..1 shows the media and equipment in the latest cabinet order. The first row shows the types of media and equipment. Each vertical row under each type of them shows specified objects. The users have to pay the compensations to the copyright holders when they purchase these equipment and media for digital copy. Fig.2 shows possible combinations of media and equipment in view of their characteristics. The most top row denotes whether items are media or equipment, and the second top row displays whether the media or the equipment plays or records audio or video. The most left column shows whether items are generic or exclusive, and the lower left column means the items are read-only or read-writable. Area of ‘the compensation’ displays coverage area of compensation by copyright law where media and equipment are exclusive and read-writable. Also, the copyright law does not define compensation in the other areas of fig.2. The manufacturers and importers of these equipment and media have to add the compensation fee on their products price. The users pay the compensation when they purchase these equipment or media.

Audio recordable media	Audio recordable equipment	Video recordable media	Video recordable equipment
Digital audio tape	Digital audio tape	Digital video cassette tape	Digital video cassette
Digital compact cassette tape	Digital compact cassette	Mvdisc	Digital video home system
Mini Disc	Mini Disc	DVD-R	
CD-R		DVD-RW	
CD-RW		DVD-RAM	

Fig.1 The media and equipment in the cabinet order

		Media		Equipment	
		Audio	Video	Audio	Video
Generic	Read				
	Read-Write				
Exclusive	Read				
	Read-Write	The compensation			

Fig.2 Position of the compensation

III. JUDGMENT TOKYO DISTINCT COURT 27TH, DEC., 2010

A. *The background of this trial*

The main reason that the “Compensation for Private Sound and Visual Recording” Act was established is the great loss of royalties among content holders. That is, the Act was recognition of the fact that content holders could not control the activities of private users. But today, enhanced technology, called Digital Rights Management (DRM), allows regulation of private copying. An example of DRM is the copy control system called “Dubbing 10,” installed in digital video recorders. It limits the number of copies that a user may make to ten. Manufacturers of such technology believe that the compensation required under the Act overlaps with the cost for DRM. The manufacturers argue that they are paying the development costs for DRM. Therefore, they question why they must add the cost of compensation to the price of their products.

B. *The action and judge*

SARVH demanded that Toshiba pay the compensation specified under the Act. TOSHIBA’s response was based on three assertions, as follows:

- 1) The products TOSHIBA made are not targets of the compensation. TOSHIBA insists the digital video home system in the cabinet order means only products for analog TV broadcasting. TOSHIBA’s products only have digital TV broadcasting tuner and these digital tuner have DRM copyright holders can control.
- 2) Article 104-5(Obligation of cooperation by manufacturers, etc.) demands only cooperation not obligation.
- 3) TOSHIBA did not do any illegal action.

Against each demand, Tokyo distinct court judged as follows.

- 1) The tuners for digital TV broadcasting are targets of the compensation. And they are also targets irrespective of having DRM. The reason Mini Disc and Digital Audio Tape are also targets, though they have technological protections.
- 2) Article 104-5 only demands cooperation to manufacturers.
- 3) TOSHIBA did not do any illegal action.

IV. DISCUSSION

Tokyo distinct court judged that DRM does not influence to the compensation, as well as the compensation is not duty. The court tried to interpret without pointing out defectiveness of the law. We assume this judgment shows a new scheme of the compensation and DRM, as we speculate the court judge where TOSHIBA need not pay the compensation is due to the DRM of TOSHIBA’s recorder.

We interpret the judgment Tokyo distinct court like Fig.3. Fig.3 shows the relationship table we guess from Tokyo distinct court judgment between correspondence of the right and that of the compensation. The means of protection will influence both correspondence of the right in copyright law and the compensation.

Fig.4 displays our image of relationship scheme between compensation and controllability. Here, we define controllability as the ability to control users' usage of copyright contents. This controllability includes copy control, access control, etc. realized by DRM technology, etc. In fig.4, the horizontal axis means controllability, and the vertical axis depicts compensation. The line displays a relationship between controllability and compensation where total utility of stakeholder (manufacturers and contents holders) is optimal. In fig.4, the compensation is inverse proportional against controllability, which means the compensation should be decreased where controllability is high. For example, we consider a case of "Dubbing 10" in the digital video home systems, which controls the user's copy within 10 times. If 10 times limitation has enough controllability to save copyright holders' royalties, the manufacturers need not cooperate with the associations of compensation, as the optimal compensation should be low.

In the next research, we will analyze current contents distributions with this scheme and will propose more substantial way of protecting contents holder's royalties.

		The right in copyright law	The compensation
The means of protection	Clear	○	×
	Unclear	△	△
	No protection	×	○

Fig.3 The relationship between correspondence of the right and that of the compensation

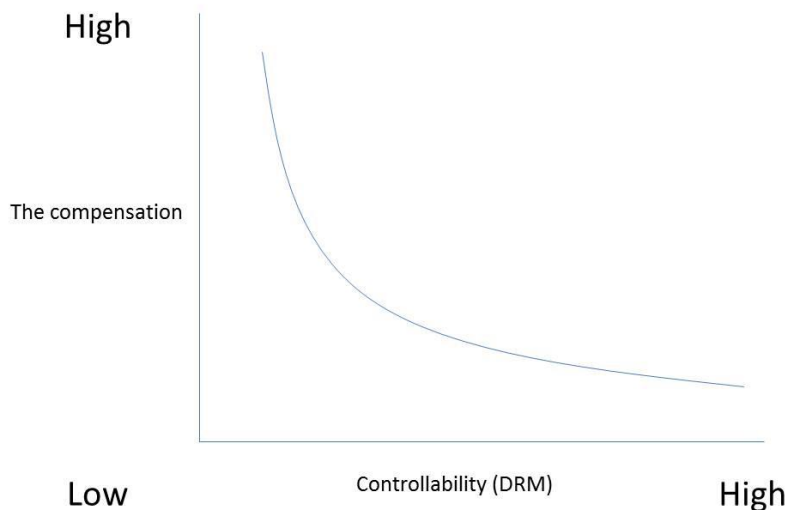


Fig.4 The relationship between the compensation and controllability

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