

Dilemma: Between Diffusion and Protection of Japanese Popular Culture

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Diffusion and Protection

A number of products of Japanese popular culture, including *manga*, *anime*, television dramas, and J-pop music, have been widely accepted in Asia since the 1990s. Japanese cultural products have diffused in part through legal distribution channels. However, the diffusion has been accelerated by illegal factors—pirated CDs and DVDs. In an attempt to counter theft that deprives Japanese producers of revenue that should rightfully be theirs, the Government of Japan (GOJ) is attempting to enforce intellectual properties protection in Asia. In this essay, I will discuss the policies of GOJ and the consequences of the enforcement.

Let me state at the outset two basic ideas, or stances, that I believe should define any nation's position concerning intellectual properties (IPs) protection. Firstly, we should avoid egocentric attitudes that give rise to the desire to defeat other countries in economic or cultural competitions. Secondly, we should not regard the principles of the copyright law as absolute and immutable, because copyright law is actually an industry protection law, although it purports to have the protection of a creator's human rights as its purpose.

Regarding the first point, the imaginariness of nation states underlies international IP conflicts. Such conflicts become visible where we see cultural diffusion through a mesh of "borders." If we regard the IP protection as merely an issue of economics, it would be difficult to reveal the complexity of cultural diffusion in the world. Furthermore, international IP protection is inevitably criticized if it seems to mask a resurgent nationalism.

Regarding the second point, it is doubtless we should obey laws because we live in a law-abiding society. When we study laws from a cultural viewpoint, however, we are allowed to refer to their suitability in society. In other words, copyright can and should be studied as an aspect of culture, one that is under the domination of a huge media industry.

Recent IP Policies of Japan

First of all, I will illustrate the recent IP policies of Japan. Japanese Prime Minister Koizumi Jun'ichirō declared in a policy speech on 4 February 2002:

Japan already possesses some of the best patents and other intellectual properties in the world. I will set as one of our national goals that the results of research activities and creative endeavors are translated into intellectual properties that are strategically protected and utilized so that we can enhance the international competitiveness of Japanese industries (Koizumi 2002).

Following his address, the “Strategic Council on Intellectual Properties” 知的財産戦略会議 was established in the Cabinet on 25 February 2002.

Based on the arguments advanced in meetings of this council, the “Intellectual Property Policy Outline” 知的財産戦略大綱, the “Basic Law on Intellectual Property” 知的財産基本法, and the “Intellectual Property Policy Headquarters” 知的財産戦略本部 (hereinafter referred to as the “Policy Headquarters”) were established on 3 July, 4 December 2002, and 1 March 2003, respectively. The Policy Headquarters announced an “Intellectual Property Strategic Program” 知的財産推進計画 (hereinafter referred to as the “Strategic Program”) in 2004, 2005 and 2006. At present, GOJ is implementing the Strategic Program. Therefore, it is important to examine the nature of the Policy Headquarters and the Strategic Program.

The Policy Headquarters announced a document “Toward the Intellectual Property-based Nation” 知的財産立国の実現に向けて during the first year of their activity (Naikaku 2003: 221–278). In the document, they stated that Japan is still in the mist of unprecedented depression described as “the lost decade”; Japan should learn from USA’s economic achievement in the 1980s; in order to keep Japanese economic power and achieve sustainable economic growth, we must produce innovative technology, turn the technology IPs, and fully utilize them for our society.

Arai Toshimitsu, the director general of the Policy Headquarters, asserted two objectives of the Strategic Program: (1) adapting structural changes of the economy and (2) revitalizing the economy (Naikaku 2003: 3–4). Undoubtedly, the IP protection in Japan is driven by economic motivation. The IP protection, however, includes copyright enforcement and content business development; it is closely linked with the development and the diminishment of culture. Therefore, we should not concentrate on the economic aspect; we should consider the IP enforcement with paying attention to the cultural aspects.

Concerning the cultural issues, Japanese key figures of IP policy have enunciated their thoughts which could be regarded as cultural imperialism. For instance, Arai stated as follows.

“The Intellectual Property-based Nation” means “diffusion of Japanese culture all over the world” (Naikaku 2003: 5).

Hamano Yasuki, a professor at the University of Tokyo, who is playing an important role in Japanese IP policy making, published *Imitated Japan* in 2005 (Hamano 2005). Citing numerous examples, he celebrates overwhelming Japanese popular culture in the world. His book is highly informative for learning widely spreading Japanese culture; however, his view lacks cultural exchange between Japan and foreign countries through popular culture. For example, foreign fans are localizing Japanese *manga* and *anime* and consuming as their own culture. It is hard to say that Japanese *manga* and *anime* are dominating the world by themselves. Therefore, Hamano’s view could be criticized as Japanese cultural imperialism.

Measures against Pirated Copies

The primary concern of the Strategic Program is patents and IPs in universities. The copyright issues are rather trifling in the Strategic Program; however, we cannot disregard them if we discuss about cultural exchange. I focus on the measures against pirated copies in the program. The Strategic Program states as follows regarding to the pirated copies.

In overseas markets, including the Chinese market, the number of Japanese companies damaged by counterfeits and pirated copies has been increasing and all types of business have been affected... Counterfeits and pirated copies spread throughout the world from the country or region where they are manufactured. In particular, the connection between counterfeits / pirated copies and criminal organizations / terrorist groups has been pointed out in recent years. Therefore, the problem of counterfeits and pirated copies is to be tackled with the cooperation of all countries around the world... The problem with counterfeits and pirated copies is that they cheat right holders out of potential profits and diminish the incentive to create new intellectual property, as well as decrease consumer trust in corporate brands, thereby hindering consumer benefits. In addition, counterfeits and pirated copies remarkably inhibit fair competition among companies in the global market (Intellectual Property Policy Headquarters 2004).

Based on this view, the Policy Headquarters are strengthening (1) measures in overseas markets, (2) regulations at the border, and (3) domestic regulations. The strengthening measures in overseas markets, for example, include (1) strengthening measures against countries and regions where infringements have been exposed, (2) utilizing bilateral framework, (3) strengthening cooperation with the United States and Europe, (4) utilizing multilateral framework, and (5) supporting Asian nations to increase their capacity to take measures against counterfeits and pirated copies.

Several action plans are precisely defined in the Strategic Program. All the ministries take responsibility to implement them. For example, regarding to the strengthening measures, the Ministry of Foreign Affairs takes the following action.

Positioning measures against counterfeits and pirated copies as a key diplomatic measure of Japan, the GOJ will make efforts to strengthen systems by establishing the Intellectual Property Protection Office (tentative name) within the Economic Affairs Bureau of the Ministry of Foreign Affairs by the end of FY 2004 and offer thorough instructions on how to cope with infringements by preparing and distributing to all Overseas Establishments the "Manual to Cope with Intellectual Property Infringements." In addition, by the end of FY 2004, Overseas Establishments will actively conduct support activities, such as understanding actual damage incurred by individual Japanese companies, following up measures against damage taken by the regulatory authorities, making a request to the regulatory authorities at the initiative of ambassadors, and clarifying the section that is in charge (Intellectual Property Policy Headquarters 2004).

The Ministry of Foreign Affairs established the Intellectual Property Protection Office on 12 July 2004, and the office distributed “Manual to Cope with Intellectual Property Infringements” to all overseas establishments, following the program.

Pirated Copies: An Infrastructure for Distributing J-Cool

The “Council against Pirated Copies” 海賊版対策連絡協議会 of the Agency for Cultural Affairs issued “Reinforcing the Frameworks against Pirated Copies of Asia in the Public and Private Sectors” アジア地域の海賊版に対する官民の取り組みの強化について in May 2002. In the report, the council refers the following data, citing a report published by the International Federation of the Phonographic Industry in 2000 and the Anti Counterfeiting Association.

Based on a survey of pirated records and CDs in East Asia, 90 percent (94.4 billion yen) of the 103 billion yen market in China is comprised of pirated copies. Similarly, 45 percent (25.9 billion yen) of the 57.6 billion yen music market in Taiwan, 25 percent (1.3 billion yen) of the 13 billion yen market in Korea, and 50 percent (14.1 billion yen) of the 28.2 billion yen market in Hong Kong are dominated by pirated copies. Approximately 30 percent of J-pop music market is occupied by pirated CDs in this region.

In China, a best hit album of popular singers who belong to various productions, including Utada Hikaru, Hamazaki Ayumi, and Koyanagi Yuki, is sold about 200 yen. Besides, pirated copies of Sony Play Station’s software are sold at the range of 75 to 150 yen (licensed copies are 6,800 to 7,800 yen) and that of Nintendo Game Boy’s software are about 700 yen (licensed copies are 3,800 to 4,800 yen). In addition, numerous pirated copies of VCD and DVD are sold about 75 to 375 yen per a disk, whereas the price of licensed DVD is about 5,000 yen in Japan; the most popular titles are Japanese animation and films directed by Kitano Takeshi and Kurosawa Akira. (Agency of Cultural Affairs 2002)

Kelly Hu has pointed out that pirated copies of Japanese TV dramas began to be produced in Hong Kong in 1996 or ’97. It took about one to two weeks after the air in Japan to produce pirated VCDs, attaching Chinese subtitles and the package. Taiwan capital supplied funds to the production; Chinese networks across Taiwan and Hong Kong deeply related to the production and the selling of pirated VCDs (Hu 2003). After the major suppression in 1998, the sale of pirated VCDs reduced in Hong Kong; however, pirated copies are easy to buy at the city center even today.

After the year of 2000, a new distribution technology for motion pictures emerged instead of pirated VCDs; that is file sharing system using network connected servers. According to Wu Yongmei, file sharing networks have been constructed in Chinese college dormitories and internet coffees. College students and customers of internet coffees are enjoying motion pictures distributed through local networks. Chinese students who live in dormitories do not have their own televisions; however, they own network connected personal computers for watching digitized motion pictures. A personal computer is easily turned into a highly personalized audio-visual facility (Wu 2004).

In the context of international IP protection, it is easy to blame copyright violation in Asia. Condemnation, however, is not always a proper attitude. We should explore these cases to get another view.

Many scholars, including Iwabuchi Kōichi, Wu Yongmei, and Kelly Hu, reported the Asian youth had been influenced by Japanese TV dramas (hereinafter referred to as J-dramas). We can observe many Asian youth long for Japanese lifestyles shown in the dramas.

For example, Nakano Yoshiko and Wu reported an interview to a Chinese university student who watched *Tokyo Love Story*.

The fashion, the makeup, and the lifestyle in the drama are all contemporary style. The heroes and heroines are singles. That might be the reason of the popularity for youth. If we young people study hard and get a well-paid job, we can have dreams and able to accomplish what we want to do. Japanese TV dramas show us good start points; they keep our future dream alive. These might be the attraction of Japanese TV dramas (Nakano and Wu 2003).

Wu pointed out that Chinese youth accept J-dramas as “catalogues of daily life.” Iwabuchi stated a reason of J-dramas’ popularity in Taiwan is they are “useful images” realized in East Asia based on the cultural resemblance (Iwabuchi 2001).

The popularity of Japanese popular culture in Asia is not established by the active selling of Japanese industries. J-dramas in Taiwan, for example, illegal broadcasting by local satellite/cable TV stations and pirated VCDs played decisive roles for the distribution. As Iwabuchi stated, Japanese TV stations are not only passive for selling their programs, but also unwilling to promote in Taiwan (Iwabuchi 2001).

It is natural to think that many J-dramas have been distributed through illegal channels. We can assume that there are basically no differences in the impressions between pirated and licensed copies of J-dramas. Asian youth who watched J-dramas by pirated copies would have same good impression of what they felt from watching licensed copies.

The most important fact we can observe is illegal activities, such as pirated copies, have been a powerful infrastructure for distributing and promoting Japanese popular culture.

Thinking about this fact, we should carefully consider the consequences of Japanese government’s IP enforcement policy. Japanese popular culture has spread in Asia with great popularity. If Japanese government enforce the IP protection and wipe illegal copies out from the market, the most powerful infrastructure which has supported Asian popularity of Japanese popular culture must be destroyed. As a fact, for example, J-drama popularity in Hong Kong apparently diminished along with the request for enforcement by GOJ; we should further examine the phenomenon taking various factors into account, anyway.

In short term, current enforcement policy will bring Japanese copyright holders small profit; at the same time, the policy will accelerate to detach Asian youth from Japanese culture. As a result, Japanese industries will loss Asian market in long term.

Why Asian youth has accepted Japanese popular culture? The reason is it has been providing “useful images” for their daily life. When pirated copies are swept out of the

market and licensed copies dominate in the country, the price of VCDs and DVDs will be inevitably increased or will be kept at a certain price level. In addition, the distribution channel will be controlled; small businesses, which are selling pirated editions all around the town, will any longer sell them. That means Asian youth will be getting harder to use the “useful images.”

The consequences are obvious: the “useful images” for Asian youth will be shifting from Japanese to Korean, Taiwan or other native products. It is nothing other than the dilemma between cultural diffusion and IP protection.

In fact, we can observe such alternation from Japanese to native popular culture in Taiwan. A good example is Taiwanese TV drama *Meteor Garden*, which is a clone of J-drama. Japanese enforcement is accelerating such alternation of popular culture.

I will illustrate my observations in Asian countries. In Beijing, I saw few J-animation and J-drama VCD titles at CD shops in 2000: *Doraemon*, *Pocket Monster*, *Chibi Marukochan*, *Ikkyū-san*, *Meitantei Konan*, and Momoe Yamaguchi's Akai-series dramas. I visited Beijing again in 2005; I could hardly find J-dramas in DVD shops. It seemed to me that DVDs of Chinese dramas are replacing those of J-dramas. As for animation, more Otaku-taste titles have been emerged: *Neogenesis Evangelion*, *Love Hina*, *Initial D*, *Card Captor Sakura*, and *Rurouni Kenshin*. Licensed DVDs are 10 RMB at discount rate; pirated copies are 5 RMB.

In Taipei at the year of 2004, it seemed that K-dramas were rapidly replacing J-dramas. In Singapore at the same year, K-manfa was replacing J-manga.

In Ulaanbaatar at the year of 2005, very few pirated J-animations are sold in the city centre. All of them seemed to be made in Taiwan or Hong Kong. On the cable TV, few J-animations in the 80s are broadcasted: *Rokushin Gattai God Maazu* and *Ranma 1/2*. All the Japanese titles had been neither dubbed nor subtitled.

In Japan, Internet selling of pirated copies seems to be growing. Many of these DVDs are made in Taiwan and are being advertised in Internet auction sites and direct e-mails. The prices are about 3,000 to 10,000 yen per title. J-clone Taiwan drama *Meteor Garden* has been broadcasted from many local TV stations and is getting popularity in Japan. *Initial D*, which is originally Japanese *manga*, was remade in a movie at Hong Kong and released in Japan on 17 September. The so-called Han-ryū 韓流 boom has been shifting to Hua-ryū 華流.

Toward a New IP Principle

Considering these discussions, a possible conclusion of my argument would be that we should consider the best way of IP protection, based on the view that the distribution of illegal copies is a strong infrastructure for promoting Japanese popular culture in Asia. The real IP protection is not legal enforcement to suppress illegal activities.

Such conclusion, however, should also be criticized because it might contain a superiority complex to Asian youth who accepted Japanese popular culture. If we conclude that pirated copies function as a powerful infrastructure for promoting Japanese popular culture, Asian people will find cultural imperialism behind the discourse. Furthermore, we should notice that Japanese popular culture boom in Asia is going to be over along

with Japanese government is putting the enforcement forward.

Tetsuya Motohashi pointed out “the worship for economy vibrant without imagination for others” lies in the conscious mind of Japanese majority (Motohashi 2005). He also indicated Japanese are still expecting the “postwar story of special procurement demand.” In other words, Japanese is dreaming a new special demand of Asia, which is close and huge market for Japan, without paying attention to the Asian complaint to Japanese insensitiveness to the prewar colonial regime.

In a report issued by “International Strategic Task Force of Contents Industry” コンテンツ産業国際戦略研究会 of Ministry of Economy, Trade and Industry in 2003, they declared that they will create 806.7 billion yen oversea market by IP enforcement. Japanese government is requiring nothing other than the story of special procurement demand by enforcing international IP protection.

Japan was not a wealthy country before the 80s. Scholars and engineers did not afford to buy expensive foreign treatises and journals. Laboratories were filled with many pirated copies of foreign publications. It is a famous story that Osamu Tezuka and other pioneering *manga* artists pirated Walt Disney’s cartoons. In a way, Japanese science, technology, and culture were brought up by pirated copies. When Japanese remember the experience, I believe we could find a new solution for IP conflicts.

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