DIMINISHING FREEDOM OF SPEECH
WITHIN THE COPYRIGHT REGIMES IN THE U.S. AND JAPAN:
WHAT JAPAN HAS TO LEARN FROM THE U.S. EXPERIENCE

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Abstract

The relationship between copyright laws and freedom of speech has recently begun to attract more attention among scholars in the United States. Although copyright law has a speech-suppressing effect in the sense that it prohibits speech with illegitimate exploitation of copyrighted expression, the copyright regimes in both the U.S. and Japan have historically retained some “safety valves” in order to secure some free speech values for the public. However, the rapid development of digital technologies, especially the digital rights management (“DRM”) technologies, and related legislation, such as anti-circumvention regulations and copyright management information regulations, have had a huge impact on the balance between copyright law and freedom of speech. In the U.S., where the scope of anti-circumvention regulation is very broad, many studies have been conducted on how free speech values within the copyright regime have been undermined. There are several cases that challenge the undermining phenomena. In Japan, however, little discussion has been occurred regarding how technologies and related legislative amendments would affect free speech values within the copyright regime. However, there are many phenomena that cause Japan to suffer in the similar way as the U.S. Now that the Koizumi Administration is considering the legal reform on intellectual property law, it is important for Japan to closely study the change of balance that is taking place in cyberspace and to learn from the experiences of the U.S. about how too broad of anti-circumvention regulation can undermine free speech values within the copyright regime.
Table of Contents

1. Introduction .................................................................................................................. 1

2. Background of this research ......................................................................................... 5
   2.1 Why freedom of speech in the copyright context is not discussed in Japan .......... 5
   2.2 Why freedom of speech in the copyright context is important in Japan ............. 9

3. Purpose of Freedom of Speech in Copyright ............................................................... 12
   3.1 Purpose of Freedom of Speech ............................................................................. 12
   3.2 Relationship between the Purpose of Copyright Law and Freedom of Speech .. 14

4. Freedom of Speech in the Copyright Regimes and Their Underlying Policies in the U.S. and Japan ........................................................................................................... 19
   4.1 Overview and the History ...................................................................................... 19
   4.2 Idea/Expression Dichotomy ................................................................................. 21
   4.3 Distinction between Derivative Work and New Work ......................................... 25
   4.4 Fair use in the U.S. and the Limitation on Copyright Clauses in Japan .............. 28
      4.4.1 Fair Use in the U.S. ....................................................................................... 28
      4.4.2 Limitation on Copyright Clauses in Japan ...................................................... 31
      4.4.3 Differences between the Fair Use in the U.S. and Limitation on Copyright Clauses in Japan .................................................................................................................. 34
   4.5 Limited Duration of Copyright ............................................................................. 41
   4.6 What is Outside the Control of Copyright ............................................................ 43

5. Impacts of Technologies in Cyberspace and Related Legislative Changes That Impact How Free Speech Rights Are Honored and Balanced Against Other Rights and Values .......... 44
   5.1 Description of the Characteristics of Technologies .................................................. 44
   5.2 Anti-circumvention Regulations and Copyright Management Information Regulations .......................................................... 51
      5.2.1 Anti-circumvention Regulations .................................................................. 51
      5.2.2 Copyright Management Information Regulation .......................................... 58
   5.3 Impacts of Technologies in Cyberspace and Related Legislative Changes ........... 59
      5.3.1 Idea/Expression Dichotomy and Distinction between Derivative Work and New Work .................................................................................................................. 60
      5.3.2 Fair Use in the U.S. and the Limitation on Copyright Clauses in Japan .......... 63
      5.3.3 Limited Duration of Copyrights ...................................................................... 70
5.3.4  What Is Outside the Control of Copyright ......................................................... 71

6  External Scrutiny of Freedom of Speech........................................................................ 75

6.1  When Is External Scrutiny of Freedom of Speech Necessary?.................................. 75
6.2  Examples in the U.S. ................................................................................................. 78
6.3  Examples in Japan .................................................................................................... 81
6.4  Limits of External Scrutiny of Freedom of Speech .................................................. 83

7  Conclusion.................................................................................................................. 85

Bibliography.................................................................................................................... 88