AMERICAN COPYRIGHT, ASIAN TRANSFORMATIONS: THE LEGACY OF THE 1976 COPYRIGHT ACT

by TATSUHIRO UENO[1]

The 1976 U.S. Copyright Act has influenced copyright laws in some Asian jurisdictions. However, these jurisdictions generally adhere to the droit d'auteur *system. Consequently, they have only adopted a small number of the statute's provisions. The diversity in the acceptance of, and deviation from, the 1976 U.S. Copyright Act is evident. This article explores the influence of this statute on the establishment and amendment of copyright laws in Japan, South Korea, China, and Taiwan, focusing on the interesting transformations and differences in three key areas: the work-for-hire system, the fair use clause, and punitive damages.*

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INTRODUCTION

Many Asian jurisdictions with civil law systems adhere to the *droit d'auteur* system,

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including Japan,[2] South Korea[3], China,[4] and Taiwan.[5] However, the influence of U.S. copyright law can also be seen in these countries, especially after World War II. Consequently, a combination of the European continental civil law system (the *droit d'auteur* approach) and the Anglo-American common law system (the copyright approach) can be observed in Asian jurisdictions, reflecting interesting transformations and differences as a result of acceptance, adaptation, and resistance in their transplantation of the 1976 U.S. Copyright Act.

The current Japanese Copyright Act ("JCA") was established in 1970, seven years before the passage of the 1976 U.S. Copyright Act. However, as will be discussed later, the Japanese government, while drafting the JCA beginning in 1962, clearly referred to the discussions over the 1964 copyright law revision bill in the United States, particularly with regard to the work-for-hire system. Therefore, it can be said that the U.S. Copyright Act influenced the establishment of the Japanese work-for-hire system. Furthermore, after the enactment of the JCA, the 1976 U.S. Copyright Act evidently influenced the discussions in Japan from 2007 to 2018 regarding a general clause on copyright exception and the fair use clause of the U.S. Copyright Act.[6]

This Article explores the influence of the 1976 U.S. Copyright Act on the establishment and amendment of copyright laws in Japan and other Asian jurisdictions—South Korea, China, and Taiwan. It shows the interesting transformations and differences in the acceptance of the U.S. statute, focusing on three key areas: the work-for-hire system, the fair use clause, and punitive damages.

I. WORK-FOR-HIRE SYSTEM

A. Japan

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[2] Chosakukenhō [Copyright Act], Law No. 48 of 1970 (Japan), *translated at* https://www.japaneselawtranslation.go.jp/en/laws/view/4207. For an English outline of the JCA and major cases under the Act, see Peter Ganea, Christopher Heath & Hiroshi Saitô, Japanese Copyright Law: Writings in Honour of Gerhard Schricker (2005); Teruo Doi & Tatsuhiro Ueno, *Japan*, *in* International Copyright Law and Practice (Paul Edward Geller & Lionel Bently eds., 2025); Tatsuhiro Ueno, *Chapter 22 (Japan)*, *in* Copyright Throughout the World (Silke von Lewinski ed., 2026).

[3] Jeojaggwonbeob [Copyright Act] (S. Kor.), *translated at* https://www.copyright.or.kr/eng/laws-and-treaties/copyright-law/act.do.

[4] Zhuzuoquan Fa (著作权法) [Copyright Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 7, 1990, rev'd Nov. 11, 2020, effective June 1, 2021) (China), *translated at* https://www.wipo.int/wipolex/en/legislation/details/21065.

[5] Zhuzuoquan Fa [Copyright Act] (1928) (Taiwan), *translated at* https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0070017.

[6] *See* 文化審議会著作権分科会 (Bunkashingikaichosakukenbunkakai) [Council for Cultural Affs., Subcomm. on Copyright],『文化審議会著作権分科会報告書(平成29年4月)』(Bunkashingikaihôkokusho: Heisei 29 nen 4 gatsu) [Report of the Subcommittee on Copyright of the Council for Cultural Affairs] (2017), https://www.bunka.go.jp/seisaku/bunkashingikai/chosakuken/pdf/h2904_shingi_hokokusho.pdf (in Japanese).

The JCA adheres primarily to the *droit d'auteur* system, while it has also been influenced by U.S. law, particularly after World War II. The unique Japanese-style work-for-hire system (Article 15) was introduced when the JCA was established in 1970, seven years before the passage of the 1976 Copyright Act in the United States. However, the Copyright Council, which the Japanese government established to draft the JCA, referred to discussions in the United States regarding a major revision draft of what became the 1976 U.S. Copyright Act, which I will mention later.

The JCA defines an "author" as "a person who creates a work"[7] and provides that an author shall enjoy the copyright and moral rights in the authored work.[8] Yet the statute provides for a unique work-for-hire system, where the authorship of a work shall be attributed to employers, including juridical persons.[9] Accordingly, the statute *ab initio* vests (as opposed to transferring post-creation) both economic and moral rights in the companies that are the "authors" under the JCA,[10] while no rights of any kind are granted to the employee who actually creates the work.[11]

Furthermore, it is normal in Japan that juridical persons invoke their moral rights as "authors."[12] In fact, there are a number of court cases where the court not only upheld the claim for injunction but also awarded damages for infringement of moral rights owned by juridical persons to compensate for "non-economic" loss.[13] These cases mainly relate to videogame developers, book publishers, broadcast companies, and religious organizations.

As for the requirement of the Japanese work-for-hire system, Article 15(1) of the JCA stipulates:

> [F]or a work (except a work of computer programming) that an employee of a corporation or other employers (hereinafter in this Article such a corporation or other employers are referred to as a "corporation, etc.") makes in the course of duty at the initiative of the corporation, etc., and that the corporation, etc. makes public as a work of its own authorship, the author is the corporation, etc., so long as it is not stipulated otherwise in a contract, in employment rules, or elsewhere at the time the work is made.[14]

Hence, the Japanese work-for-hire system is basically subject to the requirement (for any work except a computer program[15]) that a work be made public as a work of the employer's

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[7] Copyright Act art. 2(1)(ii) (Japan).
[8] *Id.* art. 17(1).
[9] *Id.* art. 15.
[10] *Id.* art. 59 (providing that "moral rights are exclusive to that author, and are inalienable").
[11] Tatsuhiro Ueno, *Moral Rights in Japan: "Moral Rights" of Juridical Persons?*, *in* Research Handbook on Intellectual Property and Moral Rights 384 (Ysolde Gendreau ed., 2023).
[12] *See* 加戸守行 [Moriyuki Kato], 著作権法逐条講義 (Chosakukenhôchikujôkôgi) [Article-by-Article Commentary on the Copyright Act] 26 (7th ed. 2021) (in Japanese).
[13] For more detailed discussion, see Ueno, *supra* note 11, at 392 *et seq.* An example is Saikō Saibansho [Sup. Ct.] Feb. 13, 2001, Hei 11 (ju]) no. 955, 55 Saikō Saibansho Minji Hanreishū [Minshū] 87 (Japan).
[14] Copyright Act art. 15(1) (Japan).
[15] *Id.* art. 15(2) ("For a work of computer programming that an employee of a corporation, etc. makes at the initiative of the corporation, etc. in the course of duty, the author is the corporation, etc., so long as it is not stipulated otherwise in a contract, in employment rules, or elsewhere at the

own authorship—in other words, under its own name as the author. Therefore, if a company, for instance, makes a publicity brochure created by its employee and published it under the company's own name as the author, the authorship of the work shall be attributed to the company.

It should be noted that these requirements have been broadly construed in case law and according to major theories.[16] As a result, even though a newspaper article, in the byline, bears the name of an employee who actually wrote it, it can be regarded as not the writer's responsible authorship, but merely an indication of a person in charge in the company. Accordingly, the news article shall be regarded as being published with the newspaper company identified as the author, and the authorship of the work shall be attributed to that company.[17]

This outcome demonstrates that the Japanese work-for-hire system has a wide application. In reality, a large number of works—including most news articles, news photos, magazines, television programs, videogames, and character merchandise—are considered works for hire. Thus, the authorship of such works is attributed to the companies. Accordingly, both economic and moral rights are *ab initio* vested (not transferred post-creation to) the companies that are the "authors" under the JCA, while no rights of any kind are granted to employees creating the works.

As for its justification, there seems to be an idea that, when an employee creates a work that is to be published under the company's name as the author, the employee creates the work on behalf of that company, and the company takes social responsibility for the work published under the company's name.[18] Hence, it has been considered appropriate that moral rights should be vested in the company for the purpose of guaranteeing its own "non-economic" interests in relation to the work and that the company can invoke moral rights on behalf of its employees.[19]

The historical roots of the Japanese work-for-hire system are unclear. However, the record of the lawmaking process of the JCA suggests that the Japanese government opted to introduce this unique work-for-hire system after examining various foreign legislation, including the concept of "collective work" under French law (1957), the "contract of service" under UK law (1956), the works-made-for-hire doctrine under U.S. law (1909), and the works-for-hire arrangement under Turkish law (1951).[20]

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time the work is made.").

[16] *See* KATO, *supra* note 12, at 153 *et seq.* (in Japanese). For case law examples, see Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Dec. 18, 1995, Hei 6 (wa) no. 9532, 1567, Hanreijihō [HANJI] 126 (Japan) (Last Message in Saishûgô Case); Chizai Kōtō Saibansho [Intell. Prop. High Ct.], Aug. 4, 2010, Hei 22 (ne) no. 10029, 2101, Hanreijihō [HANJI] 119 (Japan) (Kitami Kôgyô University Case).

[17] RYÔ SHIMANAMI, TATSUHIRO UENO & HISAYOSHI YOKOYAMA, COPYRIGHT LAW IN JAPAN 98 (4th ed. 2024).

[18] *See* KATO, *supra* note 12, at 152.

[19] *See id.* See also the statement of Moriyuki Kato in 23 CHOSAKUKENKENKYÛ [COPYRIGHT STUDY] 68 (1997) (in Japanese).

[20] 文部省 (Monbushô) [MINISTRY OF EDUC.], 著作権制度審議会第一小委員会資料集（昭和40年3月）(Chosakukenseidoshingikai Daiichishôiinkai Shiryôshû (Shôwa 40 nen 3 gatsu)) [COLLECTION OF MATERIALS FOR THE FIRST SUBCOMMITTEE OF THE COPYRIGHT SYSTEM COUNCIL (MARCH 1965)] 21 (in Japanese). For a historical examination of Article 15(1), see also 山根崇邦 [Takakuni Yamane],

Regarding the relationship between the drafting of the JCA and U.S. copyright law, the First Subcommittee of the Copyright System Council, which the Japanese government established to draft the main part of the law, referred to the discussions in the United States concerning the amendment of the 1909 U.S. Copyright Act to create the 1976 Act. The Council referred, in particular, to Article 14(b)[21] of the 1964 copyright revision bill (H.R. 11947 and S. 3008), which was submitted to Congress on July 20, 1964, and was introduced by Senator John McClellan and Representative Emanuel Celler. Under Article 14(b), an employer is considered the author and owns all the copyright interests in a work made for hire.[22] In January 1954, the Japanese government produced for reference purposes a tentative Japanese translation of the entire 1964 bill,[23] to which the members of the Copyright System Council were highly likely to have referred. Moreover, the Japanese government distributed the translation of part of the *Supplementary Report* prepared by the U.S. Register of Copyrights in 1965[24] to the Council's general meeting on December 15, 1965.[25]

Therefore, it can be said that the 1976 U.S. Copyright Act indirectly influenced the creation of the Japanese work-for-hire system. However, there are still some differences between the U.S. and Japanese work-for-hire systems. Consequently, we can see that the JCA both accepts and deviates from U.S. copyright law.

B. South Korea

The 1957 Korean Copyright Act has a work-for-hire system similar to the Japanese system, where the authorship is attributed to employers, including juridical persons.[26] When

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「職務著作」制度の再構成－起草過程に基づく系譜的・比較法的考察 ("Shokumuchosaku" Seido no Saikôsei : Kisôkatei nimotozuku Keifuteki & Hikakuhôteki Kôsatsu) [*The Restructuring of the Work-for-Hire System—A Genealogical and Comparative Examination of the Drafting Process*], 39 日本工業所有権法学会年報 (Nihonkôgyôsyoyûkenhôgakkainenpô) [JAPAN INDUS. PROP. L. ASS'N. J.] 57 (2016) (in Japanese).

[21] H.R. REP. NO. 11-947, art. 14(b) (1964) ("WORKS MADE FOR HIRE.—In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and owns all of the rights comprised in the copyright unless the parties have expressly agreed otherwise.").

[22] See the material distributed in the meeting of the Special Committee of the First Subcommittee of the Copyright System Council on April 19, 1965, which is contained in 文部省 (Monbushô) [MINISTRY OF EDUC.], 著作権制度審議会第一小委員会資料集（第二集） (Chosakukenseidoshingikai Daiichishôiinkai Shiryôshû (Dai 2 shû)) [COLLECTION OF MATERIALS FOR THE FIRST SUBCOMMITTEE OF THE COPYRIGHT SYSTEM COUNCIL (VOLUME 2)] 100 (1965) (in Japanese).

[23] 文部省 (Monbushô) [MINISTRY OF EDUC.], 米国著作権法改正法案（仮訳） (Beikoku chosakukenhôkaiseihôan (Kariyaku)) [THE TRANSLATION OF THE COPYRIGHT LAW REVISION BILL (Tentative)] (1965) (in Japanese).

[24] STAFF OF H. COMM. ON THE JUDICIARY, 89TH CONG., SUPPLEMENTARY REPORT OF THE REGISTER OF COPYRIGHTS ON THE GENERAL REVISION OF THE U.S. COPYRIGHT LAW (Comm. Print 1965).

[25] 文部省 (Monbushô), 著作権制度審議会第一小委員会審議事項関連資料〔昭和40年6月～45年12月〕 (Chosakukenseidoshingikai Daiichishôiinkai Shingijikôkanrenshiryô (Shôwa 40 nen 6 gatsu–45 nen 12 gatsu)) [COLLECTION OF RELATED MATERIALS FOR THE FIRST SUBCOMMITTEE OF THE COPYRIGHT SYSTEM COUNCIL (JUNE 1965–DECEMBER 1970)] (in Japanese).

[26] Jeojaggwonbeob [Copyright Act] art. 9 (S. Kor.) ("The authorship of a work made for hire which is made by an employee of a legal person, etc. during the course of his duties and is made public

the Korean work-for-hire system was introduced by an amendment in 1986, it was largely influenced by the JCA and was modelled after the Japanese system.[27] Thus, theoretically, not only economic rights but also moral rights can be vested in juridical persons under Korean law. Nevertheless, it seems unlikely in practice that the court would grant an injunction or award damages for infringement of moral rights to a juridical person in South Korea. Therefore, we can observe not only the direct adoption of Japanese and U.S. copyright laws but also how such adoption has transformed the Korean Copyright Act.

II. FAIR USE CLAUSE

A. Japan

The JCA has a detailed catalogue of specific provisions on limitations of and exceptions to copyright, while it has no general or open-ended clause on copyright limitations, in common with the copyright law in most civil law countries. However, such a detailed catalogue of specific provisions has caused problems due to its strict interpretation of such provisions.

Since 2007, discussions have been held over the addition of a general clause on copyright limitations to the catalogue of specific provisions.[28] In fact, I gave a presentation at the Copyright Research and Information Center in Tokyo on September 19, 2007, in which I proposed to consider the introduction of a general clause on copyright exception that fit Japanese law and civil law system, which I called the "Japanese-style 'fair use' clause."

On June 18, 2008, the Intellectual Property Strategic Program of the Intellectual Property Strategy Headquarters of the Japanese government proposed to consider the introduction of a general clause on copyright limitations.[29] Released a few months later, the report of the Task Force on Intellectual Property System in the Age of Digital Networks stated that "it would be appropriate to add to [Japanese copyright] provisions a general clause on limitation of rights (Japanese-style "fair use" clause) that comprehensively permits fair use of a work to the extent that such use does not unreasonably prejudice the legitimate interests of the right holders."[30]

After discussion of the issue in the Subcommittee on Legal Affairs of the Subdivision on

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under the name of such a legal person, etc. as the author shall be attributed to that legal person, etc., unless otherwise stipulated in the contract or work regulation, etc.: Provided, that in cases of a computer program work . . . , being made public is not required.").

[27] *See* 박선하 [Park Seon-Ha], 저작권법상 업무상 저작물에 관한 검토- 주요국 및 직무발명 제도와의 비교를 중심으로 [*A Review of Works Created in the Course of Employment Under the Copyright Act: Focusing on Comparisons with Major Countries and the Employee Invention System*], 15 J.L. & INTELL. PROP. 123 (2025); 신재호 & 김형렬 [SHIN JAE-HO & KIM HYOUNG-RYEL], 업무상저작물의 권리귀속 방안에 관한 연구 [A STUDY ON THE ATTRIBUTION OF COPYRIGHT IN WORKS MADE BY EMPLOYEES], 51산업재산권[INDUS. PROP.] 457 (2016).

[28] *See* Tatsuhiro Ueno, *Rethinking the Provisions on Limitations of Rights in the Japanese Copyright Act—Toward a Japanese-Style "Fair Use" Clause*, 34 AIPPI J. 159 (2009).

[29] INTELL. PROP. STRATEGY HEADQUARTERS, INTELLECTUAL PROPERTY STRATEGIC PROGRAM 2008 (2008), *translated at* https://warp.ndl.go.jp/web/20260601195547/https://www.cas.go.jp/jp/seisakukaigi/titeki2/keikaku2008_e.pdf.

[30] *Id.*

Copyright of the Council for Cultural Affairs, the four specific provisions on copyright limitations were introduced in 2012 (Articles 30-2, 30-3, 30-4, and 47-9). However, a general clause on copyright limitations was not introduced into the JCA, because introducing a fair use clause had faced strong objections from right holders.

Therefore, in 2016, it became a very hot issue whether to introduce more flexible provisions or a general provision on copyright limitations into the JCA. The Intellectual Property Strategy Headquarters issued the Intellectual Property Strategic Program 2016 on May 9, 2016, which proposed to consider the possibility of introducing flexible provisions on copyright limitations to promote new innovation in the digital network era. On February 24, 2017, the Sub-Committee's report proposed to introduce flexible provisions on copyright limitations.

Nevertheless, introducing the U.S.-style fair use clause also faced strong criticism and objections from copyright holders in Japan. Taking into account the differences between the United States and Japan in terms of the volume of case law, the litigation system, and the role of the courts, the Japanese government considered that a U.S.-style fair use clause was not a comfortable fit within the civil law system. Consequently, the government decided against introducing a U.S.-style fair use clause in Japan,[31] although, in my opinion, the combination of a detailed catalogue of specific provisions and a general clause on copyright exceptions would be both acceptable and appropriate for civil law countries.[32]

Instead, some "flexible" provisions on copyright exceptions (Articles 30-4, 47-4, and 47-5) were introduced into the JCA in 2018 and came into effect in 2019. These provisions are not general clauses and are therefore largely different from the U.S. fair use clause and the UK fair dealing provisions.[33]

Here, we can see the clear influence of the 1976 U.S. Copyright Act on the discussions about introducing a general clause on copyright exceptions. While the final result differed greatly from the U.S. statute, it could be argued that the unique Japanese flexible provision on copyright exceptions, which has recently attracted global attention in the context of text and data mining or AI training, was created by combining the civil law system with the U.S.-style fair use clause.

B. Other Asian Jurisdictions

It has been traditionally considered that the fair use or fair dealing clause does not fit the civil law system. However, it should be noted that two civil law jurisdictions, South Korea and Taiwan, have already introduced the U.S.-style fair use clause.

The Korean Copyright Act was amended in 2011 to introduce the general provision on copyright limitations (Article 35-3),[34] which appears to combine the U.S.-style fair use

[31] *See* Council for Cultural Affs., *supra* note 6.
[32] Tatsuhiro Ueno, *A General Clause on Copyright Limitations in Civil Law Countries: Recent Discussion on Japanese-Style Fair Use Clause*, *in* The Cambridge Handbook of Copyright Limitations and Exceptions 211–15 (Shyamkrishna Balganesh, Ng-Loy Wee Loon & Haochen Sun eds., 2021).
[33] Tatsuhiro Ueno, *The Flexible Copyright Exception for "Non-Enjoyment" Purposes: Recent Amendment in Japan and Its Implication*, 70 GRUR Int'l 145 (2021).
[34] Jeojaggwonbeob [Copyright Act] art. 35-3, *amended by* Act No. 11110, Dec. 2, 2011 (S. Kor.).

provision with the three-step test.[35] Furthermore, this provision was once again amended on March 22, 2016,[36] by removing two parts, including the phrase "for news reporting, criticism, education and research etc.," which was enacted on September 23, 2016. Such removal presumably expanded the scope of application of the Korean fair use clause. Following the amendment in 2019, this provision was moved to Article 35-5 of the Korean Copyright Act.[37]

Additionally, the 1928 Taiwan Copyright Act introduced the U.S.-style fair use clause in 1992. Article 65 has four factors,[38] drawing on the legislative model provided by Section 107 of the 1976 U.S. Copyright Act.[39] Introduced through a 2003 amendment, Article 65(3) states further that an external agreement negotiated by copyright owners and users shall be taken as a reference for determining fair use,[40] thereby providing an interesting deviation from the U.S. Copyright Act.

China first proposed the introduction of a small general clause (stipulating "other circumstances") at the end of the catalogue of specific provisions on copyright exceptions in the draft amendment to the Chinese Copyright Law released on June 6, 2014 (Draft Article 43(13)).[41] Although the general clause disappeared from the first revision draft of the

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[35] *See* Peter K. Yu, *Customizing Fair Use Transplants*, LAWS, Mar. 2018, no. 9, at 6.

[36] Jeojaggwonbeob [Copyright Act] art. 35-3, *amended by* Act No. 14083, Mar. 22, 2016 (S. Kor.).

[37] Jeojaggwonbeob [Copyright Act] art. 35-5, *amended by* Act No. 16600, Nov. 26, 2019 (S. Kor.):

(1) Except as provided in Articles 23 through 35-4 and 101-3 through 101-5, where a person does not unreasonably undermine an author's legitimate interest without conflicting with the normal exploitation of works, he or she is entitled to use such works.

(2) In determining whether an act of using works falls under paragraph (1), the following matters shall be considered:

1. Purposes and characteristics of use;

2. Types and purposes of works;

3. Amount and substantiality of portion used in relation to the whole works;

4. Effect of the use of works on the existing or potential market for the works or current or potential value thereof.

[38] Zhuzuoquan Fa [Copyright Act] art. 65 (1928) (Taiwan):

(1) Fair use of a work shall not constitute infringement on economic rights in the work.

(2) In determining whether the exploitation of a work complies with the reasonable scope referred to in the provisions of Articles 44 through 63, or other conditions of fair use, all circumstances shall be taken into account, and in particular the following facts shall be noted as the basis for determination:

1.The purposes and nature of the exploitation, including whether such exploitation is of a commercial nature or is for nonprofit educational purposes.

2.The nature of the work.

3.The amount and substantiality of the portion exploited in relation to the work as a whole.

4.Effect of the exploitation on the work's current and potential market value.

(3) Where the copyright owner organization and the exploiter organization have formed an agreement on the scope of the fair use of a work, it may be taken as reference in the determination referred to in the preceding paragraph.

(4) In the course of forming an agreement referred to in the preceding paragraph, advice may be sought from the specialized agency in charge of copyright matters.

[39] 經濟部智慧財產局 [INTELL. PROP. OFF., MINISTRY OF ECON. AFFS.], 著作權法第六十五條第二項四款衡量標準之研究 [A STUDY ON THE STANDARD OF REVIEW UNDER ARTICLE 65(2)(IV) OF THE COPYRIGHT ACT] 4-1 (2001), https://www.tipo.gov.tw/wSite/public/Attachment/0/f1747648542000.pdf (in Chinese).

[40] *See* Yu, *supra* note 35, at 7.

[41] Copyright Law (Amendment Draft Submitted for Review, June 6, 2014) (China); *see* Chenguo Zhang, *Introducing the Open Clause to Improve Copyright Flexibility in Cyberspace? Analysis and Commentary on the Proposed "Two-Step Test" in the Third Amendment to the Copyright Law of the PRC, in Comparison with the EU and the US*, 33 COMPUT. L. & SEC. REV. 73, 84 (2017).

amendment in May 2020 (then-renumbered Article 22),[42] it was again provided for in the second revision draft in August 2020 and became the now-adopted Article 24(13), which stipulates "other circumstances provided for by laws and administrative regulations."[43] The final revision bill was passed by the Standing Committee of the National People's Congress on November 11, 2020, and came into force on June 1, 2021.[44]

This section demonstrates not only the acceptance of U.S. copyright law but also the transformation and diversity brought by such acceptance.

III. PUNITIVE DAMAGES

A. Japan

A person whose copyright or other rights have been infringed, either intentionally or negligently, may claim damages.[45] The JCA has provisions to facilitate assessment of damages. Under these provisions, the damages amount is calculated based on the volume of the infringing goods transferred (Article 114(1)), the profits obtained by the infringing party (Article 114(2)), or the license fee (Article 114(3)). Therefore, the JCA contains no provisions for punitive damages.

Copyright holders have long demanded the introduction of punitive damages in cases of willful copyright infringement. However, the Japanese government has not yet introduced them. In addition, in one precedent handed down by the Japanese Supreme Court, a judgment ordering punitive damages in accordance with the Civil Code of the State of California was declared to be contrary to public order in Japan and accordingly invalid.[46]

One reason why Japan has not introduced punitive damages would be that, even if they were introduced in the intellectual property field only, the court would be unable to refuse the enforcement of a judgement ordering the payment of punitive damages issued by U.S. courts because punitive damages are contrary to public order in Japan.

B. Other Asian Jurisdictions

In China, punitive damages are recognized in certain copyright infringement cases. Article 54 of the Chinese Copyright Law (amended in 2020 and effective from June 1, 2021) provides that "where copyright or neighbouring rights are intentionally infringed and the circumstances are serious, damages of not less than one time and not more than five times the amount determined by the aforementioned methods shall be awarded."[47] The "amount

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[42] Amendment to the Copyright Law (Draft, Apr. 26, 2020) (China), http://www.npc.gov.cn/flcaw/flca/ff80808171ba0ccc0171be96df3a02b0/attachment.pdf (in Chinese).
[43] Amendment to the Copyright Law (Draft for Second Review, Aug. 17, 2020) (China), http://www.npc.gov.cn/flcaw/flca/ff808081736ba7420173ec57d96d3b14/attachment.pdf (in Chinese).
[44] Copyright Law (China).
[45] MINPŌ [CIV. C.] art. 709 (Japan).
[46] Saikō Saibansho [Sup. Ct.] July 11, 1997, Hei 5 (o) no. 1993 (o) 1761, 51 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 2530 (Japan).
[47] Copyright Law art. 54 (China).

determined by the aforementioned methods" referred to here means the amount of damages calculated by reference to the actual losses suffered by the right holder, the infringer's unlawful gains, or the license fee. The upper limit for statutory damages has also been raised to five million yuan. This provision corresponds to Article 1185 of the Civil Code, which came into force on January 1, 2021, stating that "where a person intentionally infringes another's intellectual property rights and the circumstances are serious, the infringed party may claim appropriate punitive damages."[48] Currently, punitive damages of "not less than one time and not more than five times" are stipulated in the Trademark Law, the Anti–Unfair Competition Law, the Patent Law, and the Copyright Law, meaning that a punitive damages system is now in place across all primary areas of intellectual property law in China.

In South Korea, the punitive damages system, which provides for treble damages, was introduced in 2019. The system initially applied only to the Patent Act and the Unfair Competition Prevention Act (in terms of trade secret infringement). Subsequently, amendments came into force in April 2021 to extend the arrangement to the Trademark Act and the Design Protection Act. In August 2024, new amendments entered into force, providing for quintuple damages in the Patent Act and the Unfair Competition Prevention Act. Through amendments that came into force in July 2025, the increased maximum for punitive damages was extended to the Trademark Act and the Design Protection Act. Finally, an amendment came into force on August 11, 2026, to revise Article 125 of the Korean Copyright Act to introduce a punitive damages system. Under the amended provision, the court may determine the amount of compensation so long as that amount does not exceed five times the amount of damages in case of intentional infringement.[49] In addition, Article 125-2 provides for statutory damages.[50]

In Taiwan, the punitive damages system, which provides for treble damages, was introduced in the Patent Act. However, there are no punitive damages in the Copyright Act. Instead, Article 88(3) of the Act provides for statutory damages.[51]

The acceptance of the 1976 U.S. Copyright Act is evident here, along with the transformation and diversity engendered by such acceptance.

CONCLUSION

While the JCA generally adheres to the *droit d'auteur* system, it has been influenced by the 1976 U.S. Copyright Act—in particular, on the work-for-hire system and the general clause on copyright exception. For the former, the Japanese government produced a tentative Japanese translation of the entire 1964 copyright law revision bill in the United States for reference purposes, to which the members of the Copyright System Council were highly likely to have referred. Therefore, it can be said that the 1976 U.S. Copyright Act indirectly influenced the creation of the Japanese work-for-hire system.

In addition, discussions in Japan from 2007 to 2018 about introducing a "Japanese-style fair use clause" into the JCA were greatly influenced by the fair use clause of the 1976 U.S.

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[48] Minfa Dian (民法典) [Civil Code] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), art. 1185 (China).
[49] Jeojaggwonbeob [Copyright Act] art. 125(4)(5) (S. Kor.).
[50] *Id.* art. 125-2 (S. Kor.).
[51] Zhuzuoquan Fa [Copyright Act] (1928) (Taiwan).

Copyright Act. However, instead of introducing the U.S.-style fair use clause, the Japanese government introduced a flexible provision on copyright exceptions, such as Article 30-4 of the JCA.[52] Therefore, while the influence of the 1976 U.S. Copyright Act on discussions in Japan regarding the introduction of a flexible provision on copyright exceptions was not perfect, the fair use clause of the 1976 U.S. Copyright Act has influenced these discussions.

As for punitive damages, there have always been long discussions about whether to introduce this type of award in the intellectual property field in Japan. However, the Japanese government has not yet introduced punitive damages in any intellectual property or civil law. Therefore, the 1976 U.S. Copyright Act does not have any actual influence on the JCA in this area.

Beyond Japan, various types of influence from the 1976 U.S. Copyright Act can be seen in other Asian jurisdictions, such as South Korea, China, and Taiwan.

South Korea has introduced a fair use clause into its Copyright Act that is similar to the one in the United States, which is based on four factors. The Korean work-for-hire system also strongly resembles the Japanese one. Therefore, the multiple indirect influences of the 1976 U.S. Copyright Act can be seen in the Korean work-for-hire system. Conversely, the punitive damages system has been adopted in patent, trademark, design, and unfair competition law but not in copyright law. The influence of the U.S. statute on punitive damages is therefore only partial.

China has already introduced a punitive damages system in its copyright law, which awards damages of not less than one time and not more than five times the amount. While there are certain differences, the influence of the 1976 U.S. Copyright Act on the Chinese system in this area can be found, since the U.S. statute was referred to in the lawmaking process in China as one of the models.

Taiwan introduced the U.S.-style fair use clause in its copyright law, which has four factors that are the same as those in the fair use clause in the 1976 U.S. Copyright Act.

In sum, the 1976 U.S. Copyright Act has influenced copyright laws in some Asian jurisdictions, although these jurisdictions generally adhere to the *droit d'auteur* system. As a result, they did not adopt many U.S. copyright provisions, and there is diversity in the acceptance of, and deviation from, the 1976 U.S. Copyright Act. This Article shows the interesting transformations and differences in the acceptance of the 1976 U.S. Copyright Act,

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[52] Chosakukenhō [Copyright Act] art. 30-4 (Japan):

> It is permissible to exploit a work, in any way and to the extent considered necessary, in any of the following cases, or in any other case in which it is not a person's purpose to personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in that work; provided, however, that this does not apply if the action would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work or the circumstances of its exploitation:
> (i) if it is done for use in testing to develop or put into practical use technology that is connected with the recording of sounds or visuals of a work or other such exploitation;
> (ii) if it is done for use in data analysis (meaning the extraction, comparison, classification, or other statistical analysis of the constituent language, sounds, images, or other elemental data from a large number of works or a large volume of other such data; the same applies in Article 47-5, paragraph (1), item (ii));
> (iii) if it is exploited in the course of computer data processing or otherwise exploited in a way that does not involve what is expressed in the work being perceived by the human senses (for works of computer programming, such exploitation excludes the execution of the work on a computer), beyond as set forth in the preceding two items.

focusing on three key areas: the work-for-hire system, the fair use clause, and punitive damages.

A subject that is yet to be explored but highly worthwhile is a detailed comparison of the 1976 U.S. Copyright Act with copyright laws in Asian countries. I hope to collaborate with U.S. scholars on this topic someday.