

## Copyright in Japan: Hitting a Sour Note

As one of its numerous activities, The Japanese Society for Rights of Authors, Composers and Publishers (JASRAC) licenses the right to play, use, broadcast (generally within the confines of the business having a license), etc., copyrighted music to businesses willing to pay royalties to JASRAC which was established in 1939 and at present controls approximately 98% of copyrights related to music in Japan. While the royalty payment system has been traditionally applied to commercial businesses such as restaurants, cafes, clothing stores, etc., JASRAC has recently sought to obtain royalties from music and dance schools which, along with other attempts to collect royalties which may extend beyond their legal scope or attempts to redefine the terms used in the Copyright Law, has drawn much scrutiny.

According to the Japanese Copyright Law, a copyright shall remain effective for 50 years after the owner of the copyright (often the composer, author, etc) has passed away.

The author or composer of a work in question is provided with the exclusive right (referred to as a "performance right") to perform or release the work in question to the public. The concept of "fair use" of art is rather limited in Japan, where copyright is viewed as a rule and not a standard in which some wiggle room exists for society or the courts to interpret whether such a performance of a musical piece constitutes a public performance requiring payment of royalties to the author or composer of the work in question. Japanese courts tend to judge such cases with a "one size fits all" mentality and often do not consider extenuating circumstances or situations in which a strict interpretation of the law may be unwarranted.

### Defining "Performance"

In February 2017, JASRAC requested<sup>1</sup> that music schools remit royalty payments equivalent to 2.5% of the lesson fees collected by the schools. These fees would apply not simply to public recitals in which students or people affiliated with the

music school performed copyrighted pieces publicly, but also to private lessons or practice regardless of whether anyone other than the music teacher and the student were present at the school at the time. In short, any use whatsoever of a musical piece for which JASRAC holds the copyright would require payment.

In September 2017, initial hearings commenced at the Tokyo District Court into this matter. Lawyers representing music schools (Yamaha Music Foundation, Kawai Musical Instruments Manufacturing, etc.) indicated that a music lesson does not constitute a public "performance" as the lesson is not performed directly for the public<sup>2</sup>. This concept derives from the language used in the Copyright Law but what actually constitutes a "public performance" is not specifically defined therein. JASRAC's representatives argued that the term "performance" could be expanded to include any use of any copyrighted piece.

Since the start of this lawsuit, numerous Japanese musicians have expressed their desire that music schools be allowed to freely use their music for lessons and non-public, not-for-profit performances, in order to maintain and stimulate an interest in the musical arts, especially musical education for children.

JASRAC, while ostensibly seeking to serve the good of musicians attempting to earn a living from their creativity, has a history of vague enforcement policies and has been known to "test the waters" to see whether they can obtain new revenue streams.

In one recent case, JASRAC informed a performer of classical Japanese songs, all of which were composed over 800 years ago, that he would have to pay royalties in order to perform such songs, despite there being no copyright for use of these songs. After some bad press, JASRAC relented and stated that they were just concerned that the performer may eventually include newer copyrighted material in his performance. To many, a warning shot like this from JASRAC is akin to a bully seeing what he/she can get away with without getting sent to detention.

JASRAC has also sought royalty payments from other small businesses and in June 2016 initiated a lawsuit against several

restaurants, barber shops and clothing stores which had been playing JASRAC protected music as background music. While the sums demanded by JASRAC from each restaurant, barber shop and clothing store were not exorbitant, when one takes into account that there are thousands of restaurants, barber shops and clothing stores which would also be forced to pay royalties (in some case retroactive over several years) to JASRAC, it is clear that JASRAC stood to collect a vast sum of money by having a court judgment returned in their favor.

JASRAC prevailed in a 2004 lawsuit brought against a ballroom dance studio<sup>1</sup>. The Nagoya High Court agreed with JASRAC that the ballroom dance students were defacto customers and accordingly, any music used in the studio could be considered a public performance. It remains to be seen whether JASRAC employs a similar technique in the case of the lawsuit brought by the music schools.

In late March 2018, the Sapporo High Court handed down a ruling in the case brought by JASRAC against a barber shop which played copyrighted music while customers were present. In the ruling, the barber shop owner was found guilty of copyright infringement and ordered to pay a sum of approximately \$300 to JASRAC<sup>3</sup>. Given this ruling, it is anticipated that JASRAC will attempt to collect royalties from any business which currently broadcasts or has broadcast copyrighted material as background music.

In April 2018, JASRAC announced that while lawsuit brought by an association of music schools had yet to be settled, it would offer a special 10% discount on payments for schools which signed contracts and requested a list of all the songs played at each music school willing to enter into a contract. As of August 2018, approximately 0.5% of the over 7000 music schools in Japan had entered into a contract with JASRAC.

In October 2018 it was announced that Japan would join and implement the Marrakesh Treaty in January 2019, which permits

loosening of restrictions for the distribution and provision of copyrighted materials to the visually-impaired (often in Braille)<sup>4</sup>. Whether or not the relaxation of copyright under the Marrakesh Treaty can be expanded to cover the abovementioned cases and others which may occur in the future remains to be seen.

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<sup>1</sup><http://japanip.blogspot.jp/2017/06/jasrac-demands-royalties-from-music.html>

<sup>2</sup><https://asia.nikkei.com/Life-Arts/Arts/Royalty-changes-strike-sour-note-among-Japan-s-music-teachers>

<sup>3</sup><https://keisenassociates.com/jasrac-pauses-bgm-playing-by-barbershop/>

<sup>4</sup>[http://www.mondaq.com/article.asp?articleid=745914&email\\_access=on&chk=2407138&q=1661224](http://www.mondaq.com/article.asp?articleid=745914&email_access=on&chk=2407138&q=1661224)