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Title “ Intellectual Creative Activities and Intellectual Property”
-- For Sustaining Our Lives --

Contents

Intellectual property that enriches our lives

☞ Awareness of surroundings (discovery of problems)→Solutions through intellectual creative activities→Commodification→Lives to be enriched

■Intellectual property created by people's creative activities

Things surrounding you as if it were a matter of course, such as PCs, TVs, mobile phones and stationery, are all created by people's creative activities.

For example, the founder of a company called OLFA CORPORATION created a type of cutter knife which allows you to snap off the edge and move to the next blade when the edge has become blunt. So, how did this idea of snapping the edge emerge?

◆Invention inspired by the shape of a chocolate bar

The development of OLFA's cutter knife started because OLFA's developer heard from people engaged in cutting paper that the knives they were using easily went blunt.

In response to a challenge of "producing fine knives," the developer tried to produce a "snappable" knife blade, inspired by a story that, when cutting things with broken glass and finding its edge being blunt, people refined its edge by breaking it.

It was not technically easy to snap off a metallic blade skillfully, but the developer **successfully realized the idea of a snappable knife blade by making slits on the knife blade, drawing inspiration from the shape of a chocolate bar**.

As can be seen in this example, useful goods were developed, thereby enriching the world, as a result of various peoples' engagement with creative activities in order to solve a wide variety of challenges. In this regard, such things created through intellectual creative activities by humans are called "**intellectual property**," which will be protected as rights.

◆From "Oruha" to "OLFA"

The snap-off-blade cutter knife was the first of its kind, but it is said that it did not initially sell well. Of course, this is because consumers were not aware of the utility of the new knife, which shows that it is not easy to sell things without familiar trade name unless they are products made by famous companies.

The developer therefore improved the design of the cutter knife, while continuing to develop better and more easy-to-use ones.

Moreover, the company **made efforts to enhance the presence of their brand, such as by naming the knife "OLFA" based on a Japanese word "Oruha" (meaning snap-off blade) and changing the company name "Okada Kogyo" to "OLFA."** As a result, OLFA's cutter knives have spread throughout the world and are now used by people everywhere.

◆“Brand” or “design” – one of the hot buttons

“OLFA” cutter knives successfully spread throughout the world not only because of the idea and technology that realized the utility (i.e., a blade edge is snappable and always cuts well) but also because of the brand power of the company or trade name “OLFA” and their product design. Actually, you would probably choose products based on both the performance or price thereof and the brand (e.g., company or trade name) or the design of such products. Accordingly, **intellectual property** is not limited to technologies and ideas but **includes brands and designs**.

Column

Pen which is easily erasable like a pencil

Pilot FriXion Ball

Here is another example of realizing commodification inspired by a problem around us. It is the “FriXion Ball,” which is a ballpoint pen that is easily erasable like a pencil.

FriXion Ball allows you to erase inked letters by friction heat generated by rubbing the letters with the rubber ball attached to the pen, rather than by the conventional way of erasing letters by applying a correction tape on the letters or by rubbing them with an eraser.

The materials of this product were produced because the developer was impressed by the change in the color of maple leaves from deep green to bright red. The developer’s goal to reproduce such color change led to the creation of the material called “Metamo Color,” the color of which is changed by heat. Afterwards, hearing of the need for a technology that allows the user to erase letters written with a ballpoint pen, the developer wondered if “Metamo Color” could be used for that purpose. “FriXion Ball” – a pen that erases inked letters by friction heat – was born as a result of trial and error testing by connecting the developer’s thought and technology with the needs throughout the world.

Sources: Japan Patent Office “Relay Messages from Inventors of the Day to the Next Generation,” PILOT website, etc.

◆Failure is also a part of creative activities

Every new creation is not simple. New creations can be realized after repeated trial and error testing.

Also, unexpected new creations may be realized from failures.

Column

A real hit product created from a failure

Post-it® Note

Sticky Notes are around you and were originally developed by a company called 3M (called three M). During their original attempt to develop a strong bond originally instructed by 3M, a 3M developer produced a bond that sticks well but can easily be removed. This bond was a failure as it did not meet 3M's demand. Such a failure is usually abandoned, but the developer believed that this bond must be useful and introduced it to many people to seek ideas from them. The real hit product "Post-it® Note" was created using the bond followed by trial and error testing intended to realize new memos and notes with a function that allows the product to be easily stuck and peeled off.

Sources: Sumitomo 3M website, etc.

■"Intellectual property systems" that support people's creative activities and make the world convenient

◆"Intellectual property systems" that protect ideas, designs, brands, etc.

All the products you have seen so far were created based on considerable effort and trial and error testing. It is the "**intellectual property systems**" that are intended to support peoples' creative activities and protect inventions created by people as property.

There are various kinds of intellectual property systems, each of which specifies their details by "law."

In the case of "OLFA" cutter knife, the idea of snappable blades is protected by the **Patent Act** and the **Utility Model Act**. The design of the cutter knife and the name of the product are protected under the **Design Act** and the **Trademark Act**, respectively. These four Acts (i.e., the Patent Act, the Utility Model Act, the Design Act and the Trademark Act) are also called the **Industrial Property Law**. In addition to the Industrial Property Law, there are also laws such as the **Copyright Act** that protects copyrighted works (e.g., animations, cartoons and music) and leads to cultural development.

◆Creative activities start from each person's "awareness" and "thought"

As you saw above, each relevant person became aware that, "This is inconvenient. Is there anything that I can do?" and thought "This would be better if it is changed in this way", thereby having produced solutions and made the world more convenient.

Creative activities are motivated by each person's "awareness" and "thought." In this connection, the "intellectual property systems" have been established as systems to support creative activities and enrich the world.

Why don't you look around you one more time?

Examples of products with industrial property rights

Patent / Utility model

"Kasapon," an invention that enables a wet umbrella to be smoothly put in a bag (Niikura Scales Co., Ltd.)

Patent No. 2562806

Designs

"Supersolid Mask" created focusing on its functions
(Unicharm Corporation)

Design No. 0972250

Trademark

"AJI-NO-MOTO®," a worldwide bestseller chemical seasoning
(Ajinomoto Co., Inc.)

Trademark No. 641075

Examples of works protected by copyright

Novel Lyric/composition Painting Movie/Video Photograph Game software Sculpture /Illustration

Column

Sakichi Toyoda who contributed to the industrial development and life enhancement in Japan

Sakichi Toyoda was born in 1867. During his youth, he read newspapers and books and deeply thought about the nation and society, and then developed a wish to do business to enrich the nation. When Sakichi became 18, he witnessed the establishment of the Patent Monopoly Act, the predecessor of the Patent Act, and committed himself to devoting his life to creative activities.

Then, after considerable efforts and struggles, Sakichi invented a Toyoda-type manual wooden loom in 1890, and, with further effort, he invented and completed the "G-type Automatic Loom," which is currently designated as a Mechanical Engineering Heritage. Consequently, Toyota Industries Corporation, an automatic loom manufacturer, developed into a very large company.

Moreover, without being satisfied with this success, Sakichi generously invested the profit gained through the automatic looms into the development of automobiles. The company established by Sakichi has eventually developed into the current Toyota Motor Corporation and has supported development of a convenient life throughout the world.

Sources: Toyota Industries Corporation website and others.

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Patents and utility models

☞ The patent system aims at making inventions available by broadly publishing “inventions,” and at industrial development by protecting the inventor’s rights and by enhancing the motivation for invention.

■Patent and utility model systems that protect inventions and ideas

◆Patent system that enhances the motivation for invention

For example, suppose that you created an invention after considerable effort and cost and think about selling it as some sort of product. At this time, what do you think if someone uses your invention without your permission and sells the same product? The products using your valuable idea may become unsalable. In this case, all your effort and costs incurred will come to nothing and you will suffer great damage.

Therefore, without any system to prevent such cases, inventors may probably think about refraining from publishing their inventions and keep them secret. Also, the motivation for invention may be lost in the first place. This is a shame, considering the fact that the accumulation of people’s creative activities will lead to technological progress and make people’s lives convenient.

In this regard, the patent system is intended to ensure the protection of inventions by granting the **patent right (i.e., the inventor’s right to the exclusive use of his/her own invention for the prescribed period of 20 years from the application)** to inventors. The system encourages people’s motivation for invention by protecting inventions.

Finding challenges around you→Invention→Acquisition of patent (for 20 years from the application date)→Commodification

◆Patent system that promotes the use of inventions

Another function of the patent system is the **publication of inventions**. This is a function that publishes the details of an invention after the lapse of the prescribed period, thereby preventing others (third parties) from investing unnecessary time and cost into similar research and development. Also, the function will enable others to create a new invention by reference to published inventions, or to use such inventions by receiving permission from inventors. Accordingly, the patent system promotes the use of inventions by publishing the details of inventions.

◆Purpose of the patent system

The patent system grants patent rights to inventors and protects their inventions, as well as provides opportunities to use such published inventions to others by publishing the details of inventions.

As provided in Article 1 of the Patent Act: "**The purpose of this Act is, through promoting the protection and the utilization of inventions, to encourage inventions, and thereby to contribute to the development of industry**," the patent system aims at ensuring technological progress by encouraging the motivation for invention balancing in the use of inventions between the inventors who are granted patents and others who are restricted by such patents, and at eventually leading to industrial development.

◆What is utility model?

In Japan, there is the "**utility model system**" that is similar to the patent system. **The subjects of the utility model system are "devices" that are relatively less advanced than "inventions" that are the subjects to be protected under the patent system, the procedure of which is also simplified**.

Also, the subjects of the patent system are not only material objects (goods) but also "methods" (e.g., a manufacturing method of a particular thing), while those of the utility model system are limited to goods, excluding methods. There is also another difference: the duration of a patent right is 20 years from the application date, while that of the utility model right is 10 years.

Registration of utility models does not require more time and cost than that of patents, which, therefore, helps, in particular, to protect inventions made by individuals and technologies that will become obsolete soon.

■Will that invention really be granted a patent?

◆Inventions are not equal to patents?

The word “inventions” generally refers to “new things or methods”; however, this does not mean that all such inventions can be granted patents.

This is because a person who obtained a patent right can exclusively use his/her patented invention, **which means that others become unable to use such invention without permission**. Taking into account such effects on others as the above, and considering the purpose of industrial development, the patent system is intended to grant patent rights only to the inventions that deserve the grant of patents, the conditions of which are provided in the Patent Act.

Now, what kind of inventions can be granted patents? **The inventions that can be granted patents are limited to those that fall under the definition of “inventions” under the Patent Act and meet the requirements for “patentable inventions.”**

Patentable inventions
Patentable inventions are those that fall under the definition of invention in the Patent Act, such as those that utilize the laws of nature and are technical ideas, and meet the requirements (e.g., novelty and inventive step).

Inventions in general
Inventions under the Patent Act
●Utilizing the laws of nature
→ Excluding the laws of nature themselves (e.g., the law of universal gravitation)
→ Excluding artificial arrangements (e.g., rules of a game)
●Being a technical idea
→ Excluding skills (e.g., how to throw the split fingered fast ball)
→ Excluding painting, sculpture and music
●Being a creation
→ Excluding mere discovery of natural products
●Being an advance invention

Patentable inventions
●Being industrially applicable
●Being novel <novelty>
●Not being easily invented <inventive step>
●No prior application
●Not contrary to public policy
●Statements in the description being as prescribed in relevant regulations

Novelty and inventive step

Let's take Yukimi Daifuku as an example to think about "novelty" and "inventive step" among the requirements for patentability.

The novelty means "that the invention is not publicly known and worked prior to the filing of the patent application." The inventive step means **"that the invention is the one that cannot be easily made by a person ordinarily skilled in the art of the invention."**

In the case of Yukimi Daifuku, it had novelty because it was an unprecedented product at the time in which the ice cream is "directly" "wrapped around" by "rice-cake-like skin that is improved not to be hardened even in the frozen state," and had inventive step because it was the one that could not easily be made by other companies in the same industry.

■If you would like your invention to be granted a patent, you need to file an application to the Patent Office!

◆To be granted a patent, you need to file an application to the Patent Office

In order to be granted a patent, you need to prepare a document describing the details of the invention (description) and submit it to the Patent Office (**application**). A person who has submitted the application is called an "applicant."

Then, the Patent Office examines whether there is any deficiency in the submitted documents and whether the documents meet all the requirements (e.g., novelty), and, if there is no problem, it renders a **decision to grant a patent** (decision to approve the invention as a patent). Consequently, upon the applicant's payment of the patent fee, the invention applied for will be registered as a patent, in which case a **patent right** comes into effect. The patent period is for 20 years from the application.

If it is found in examination that the application does not meet the patent requirements, the applicant is expected to receive a "**notice of reasons for refusal**" that describes the reasons therefor. In response to this decision, the applicant may submit a written opinion (opinions against the reasons of refusal) or a written amendment (amendment of the application details), and, if the reason of refusal is resolved, the Patent Office will render the decision to grant a patent.

If the reason of refusal is not resolved even by the written opinion, etc., then the **decision of refusal** (decision not to approve the invention as a patent) will be rendered by the Patent Office. If the applicant is dissatisfied with the decision, the applicant may file a request for trial (a request to make a decision for the application again) to the Patent Office; then, if the applicant is dissatisfied with the result of the trial, the applicant may further appeal to a court.

You may think that it is complicated for an invention to be granted a patent as it will have to go through many procedures; however, there are people called "**patent attorneys**" who are engaged in supporting such procedures. If you think you have invented something, it is a good idea to consult with a patent attorney on whether the invention can be granted a patent, or what you should do for that purpose.

There are also many inventions and devices for which high or junior high school students obtained patent rights or utility model rights.

Flowchart of the process from the patent application to the registration thereof

How are plant varieties protected? (Plant variety registration system)

Some rice, vegetables and fruits that you regularly eat have characteristics that are similar to so-called inventions. One of the examples is "Tochiotome" strawberry that was produced based on a series of variety improvements through the efforts of farmers or companies.

Such new plant varieties are protected under the "**plant variety registration system**" that is similar to the patent system. The plant variety registration system is the one prescribed by the Plant Variety Protection and Seed Act that is intended to grant exclusive rights to use new varieties (**breeder's rights**) to persons who bred and registered such new plant varieties.

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Designs

☞ The design systems aim at industrial development by protecting designs of goods and encouraging creation.

■Design systems that protect designs

◆Design systems that encourage the creation of designs

There are a surprising number of "**designs**" around you. For example, a pen case and a ballpoint pen therein that you use, as well as buses, bicycles, etc., that you use for commuting, are all based on designs. Moreover, the shapes of sweets you regularly eat are also designs.

Almost all tools around you can be said to be designed because designs are to explore the more beautiful and user-friendly appearance of things, and to enhance the value of products.

Designs can easily be imitated by anyone just by seeing the authentic products; therefore, it is very important to protect newly created designs as the creators' properties.

The **design systems** are **intended to encourage the creation of new designs by protecting designs, thereby increasing products with better designs and enhancing people's lives**.

"**Design(s)**" are defined under the design systems, and those registered with the Patent Office after the application, examination, etc., will be protected for 20 years from the registration date. In addition, Article 1 of the Design Act sets forth the purpose of the design systems: "**through promoting the protection and the utilization of designs, to encourage creation of designs, and thereby to contribute to the development of industry**."

Examples of designs protected under the design systems

■Design system

◆What designs can be registered?

As with the patent system, it is not necessary that all designs in general will be protected. **The designs must meet the definition of "design" under the Design Act and satisfy the registration requirements such as those of industrially applicable designs**.

For example, in order for a design to be deemed as the "design" under the Design Act, it **must be a design of "goods."** Therefore, buildings (i.e., immovable properties) and fireworks are excluded from the scope of protection.

Also, since the design systems are instituted for the purpose of industrial development, the registration requirements include that the design be industrially applicable. For example, things that cannot be mass-produced (e.g., bonsai and green plants) and works (e.g., paintings and sculptures) are excluded from the scope of protection.

Designs defined under the Design Act

1. Those that are deemed to be goods (excluding buildings, fireworks, fountains, etc.)

2. Configuration of goods themselves (e.g., an artificial flower made by folding a napkin is not deemed to be the configuration of the napkin itself)

3. Those that appeal to the eye

4. Those that create an aesthetic impression through the eye ("aesthetic impression" does not focus on beauty, but configuration of goods appealing to the eye)

Requirements for the registration of design

1. Industrially applicable designs (excluding those that cannot be mass-produced and pure art)

2. Designs must be novel (novelty)

3. Designs that are not easily created (creative difficulty)

4. Not contrary to public policy

5. No prior same design application etc.

Design of a real hit product

Many real hit products in the world have not only superior functionality but also better design. Apple's iPhone is one of them.

Apple (i.e., the manufacturer and seller of iPhones) is a US company; however, it filed an application to Japan Patent Office and acquired a design right. Accordingly, in the case of selling products in other countries, you can obtain design rights to protect your designs in respective countries.

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◆How to obtain a design right

In order to obtain a design right, you need to file an application to the Patent Office. The flowchart of the process from the design right application to the registration is almost the same as that of a patent and is as follows.

Flowchart of the process from the design registration application to the registration thereof

Drawings of the design

Under the design systems, your application must be submitted with “drawings” in which the design is depicted.

The drawing to be submitted with the design application is expected to depict the design in six types of drawings (i.e., front view, back view, left side view, right side view, plan view and bottom view). Also, if these types of drawings are not enough to depict the design, it is allowed to add a developed view, cross-sectional view, diagrammatic perspective view, etc.

Drawings of the design of “PlayStation® Vita” by Sony Computer Entertainment Inc.

Column

Special design registration

The design systems include methods of special design registration, such as the "**partial design system**" that protects the design for parts of goods, the "**related design system**" that protects the designs of variations arising in the course of product development, and the "**design for a set of articles**" that protects any design of a set of articles. Also, for any design that you would like to keep secret for corporate strategic reasons or others, there is the "**secret design system**" under which the content of the design right (e.g., drawings) may be kept secret for a certain period of time.

Example of partial designs
Bottle (bottle waist is the partial design)
Design Registration No. 1329280
Note: Due to an acquisition of the right to the package of a mineral water "Irohasu"

Example of design for a set of articles
Panasonic
A set of audio equipment
Design Registration No. 1329394

Example of related design
Computer arithmetic and control unit with display equipment
(Left: the principal design; right: a related design)
Design Registration No. 1075393 (left); No. 1075674 (right)

Patent Contest / Design Patent Contest

Let’s obtain patent/design rights

The Ministry of Education, Culture, Sports, Science and Technology, Japan Patent Office, the Japan Patent Attorneys Association, and the National Center for Industrial Property Information and Training annually hold the Patent Contest / Design Patent Contest for students of high schools, colleges of technology, universities, etc. In these contests, excellent inventions and designs will be selected out of the applicants and awarded to those to be supported for application for patents and design rights. The awarded applicants can experience the process to obtain patents or design rights by actually filing an application to the Japan Patent Office. Also, in filing the application, the students can receive advice from patent attorneys and support for expenses required for application, etc.

Many students and pupils have obtained patent/design rights, and some inventions/designs were commercialized into products.

Example of winning entry FY 2010 Design Patent Contest “Chair”

A chair that can easily be assembled and disassembled because screws and nails are not used. The chair can be stored without much space as the shape and size of each assemble part are similar enough so that they can be superimposed.

(Design Registration No. 1429104)

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Trademarks

☞The trademark system is intended to protect the trust in business of companies (business operators) selling and providing products/services and contribute to industrial development by protecting “trademarks,” as well as to protect consumers who purchase/use goods and services.

■Trademark system to protect business operators and consumers

◆The trademark system that ensures the maintenance of the trust of business operators

Corporate marks and **trade names** are indicated on almost all goods sold in stores. For example, in the case of sweets, a company name (e.g., MORINAGA & CO., LTD.) and a trade name (e.g., Chocoball) are indicated on the package, and, in the case of portable music players, a company name (e.g., SONY) and a trade name (e.g., WALKMAN) are indicated on the product.

Such logos and trade names used by business operators to distinguish their own products/services from those of others are called “**trademarks**.”

By attaching their “trademarks” to their goods/services, business operators demonstrate that such goods/services are provided by them. Then, the **brand** image (e.g., “trustworthy” and “can be bought at ease”) of a trademark will be formed on the basis of the accumulation of consumers’ trust in the given business operator’s goods/services through their continuous marketing efforts. We can purchase products and use services, using such “trademarks” as a guide. Therefore, trademarks are sometimes expressed as “silent salespersons,” which play an important role as a symbol of products/services.

Since a trademark is an object in which the business operator’s marketing efforts and consumers’ trust are accumulated, it is important for business operators, and consumers who trust trademarks, to protect trademarks from being used without permission. Therefore, the trademark system **aims at contributing to the development of the industry and the protection of the interests of consumers**, through the protection of trademarks attached to products/services by persons who use such trademarks, **by ensuring the upholding of the reputation of businesses** of such persons.

■Trademark system

◆Marks that can be registered as trademarks

Trademarks are marks that are intended to indicate a company's own products/services; however, it does not necessarily mean that all such marks can be registered as trademarks.

Trademarks can be registered as trademarks only if they fall under the definition under the Trademark Act and meet all the registration requirements

Trademarks under the Trademark Act

1. Any character, figure, sign or three-dimensional shape, or any combination thereof, or any combination thereof with colors.
(These are referred to as "marks")

2. Marks that fall under any of the following items:
(1) Those that are used for products by persons who manufacture, etc., such products in the course of trade; or
(2) Those that are used for services provided, etc., in the course of trade.

Products and services that cannot be registered as trademarks

1. Those that cannot be distinguished from products or services provided by others (e.g., generic names and quality labelling)

2. Those that are against the public interest such as those that can be confused with those of public institutions (e.g., those that can be confused with the national flags, or logos, etc., of international organizations, etc.)

3. Those that can be confused with registered trademarks of other persons, well-known/famous trademarks, etc. (e.g., stage names of famous persons)

Example of trademarks that are familiar to us

Do you know "Amazon," the Internet shopping giant? Those who use (or whose family uses) Amazon probably often see the logo indicated on the right. In fact, this logo is also a trademark registered with Japan Patent Office.

Amazon's logo, in which an arrow runs from the first letter "a" to the fourth letter "z," implies a message "you can buy a to z, i.e., everything." Accordingly, many company logos include companies' characteristics or key messages, thereby taking important roles in building such companies' brand images.

Amazon logo
International Registration No. 756850 A
Note: Amazon, アマゾン and Amazon logos are the trademarks of Amazon.com, Inc. or its affiliated companies.

◆How to obtain a trademark right

In order for a trademark to be registered, you must file an application to the Patent Office. The process from trademark application to registration is almost the same as that of a patent or design and is as follows.

Flowchart from trademark registration application to registration

A unique feature of the trademark system lies in its requirement for registration of a trademark with designation of products/services to which the trademark will be attached.

It is prescribed that the duration of rights shall be for 10 years from the registration of establishment; however, since it is intended to protect the trust accumulated in the trademark, the trademark may continue to be protected by **renewing** the duration as long as the trademark continues to be used.

Regional Collective Trademark

The regional collective trademark is a system intended to protect the trademark that consists of a combination of local name and a product/service under certain conditions, so that the relevant region can by itself locally protect and develop its own local brands.

Currently, about 500 trademarks are registered.

Trademark: Kobe Beef

Trademark: Hakata Doll

Counterfeit products that harm corporate efforts

In the case where a company invests time and money in making a product, if just the appearance of its products is imitated like the real ones behind its back and the products are sold as poor-quality copies, what will happen? Those who purchased them believing that the products are real ones may have a negative image of the company due to the poor quality of counterfeit products. Also, since many counterfeit products tend to be sold at much lower prices than the real ones, the company's products may become unsaleable.

Accordingly, counterfeit products will harm creators' efforts, which are illegal. Japanese companies have struggled with the existence of such counterfeit products for a long time.

For example, many products of Bandai, a toy maker, have suffered from counterfeit products abroad, the amount of which is said to be about 12 billion yen every year.

■Bandai's plastic model and its counterfeit product

Authentic product　　Counterfeit product

Note: The right is a counterfeit product. It took 8 hours to assemble it without being completed due to lack of parts, etc. (while it took 2 hours to assemble and complete the authentic product).

Adverse effects on consumers as well

Counterfeit products cause adverse effects on both companies and customers. For example, some counterfeit appliances may be broken just after a few times of use or be originally disabled. For consumers who purchased such counterfeit products by mistake, such purchase is nothing more than a loss. Moreover, since counterfeit products are not assured of their safety, in the case of counterfeit foods or medicines, consumers who purchased them may suffer health hazards.

Accordingly, counterfeit products cause adverse effects to both companies and consumers; however, in order to reduce damages, it is also important for you to consciously try not to buy counterfeit products.

Enforcement by the Customs

Of course, counterfeit products purchased abroad are also prohibited from being brought into Japan. If anything suspected of infringing an intellectual property is found by customs, a procedure will be started to find whether it infringes the intellectual property (procedure for finding an infringement). If any infringement is found through the procedure, the object in question will be seized at customs and cannot be brought into Japan.

Also, infringement may be subject to a stiff penalty such as 10 years or less imprisonment or a fine of up to 10 million yen (Article 109, paragraph (2) of the Customs Act).

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Copyright

☞The copyright system is intended to promote cultural development by protecting copyrighted works. Anyone may become an author and infringe others' copyright; therefore, it is important to respect creative activities of others and works as an outcome of such activities.

■Copyright system that promotes cultural development

◆Works abounding around you

As mentioned above, for example, novels, cartoons, lyrics, compositions, paintings, illustrations, sculptures, movies, videos and photographs, can all be **copyrighted works**. Probably, you see them in your daily lives. It is **the system of the Copyright Act that is to protect** such **copyrighted works**. You may suppose that the Copyright Act is for people who are professional creators such as novelists, cartoonists, lyricists and composers; however, if you write a novel, a cartoon, a lyric, or a composition, then you will become an author. Accordingly, copyrighted works are very familiar things; therefore, you should be regularly conscious of a feeling of respect for each other's creations.

◆Purpose of the copyright system

Copyright is similar to industrial property rights such as patent rights or design rights in terms of protecting created works. However, copyright aims at **cultural development**, and therefore is slightly different from the purpose of industrial property rights that aim at industrial development.

For that reason, the copyrighted works protected under the Copyright Act shall be "**a production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, academic, artistic or musical domain**," which is limited to the field of "culture."

Also, copyright is significantly different from industrial property rights in that copyright does not apply to any works that are independently created. That is, although copies and reproductions of others' copyrighted works are not allowed, works that were independently created and, as a result, became similar to other's copyrighted work will not infringe copyrights. Moreover, under the Copyright Act, **a copyright automatically arises at the time of creation of a work and, in principle, to be protected for 50 years after the death of the author**, which is longer than those of patent and design rights.

In the case of industrial property rights (patents)

Invention → Application → Examination → Registration → Arising of rights

In the case of copyright

Creation ——————————————————→ Arising of rights

Works protected under the Copyright Act
1. Those that express **thoughts or sentiments** (excluding mere data, etc.)
2. Those that express thoughts or sentiments in a **creative** way (excluding copies of others' works or expressions of mere facts)
3. Those that are expressed (excluding ideas and inspirations that are not expressed in some form)
4. Literary, academic, artistic or musical domain (excluding industrial products, etc.)

Difference from industrial property rights
1. Even without registration, etc., copyright arises at the time of creation.
2. Once copyright arises, the copyrighted work will be protected, in which case the protection in principle will continue for 50 years even after the death of the author.
3. The Copyright Act has a similarity to the Design Act in that it protects designs such as fine arts and crafts; however, the Design Act is essentially intended to protect industrially applicable designs, which is significantly different from the Copyright Act that protects works within the field of culture.

Column

Active high school students

There are many competitions for creative writing, songwriting, painting and photography for which high school students can also apply. Someone around you may probably be actively involved in such creative activities.

Cultural development has been promoted by such creative activities, and there are high school students whose creations were highly evaluated, whose novels were commercially published, and whose works were introduced in magazines.

■Copyright infringement – familiar problems

◆What is copyright infringement?

Since copyrighted works and copyrights are very familiar to us, many people are probably less ordinarily conscious thereof; however, you must obtain authors' permission when using others' copyrighted works. The use of other's copyrighted work without permission infringes the copyright, which is defined as a crime under the Copyright Act, excluding the cases of private use or of the use in educational activities.

Example of copyright infringement

Reproduction and distribution without permission

Publication on a website, etc.

Paid performance or production at a cultural festival

Distribution from a website, etc.

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◆What is illegal downloading?

Your familiar music, movies, etc., have copyrights, so you cannot use any work without permission of authors. You are allowed to copy copyrighted works or download data into PCs for private purposes without consent of copyright holders; however, you are not allowed to make them available to others by publishing them online without such permission.

In this way, the copyrighted works that are published on the Internet without permission of authors are called "**pirates**," and it is illegal to download them knowing that they are pirated, which is called "**illegal downloading**."

In particular, music and movies are sold as CDs or DVDs; if illegal downloading flourishes, CDs and DVDs will become unsalable and the artists who are authors will become unable to earn their incomes. If so, it will be impossible to create new works and nurture artists, which may cause adverse effects on cultural development.

Therefore, in particular, downloading of music or a movie that is sold as a CD, DVD, or any other form, knowing that it is pirated, will be subject to a criminal penalty.

Illegal downloading
Music or movies → Publication without permission → Pirated music or movies Internet → Illegal downloading

A dispute over copyright that involves a high school student

As copyrighted works abound around you, you would probably see various copyrighted works in your everyday life. If you respect copyrighted works in your everyday life, it is rare to get into a big trouble; however, there was a case where a high school student was involved in a trouble.

There was actually a case where a high school student running his/her own blog published popular cartoons on the site without permission, and made such cartoons available for download for all the blog visitors free of charge. This case resulted in the arrest of the high school student on suspicion of violating the Copyright Act, on the grounds that he/she published a large volume of cartoons (thousands of books) without permission, and that he/she received ad revenue by increasing the page views of his/her blog thanks to such publication.

It is important to recognize that it is socially and legally accusable to commit, through a selfish act aiming to increase the page views of a blog and as a result receive ad revenue, an act of infringing the rights of authors that should be respected under ordinary circumstances.

■Copyright is also important property

Many copyrighted works, such as novels/cartoons, lyrics/compositions, paintings/illustrations, sculptures, movies/videos and photographs are commercially used; for example, you can see that novels and cartoons are sold in bookstores, and music and movies are also sold as CDs or DVDs. Moreover, these days, it is more likely that novels, cartoons, music or movies can be purchased in electronic formats on the Internet.

Since such copyrighted works are everyday necessities, you would have many opportunities to purchase books, CDs, DVDs, etc. From the industry perspective, publishers, record companies, film companies, etc., that commercially handle the abovementioned works and authors thereof (also called contents) have formed a big industry (called "**Content Industry**"). Also, Japanese content has been exported to various countries, which has become one of the representative industries of Japan.

It is wonderful that the export of works representing Japanese culture not only provides economic benefits but also deepens understanding of Japanese culture. However, many pirated Japanese works reproduced without permission even in the market abroad can be found, which has become a problem.

That people all over the world respect creation activities of authors and protect their copyrights can contribute to the development of culture.

Japanese content exports

Japanese content has been exported to markets around the world. For example, Japanese animations are one of the most popular forms of content, and it is also considered that about 60 percent of animated television programs broadcast in the world are made in Japan.

For example, in the US, 3 Japanese animations had been broadcast on ordinary channels and 29 were cablecasted as of March 2010.

In addition, the content is used for not only videos but also the related goods such as game software, DVDs and toys.

Source: JETRO "Actual Situation of the Content Market in the United States (2010-2011)"

"Reproduction" and "quotation" of works

Reproduction means to copy other's work by a method such as printing, photographing, copying, sound recording or video recording, which cannot be performed without permission of the author. However, it is not required to obtain permission of the author if you privately use it at home or quote it in your work (called "quotation"). However, if you quote any work, you must be careful about the following points:

(1) The copyrighted work must have been published;
(2) It is inevitable to quote other's copyrighted work;
(3) The reference part must be distinguished from your own copyrighted work (e.g., by putting quotation marks);
(4) The master-servant relationship between your copyrighted work and the quotation must be clearly distinguished (your work must be the subject); and
(5) The source must be clearly indicated.

In writing your essay, you may sometimes have the opportunity to introduce matters contained in other's books or reports. Let's take care about these points when quoting such work.