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## *Diversity Desired in the Copyrights Protection System*

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Due to the rapid digitalization of information, the question of how to protect patent rights, copyrights and other intellectual property rights has become an ever more important topic of discussion. The digitalization of information about music, animations, photographs, broadcasting and paintings has made it possible to distribute them in the market at a low cost, while in the past the distribution of such contents required large investments. On the other hand, since the reproduction and modification of contents are easy (and possible at practically no marginal costs) and the transmission and reception of massive volumes of information are possible, there is an increasing number of cases in which contents are reproduced and used in large volumes without the permission of copyright holders. Moreover, it has become almost impossible to distinguish copies from the originals.

### *Opinion Divided on Extension of the Protection Period*

Alarmed by this situation, groups of holders of peripheral copyrights to software, such as the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC), are proposing the following revisions to the present copyrights law: 1) to extend the protection period from “the copyright holder’s life plus 50 years,” which is stipulated under the present Japanese law, to 70 years as in the United States and Europe and 2) to expand the scope of items which are objects of compensation payments to include digital equipment.

The holders of copyrights claim that to protect the rights of creators, who are the bearers of culture and arts, new creativity should be encouraged and the protection period should be extended to 70 years after the death of the copyright holder in order to both energize the cycle of content creation and improve Japan’s international competitiveness. On the other hand, users are adamantly against this, claiming that if the protection period is extended to 70 years, it will postpone by 20 years the creation of new works inspired by past works, which will hamper the energizing of the cycle of intellectual creation. Some are simply skeptics. They say, “It is all right for copyright holders (who are themselves the creators) to gain benefits from the protection, but it is hard to understand why their heirs should enjoy the benefits of legacies for 50-70 years after the creators’ deaths. After all, the change may only benefit the distributors of the content.”

### *Price Differentiation Allowed as Incentive to Creation*

Regarding this problem, legal scholars and others have made numerous proposals. From the perspective of economics, the problem is of a “trade-off between incentive before-the-fact and access after-the-fact.” This problem, first pointed out by K. Arrow (1962), may be broken down as follows. To encourage the creation of more works of higher quality, it is necessary to increase incentives for creative work by guaranteeing as much benefit as possible to the creator. On the other hand, once the work is created, it is desirable to hold its price as low as possible, so that as many people as possible may use it.

Creative works have a unique problem which is not seen in the market of ordinary goods. Benefits to developers or creators, which should be paid before-the-fact, correspond to fixed costs which should be recovered after-the-fact without regard to the volumes of production or sales. These costs are also incurred in other industries, therefore, prices are often set at the level of the marginal cost to ensure profits and cover fixed costs. However, in creative work, the average cost does not increase gradually. Therefore, if its pricing uses the marginal cost as a benchmark, there may be no gross margin and it may not be possible to cover fixed costs.

As a result, a system of “differentiated pricing based on monopoly of supply” was introduced. This is a system which allows a strategy for differentiated pricing of contents created by the same creator, based on such factors as whether a book is a hard-cover or paper-back edition, whether a product is for corporate or personal use, or whether a movie is for a road show or another method of distribution. Under this system, the costs prior to creation and compensation (such as the royalty) to the creator are treated as surcharges, which are added on to prices and which vary from user to user. Ordinarily, price differentiation, especially differentiation through monopolistic pricing, increases corporate profits, but it is also subject to the criticism that it decreases the consumer’s surplus. For creative works, it has been authorized exceptionally as a “measure to guarantee before-the-fact incentive” in order to motivate creators. The Copyrights Law provides legal grounds for this practice. Therefore, creators have been able to freely price their works during the period in which copyrights have been protected under this law.

### *Limits to the Present System of Uniform Regulation*

When viewed in terms of the above-mentioned spirit of the copyrights system, the strengthening of rights through the extension of the protection period for works that have been made public is detrimental to consumers. This is because the extension of the period in which works are priced expensively reduces the possibility of using the works after-the-fact and eliminates the consumer’s surplus obtainable when the protection period ends, at which time it is possible to offer the works inexpensively as public domain. For creators, the benefits obtainable from the continued offer of expensively priced works may

be offset by the loss of latent demand which could have been retained and met by offering these works inexpensively (the extension does not guarantee an increase in the producer's surplus, either).

Under a condition, in which the interests of the supplier and the user shift before and after the fact, the question of setting a protection period which maximizes the combined social welfare of the two parties hinges on whether the marginal cost curve and the marginal revenue curve cross within the protection period. [For details, see *Dejitaru Keizai no Hikari to Kage* (Light and Shadow of the Digital Economy)]

Aside from the above discussion, there is also the problem of how well the present copyrights system responds to the situation of the content market, which is becoming increasingly diverse. While the majority of contents are of the type for which demand declines sharply as time passes after they are made public, there is also a type of artwork that takes a long time to become popular. In rare cases, the appearance of a similar work increases the value of the earlier work and increases demand for it as time goes on. Works which were bestsellers during the analog era and whose protection periods are about to expire should be assessed from a completely different perspective from works of digital content with a short lifespan. What is really needed is not to discuss the pros and cons of strengthening the protection period through its uniform extension, but to seriously work on a system, which can be managed flexibly to suit the ever-diversifying nature of artworks.

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