ALAI Congress 2019 in Prague Managing Copyright

Questionnaire

When drafting the national report, please: quote to the most relevant literature; refer to court decisions, wherever they exist; add a list of the quoted literature and of the abbreviations used; use the consistent terminology within your report; explain a special terms that might not be known outside your jurisdiction when you first use them; add the text of the relevant statutory provisions (translated into English or French) in the footnotes.

1. General Overview of the Collective Management

1.1 Can collective management organizations be described as monopolies (natural monopolies or monopolies set by the law) in your jurisdictions?

Collective management business in Japan, other than remuneration/compensation rights mentioned below, cannot be described as natural monopolies or monopolies set by law. To exercise exclusive rights, collecting management organizations (hereinafter referred to as “CMOs”) shall be registered by the Commissioner of the Agency for Cultural Affairs (hereinafter referred to as “ACA”) under Article 3 of Law on Management Business of Copyright and Neighbouring Rights (hereinafter referred to as “LMBC”).

In the field of music copyright, Japanese Society for Rights of Authors, Composers and Publishers (hereinafter referred to as “JASRAC”) licenses for and collects royalties for the performing and mechanical reproductions rights based on the tariffs which are registered with ACA for the music use of its domestic members as well as international members of its sister societies around the world.

However, as regarding some rights other than exclusive rights, only specific organizations designated by ACA are entitled to exercise the rights as the performers’/phonogram producers’ statutory remuneration right arising from secondary use of commercial phonograms in broadcasting and wire diffusion (Art.95(1) and 97(1)) and lending commercial phonograms (Art.95ter(3) and 97ter(3)), and the compensation right of private audio/audiovisual recordings (Art. 30(2)).

In the field of performers’/phonogram producers’ statutory remuneration rights, Japan Copyright Law does provide that where there is an organization which is so designated by ACA, the right to secondary use fees and the remuneration for lending commercial phonograms shall be exercised exclusively through the intermediary of such organization(Art.95(5), 95ter(4), 97(3) and 97ter(4)). Japan Council of Performers Rights & Performing Arts Organizations (hereinafter referred to as ”GEIDANKYO”) for perfomers and the Recording Industry Association of Japan (hereinafter referred to as ”RIAJ”) for phonogram producers is respectively designated by ACA. According to the drafter of Japan Copyright Law, it did not assume that multiple management organizations shall be designated, but was designed to be monopolized by the only

one designated organization (Kato Moriyuki, Commentary on Copyright Law[*Chosakukenhou-Chikujyoukougi*], 6th new edition, CRIC, 2013, pp.600).

As for private audio/audiovisual recording compensation, it is stipulated in Japan Copyright Law that where there is an organization which is designated by ACA as the only one organization throughout the country for each categories of compensation for private recording, the right to claim compensation for private audio/audiovisual recording shall be exercised exclusively through the intermediary of the designated organization. Therefore, the monopoly is set by the law. As regarding the private audio recording compensation, Society for Administration of Remuneration for Audio Home Recording (hereinafter refered as to "sarah") is designated by ACA as the only one organization for private audio recording compensation.

1.2 Does your system make difference between the voluntary, extended (if any) and mandatory collective management? Which rights are managed under which regime?

As mentioned above, in the field of performers'/phonogram producers' statutory remuneration right, Japan Copyright Law does provide that where there is an organization which is so designated by ACA, the right to secondary use fees and the remuneration for lending commercial phonograms shall be exercised exclusively through the intermediary of such organization (Art.95(5), 95ter(4), 97(3) and 97ter(4)). As GEIDANKYO and RIAJ is respectively designated by ACA as the organization to exclusively collect such secondary use fees and the remuneration for lending commercial phonograms on behalf of performers/phonogram producers, therefore it means that these rights are subject to mandatory collective management. And as for private audio/audiovisual recording compensation, Japan Copyright Law does provide that where there is an organization which is designated by ACA as the only one organization throughout the country for each categories of compensation for private recording, the right to claim compensation for private audio/audiovisual recording shall be exercised exclusively through the intermediary of the designated organization. As sarah is designated by ACA as the only one organization, the right to claim compensation for private audio recording is subject to mandatory collective management.

In Japan, there is no "extended collective management system" existed.

1.3 Is the competition between collective management organizations permitted in your jurisdiction? If so, under which circumstances, how often and in which fields (e.g. tariffs, service for users, available repertoire, service for rightholders, amount of deductions) the competition may occur.

LMBC is intended to promote the competition between CMOs. There are multiple CMOs in the field of music copyrights. There is no joint licensing scheme among music copyright CMOs and no joint licensing scheme between music copyrights CMOs and neighboring rights CMOs. CMOs compete in all aspects.

However, as regarding the collective management of performers'/phonogram producers' statutory remuneration rights, since it is carrying out by the only one designated organization in each field, it does not see any competition at the moment.

1.4 How is extended (if any) and mandatory collective management regulated and applied where, for the management of a given right, there are more than one organization?

As regards exclusive rights, there are no legal systems like extended or mandatory collective management under the Japanese copyright law.

In the field of performers'/phonogram producers' statutory remuneration rights subject to mandatory collective management, some regulations on the designated organization are provided in copyright law and relevant Cabinet Order;

1) the designated organization shall make a report of regulations concerning secondary use fee to ACA. (Copyright Law Cabinet Order Art.47(1))

2) the designated organization shall establish and submit the business plan and income/expenditure budget concerning secondary use fee to ACA on each business year, and make public thereof. (Copyright Law Cabinet Order Art.49(1))

3)the designated organization shall establish and submit the business report and financial statements concerning secondary use fee to ACA on each business year, and make public thereof. (Copyright Law Cabinet Order Art.49(2))

4)the designated organization shall make a report about the agreed amount of secondary use fees to ACA without delay. (Copyright Law Cabinet Order Art.49bis(1))

5)ACA shall notify the Japan Fair Trade Commission of the amount of secondary use fees agreed without delay on receiving the report thereof from the designated organization. (Copyright Law Cabinet Order Art.49bis(2))

6)ACA may ask the designated organization to report on their business concerning secondary use fees or to submit account books, documents and other data, or make necessary recommendations for improving in a manner of practicing business. (Art.95(9); Copyright Law Cabinet Order Art.50)

1.5 Is the collective licensing of rights conducted by non-profit CMOs or a

different type of agency or entity (profitable entities such as business corporations), or by the state agency (such as the IP Office)?

LMBC stipulates CMOs to be granted as entities having a corporate status but non-profitability is not required. (LMBC Art. 6(1))

In the field of performers'/phonogram producers' statutory remuneration rights, the designated organization must be non-profit organization. i.e. (1) that it is not established for profit-making; (2) that its members may freely join and withdraw; (3) its members are granted an equal right to vote and to be elected; and (4) it has sufficient ability to practice properly by itself the business of exercising the right on behalf of the right holders (Art.95(6) and 97(4)).

1.6 Are the collective management organizations obliged to contribute to cultural development of the society? If so, in which areas and how is the cultural support implemented (e.g. management of social or cultural funds)? Is the creation of such funds and their allocation limited by law?

Article 1 (Purpose) of Japan Copyright Law and LMBC states the purpose of the law as "contribute to the development of culture". But any actual or financial support is not required by the law. In the case of JASRAC, JASRAC promotes and finances cultural activities from its own budget such as donate courses at universities, open to the public lectures, symposia, talk & concerts, etc.

It is clearly stipulated in copyright law that only the designated collective management organization (CMO) of compensation for private audio/audiovisual recording shall allocate an amount corresponding to the rate fixed by Cabinet Order within 20% of the compensation received for such activities as contributing to the protection of copyright and neighbouring rights as well as to the promotion of the creation and dissemination of works (Art. 104octies). On the ground of inherent difficulty in elaborate distribution to the relevant right holders, this allocation mentioned above is called 'Common Purpose Fund', which is designed as a form of the indirect distribution by serving the interest of all right holders. Copyright Law Cabinet Order Art.57sexies prescribes the amount to be spent for Common Purpose Initiative to be 20% of compensation collected and it is actually given out to compile educational leaflets and conduct survey research on copyright.

On another note, a newly introduced limitation/exception regarding public transmission of works and other protected matters in the course of lessons, which was adopted in the Diet in 2018 and will be effective within three years of the promulgation, accompanies the compensation right and the organization administering compensation is required to allocate a certain percentage of collected amount to Common Purpose Initiative on the same ground as the private recordings[Amended Copyright Law/Article 104quinquies decies].

2. Collective Management Organizations and Authors (Right-holders)

2.1 Do the authors/rightholders have a legal right to become represented? To become members? If they are rejected, what kind of remedy do they have at their disposal?

In the case of JASRAC, JASRAC accepts any music copyright holder who meets its criteria to be a member/trustor of JASRAC subject to its board's approval.

In the field of performers'/phonogram producers' statutory remuneration rights, Japan Copyright Law provides that the designated organization (CMO) may not refuse the request of the right holders for the exercise of the right on their behalf (Art.95(7) and 97(4)). There is no provision in Japan Copyright Law as related to the remedies against any possible rejection by the CMO.

2.2 How does the CMO resolve a conflict between rightholders in case of a "double claim"? Are the rightholders referred to court or is there an ADR at hand?

When JASRAC are faced with a "double claim" among our members (trustors), JASRAC notifies the relevant members and request them to resolve the disputed claim, while holding any payable royalties in suspense. JASRAC does not initiate any legal solution.

Here are the relevant Articles of the "STIPULATIONS FOR COPYRIGHT TRUST CONTRACT" between JASRAC and its trustors.

Article 7 (Warranty of Copyrights)

Section 1. Trustor warrants the ownership of Copyrights for all works which are entrusted to Trustee and also warrants that no Copyrights of others have been infringed.

Section 2. Trustee may, with regard to the warranty set forth in the preceding Section, demand that Trustor submit relevant documentation if considered necessary. In this case, Trustor shall submit such documentation without delay.

Article 19 (Suspension of Royalty Distribution, Licensing, and Exception from Trust)

Section 1. Notwithstanding the provisions of the preceding Article, in case Trustee considers Works, the administration of which have been entrusted by Trustor, to fall under any of the following, Trustee may suspend the distribution of royalties, etc. pertaining to such Works (for Works in which lyrics and melody are jointed, the entire Work; same hereinafter) to the extent and for the period required:

1) In case information required for conducting distribution to beneficiaries, such as the interested parties, the share splits to be applied, etc., cannot be determined.

2) In case doubts arise concerning the existence or the attribution of Copyrights.

3) In case complaints are filed or actions are brought concerning the infringement of copyrights of other Works, or in case Trustee receives notifications from those who claim their Copyright to be infringed.

In the field of performers' statutory remuneration rights, GEIDANKYO usually leaves it to the relevant parties to negotiate and resolve the problems. RIAJ withholds distribution on the claim until it will be solved by the relevant parties in any form agreed on between involved parties, too. The distribution will be subject to the settlement of the dispute.

2.3 How can the authors (rightholders) participate in the activities of the collective management organization? Under which circumstances can they be elected into the management or controlling boards? Are there pre-conditions, such as a minimal amount of remuneration from CMO, to become elected?

The members of JASRAC, whose total distribution amount in the last two years exceed JPY400,000, are eligible for the full members and the board member candidates. 6 lyricists, 6 composers and 6 publishers are elected by full members' votes for a two-year term.

GEIDANKYO has its articles of incorporation and internal regulations, etc., that clearly regulate such matters, including "qualification of candidate", "procedure of election" and "board members' remunerations" and etc.

RIAJ undertakes two roles as an industrial association and a CMO. Phonogram producers can become involved in activities of CMO with a membership in RIAJ as an industrial association. To join the decision-making RIAJ Board Meeting, full membership is required.

2.4 How is the remuneration distributed amongst authors? How can the authors intervene in the process of the formulation of distribution schemes? In which phases of the collecting process are the fees taxed and by whom?

The royalties collected by JASRAC will be distributed to the domestic and international right holders according to the Distribution Rules. The Distribution Committee comprised of several full members reviews the Rules and may propose the revision. Any revision of the Rules is subject to the board's approval.

As for GEIDANKYO, the representative of performers and right holders usually participated in the process of making necessary regulations (according to Copyright Law Regulation Art.21(ⅲ)) on distribution of secondary use fees (sub-committees established) at the designated organization (CMO of performers' statutory remuneration rights). Once the regulations were made and passed at CMO's general assembly, they shall be reported to ACA (according to Copyright Law Cabinet Order Art.47(1)). There is no tax charged at the collection of the statutory remuneration (non-profit operation) by the CMO, but the individual performer or the right-holder shall pay their income tax after they receive the distribution.

RIAJ calculates and distributes the collected remunerations based on the actual usage reports submitted from users. For example, secondary use fees of commercial phonograms are distributed mainly based on annual airtime of each phonogram. RIAJ's full members are qualified to join the Board Meeting where the rules on distribution are developed and approved. The statutory consumption tax is added on the invoice to users by RIAJ.

2.5 How does the law or legal practice reflect the will of the author ("autonomy of will") to grant licenses individually? Is it allowed for the user to obtain the license directly from the represented author? Are such direct licenses null and void or are they valid, while the user still pays remuneration to the CMO? Please elaborate for each regime of the collective management.

JASRAC concludes the Copyright Trust Contracts with all members (trustors) under which they entrust JASRAC with all copyright they own.

> Article 3 (Copyright Trust)
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> Section 1. Trustor shall transfer to Trustee as trust property for Term of Trust (hereinafter called "Term of Trust") any and all Copyrights owned and to be acquired in the future, and Trustee shall administer such Copyrights on behalf of Trustor and distribute to the beneficiary any royalties, etc. which have been obtained through the administration thereof. In this case, Copyrights transferred to Trustee by Trustor shall include the rights provided for in Article 28 of the Copyright Law (Act No. 48 of 1970).

The trustors may exclude some categories of the rights and the utilization forms from JASRAC's administration. They may license the use of their works directly or mandate such excluded rights or utilizations to another CMO.

> Article 4 (Choice in the Extent of Trust of Rights)
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> Section 1. With regard to the Copyrights in Japan, Trustor may exclude all or a part of the categories of rights or utilization forms provided in the Appendix from the scope of administration entrusted to Trustee.

In the field of performers'/phonogram producers' statutory remuneration rights, e.g. secondary use fees and remunerations for lending of commercial phonogram cannot be individually exercised because these rights shall be exercised only through the designed organization (CMO).

RIAJ manages exclusive rights of phonogram producers as an agent and the exclusive rights are still reserved by producers themselves. It allows producers to license users directly.

2.6 Do CMOs allow the rightholders to grant a non-commercial license for their work? Are so called "public licences" used in this context? Are there any examples concerning the non-commercial distribution of the protectable

subject matter by the CMOs in your country?

JASRAC trustors may reserve their rights or limit JASRAC's administration under the "STIPULATIONS FOR COPYRIGHT TRUST CONTRACT".

Article 11 (Reservations or Limitations in Scope of Administration)

Section 1. Trustor (excluding music publishers) may, with prior consent from Trustee, make reservations or impose limitations in the scope of administration of entrusted Copyrights provided for in Article 3 Section 1, Article 4, and Article 10 as follows:

1) Trustor may, with consent from all interested parties (same as interested parties mentioned in Article 2, item 1 of Distribution Rules for Musical Works; same hereinafter) of Works under its entrusted Copyrights (including Works for which Copyrights were assigned in accordance with item 2 of the preceding Article; hereinafter referred to as "Works" in this Article), use Works per se in Japan for the purposes prescribed in a) or b) below, provided that the use prescribed in b) is available only for the Works for which the Copyrights have not been assigned as provided in item 2 of the preceding Article.

a) Use intended for exploitation of the use of Works without compensation for presentation or provision thereof.

b) Use within a scope of certain scale determined at the Board of Directors of Trustee to which a) is not applied.

2) Trustor may conclude with users of Works an exclusive agreement which enables exclusive use of Works, and authorize such users to use particular Works which have been created in accordance with said agreement by means of recording (excluding synchronization) only during Term of said agreement. However, with respect to recordings on commercial phonograms governed by the provisions of Article 69 of the Copyright Law, such authorization shall be valid only for a period of three years from the date when such phonograms are first sold in Japan.

3) Trustor may, with regard to company songs, school songs, and other Works created by special request, allow the party who commissioned such Works to use them within a certain scope set as the purpose of such commission.

4) Trustor may designate those who undertake the publication of its Works.

Section 2. Trustor who is a music publisher may, with prior consent from Trustee, make reservations or impose limitations in the scope of administration of entrusted Copyrights provided for in Article 3 Section 1, Article 4, and Article 10 as follows:

1) Trustor may itself publish Works.

2) Trustor may, with consent from all interested parties of Works, use Works by means of interactive transmissions per se in Japan for the purpose of promoting their usage upon taking technical protection measures to prevent illegal reproduction and other such acts. However, the foregoing shall not apply in case Trustor gains compensation for the presentation thereof.

3) Trustor may designate translated lyrics or new lyrics of Works which are recorded with such translated or new lyrics.

For reference of non-commercial performances, Article 38 of Japan Copyright Law provides for permissible non-commercial performances;

(Performance, etc. not for profit-making)

Article 38. (1) It shall be permissible to publicly perform, present and recite a work already made public, for non-profit-making purposes and without charging any fees ("fees" includes any kind of charge to be imposed on the offering and the making available of a work to the public; the same shall apply hereinafter in this Article) to audience or spectators; provided, however, that the performers or reciters concerned are not paid any remuneration for such performance, presentation or recitation.

(2) It shall be permissible, for non-profit-making purposes and without charging any fees to audience or spectators, to diffuse by wire a word already broadcast or to make the interactive transmission (including the making transmittable by means of inputting information to an interactive transmission server already connected with telecommunication networks for public use) of such work, exclusively for the purpose of reception within the service areas intended for by such broadcasting.

(3) It shall be permissible to communicate publicly, by means of a receiving apparatus, a work already broadcast or diffused by wire (including such work broadcast in the case where the interactive transmission of that work is made), for non-profit-making purposes and without charging any fees to audience or spectators. The same shall apply to such public communication made by means of a receiving apparatus of a kind commonly used in private homes.

(4) It shall be permissible to offer to the public a work (except a cinematographic work) already made public, by lending copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work) for non-profit-making purposes and without charging any fees to borrowers of such copies.

(5) For audiovisual education establishments and other establishments not for profit-making, designated by Cabinet Order, having the purposes, among others, to offer cinematographic films and other audiovisual materials for the use by the public as well as a person, designated by Cabinet Order mentioned in the preceding Article, who does activities for the welfare of the aurally handicapped, etc. (only such person as concerned with item (ii) of that Article, and excluding a person who does such activities for profit-making purposes), it shall be permissible to distribute a cinematographic work already made public, by lending copies of the work, without charging any fees to borrowers of such copies. In this case, a person who makes such distribution shall pay a reasonable amount of compensation to the owner of the right mentioned in Article 26 (including the owner of the same right as that mentioned in Article 26 in accordance with the provisions of Article 28) with respect to such a cinematographic work or a work reproduced in that cinematographic work.

In the field of performers right (both statutory remuneration right and the exclusive rights), GEIDANKYO never heard the case for CMO to allow the individual right holders to grant a non-commercial license for their performance. GEIDANKYO never heard also the case concerning the non-commercial distribution of the performances by CMO.

As above-mentioned in 2.5, phonogram producers can grant license to users directly both for commercial and non-commercial purposes. As far as RIAJ's collective licensing practice is concerned, they grant licenses to baton twirling contestants for reproduction of commercial phonograms for the purpose of playing it during their performance, and distribute the collected license fees based on the actual usage.

3. Collective Management Organizations and Users

3.1 How does your jurisdiction prescribe private copying remuneration

("levies")? Is the general principle of freedom of a contract respected in this area (i.e. is the remuneration a subject of the negotiations between users and collecting societies) or is the size of the private copying levy stipulated by any legislative act (such as governmental decree)?

Any person who, for private use, makes audio/audiovisual recording on such a digital recording medium as specified by Cabinet Order by means of such a digital recording machine as specified by Cabinet Order shall pay a reasonable amount of compensation to the right-holders concerned(Art.30(2)). Individual user, who shall pay private audio/audiovisual recording compensation, adds private audio/audiovisual recording compensation to the price of specified recording machines or media and pays the compensation when he/she purchased such machines or media(Art.104quater(1)). Any manufacturer or importer of specified recording machines or media shall cooperate with the designated organization in claiming and receiving the compensation (Art.104quinquies). The designated organization for private audio recording (sarah) distributes private audio recording compensation collected to JASRAC, GEIDANKYO and RIAJ. Each organization distributes the received private audio recording compensation to right holders.

The designated organization shall fix the amount of private audio/audiovisual recording compensation and obtain the approval thereof from ACA(Art. 104sexies(1)). Before applying for such approval, the designated organization shall consult with associations which are composed of manufacturers and importers of specified recording machines or media and which are deemed to represent their opinions (Art. 104sexies(3)).

The compensation system for private audio/audiovisual recording does exist but unfortunately not functional at the moment.

【Audio】 There is still a demand for CD-Rs for music, the audio compensation is not completely evaporated, but has declined to approximately 1% of its peak in 2001.

【Audiovisual】 The 2012 Supreme Court ruling confirmed defeat for the right holders side in the Toshiba lawsuit. As all existing devices are specifically made for digital broadcasting, which were ruled outside the scope of the compensation system, the collection amount in 2013 has fallen to zero.

After years of discussions, it was concluded that the compensation for creators are necessary as long as the profit of creators are damaged by private recording, by the "the sub-committee for Appropriate Protection, Use and Distribution of Works, etc.," which is the sub-division on Copyright of the Council of Cultural Affairs. Following the conclusion, the sub-committee carefully reviewed the issue in fiscal 2017. Three concrete options as means of remuneration for private recording were discussed; 1) To re-build a compensation system for private recording, 2) To compensate/remunerate with contractual and technological approach, and 3) To establish a specific fund for supporting creators.

The representatives of manufacturers and consumers are keeping their position, doubting the need for compensation, claiming that the volume of material being copied is decreasing due to the penetration of streaming services. The sub-committee has not come to a conclusion.

3.2 Nowadays, the major use occurs on the Internet. Has there been any attempts in your country to set a private copying levies collected by CMOs or by different entities or state for the use of protected subject matters on the Internet (e.g. in the form of a so-called "flat fee" or a special tax)?

There are no such attempts in Japan.

3.3 How are the tariffs set (by decision of the CMO, by negotiation with users, consumers or others?)? What are the statutory criteria for the tariffs (e.g. assessing the value of the rights by experts, proportionality etc.)? Do they require approval of a regulatory authority (such as an IP Office, Ministry of Culture etc.)? How can they be contested by the users? By general courts, by special ADR procedure or specialized tribunals?

CMOs shall submit royalty rules to ACA with previous endeavour to hear opinions from users concerned or their groups (LMBC Art.13). No approval or permission by authorities is required, but CMOs which ACA designates as those having considerable share in the entire right management business are required to cater to consultation at the request of a representative of users. In case that the concerned parties cannot come to a settlement, an arbitration by ACA may be applied (LMBC Art. 23 and 24).

In the field of performers'/phonogram producers' statutory remuneration rights, the designated organization (CMO) shall negotiate the amounts of secondary use fees with broadcasting organizations, etc. or their federation and fix them(Art.95(10) and 97(4)). The designated organization (CMO) shall make a report on the amounts to ACA without delay (Copyright Law Cabinet Order Art.49bis(1)). The designated organization (CMO) doesn't need to require approval of a regulatory authority (i.e. ACA). When the agreement cannot be reached, the parties request ACA to issue a ruling fixing an amount of secondary use fees(Art.95(11) and 97(4)).

3.4 Does the competition law in your country recognize abuse of dominant position of a CMO? Are there any examples (cases) that the CMO has been held responsible for the distortion of the competition?

Exemptions from the Law Relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade (hereinafter referred as to "Anti-monopoly Law") are stipulated concerning such acts recognizable as the exercise of intellectual property rights (Anti-Monopoly Law Art. 21). However, acts deviating from the spirit of the intellectual property system and having bad effects on competition are not exempt.

It is possible that the Anti-monopoly Law may recognize abuse of dominant position of a CMO. To date, there has not been any act of a CMO recognized by the Japan Fair Trade Commission (hereinafter referred as to “JFTC”).

JFTC gave the Cease and Desist Order as of February 27, 2009 considering that JASRAC's blanket licensing agreements with TV and radio broadcasters which allow JASRAC to comprehensively collect the royalties for the JASRAC repertoire based on the broadcasters' revenues constitute “private monopolization”. After the hearings, JFTC rescinded its decision in June 2012. However, the issue was referred to the court.

Supreme Court on April 28, 2015 addressed a possible applicability of “private monopolization” prohibited by Anti-Monopoly Law Article 3. It was ruled that CMO’s calculation method for broadcasting loyalties does not reflect the usage rate of copyrighted musical works managed by them and produces a deterrent effect on the use of copyrighted musical works managed by the other CMO, which can be recognized as having an effect excluding the business activities of other entrepreneurs and meeting one of the criteria for “private monopolization” (Anti-Monopoly Law Art. 2(5)).

The cases were concluded in September 2016. https://www.jasrac.or.jp/ejhp/release/2016/0914.html

In the field of performers’/phonogram producers’ statutory remuneration rights, the provisions of Anti-monopoly Law shall not apply to agreement between the CMO and the users, provided that the trading method is fair and without unreasonable prejudice to the interests of concerned entrepreneurs (Art.95 (13) and 97(4)).

3.5 In some jurisdictions the problem may be the non-transparency of tariffs. Are there any rules on the statutory level or as the outcome of the self-regulatory activities which concern the transparency of the tariffs? Has there been any development in this area in recent years?

In the case of collective management of copyrights or neighbouring rights(exclusive rights) under the LMBC, CMOs are institutionally supposed to develop and change the royalty rules after hearing opinions from users or groups of them (LMBC Art. 13 and 23), so it is believed that the transparency of tariffs is secured. In addition, a CMO shall, when specifying and making a report to ACA, make public the summary of the reported royalty rules (LMBC Art.13(3)).

The CMO who made a report shall not enforce the reported royalty rules for a period of thirty days from the day when ACA received that report (LMBC Art.14(1)). The purpose of these provisions is “Before enforcing the royalty rules, LMBC ensures a certain period to make it public and prepare for users. In some cases, it is desirable to give users (the representative of users) an opportunity to be able to negotiate the royalty rules according to LMBC.” （*Chosakuken-Hourei-Kenkyukai*, Law on the Management Business of Copyright and Neighboring Rights: Text and Commentary [*Chikujyokaisetsu Chosakukentoukanrijigyohou*], Yuhikaku, 2001, pp.89）

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