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研究課題名(和文) 公衆の視点からみた著作権侵害の不法性

研究課題名(英文) Public Views on Wrongfulness of Copyright Infringements

研究代表者

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研究成果の概要(和文)：本研究の考察を通して、著作権法と関連する救済措置が、法による単なる人工的構築物ではなく、それらの中核となるルールが社会規範に深く根ざしていることが明らかになった。人々は著作権法をほぼ完全に無視しているという従来の有力な見解と異なり、本研究の検証によって次のことが判明した。他人の著作物を権利者の許諾なく商業的に利用することを不正な行為であると公衆が評価していること。公衆が著作物に対する利用行為の当否を評価するにあたって、それが私的利用であるか、商業的利用または大規模な利用や頒布であるかをはっきりと区別していること。著作権の行使が商業的または大規模な著作物の利用に対し有効に機能していること。

研究成果の学術的意義や社会的意義

The research results fill a gap in scientific knowledge on social norms governing the uses of copyrighted works by the general public. As such norms notably affect compliance of the public with copyright norms, this knowledge is vital for improving the efficiency of copyright enforcement.

研究成果の概要(英文)：The research results show that copyright laws are not only legal constructs, but their core rules have deep foundations in social norms recognized by the general public. Contrary to dominant views that the public completely disregards copyright law, this research found out sound and solid evidence that the public clearly deems it wrongful when someone commercially uses another person's intellectual creation without getting any permission from the concerned person. Stealing of a bicycle is thus as wrongful as uploading of sound recordings on the internet or making of the copies of a movie DVD for their distribution amongst strangers. Nonetheless, the public also distinguishes between personal uses on the one side and commercial and other large-scale public uses of copyrighted works. This causes that copyright enforcement measures work quite efficiently when they are applied to commercial or large-scale copyright uses contrary to private non-commercial and personal ones.

研究分野：新領域法学関連

キーワード：copyright infringement wrongfulness non-transformative use internet use survey social norms 3D trademark

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## 1. 研究開始当初の背景

(1) Intellectual property laws, including copyright laws, traditionally targeted commercial activities of entities which built their businesses on reaping unfair commercial benefits from copying or imitating the products of other competitors (*see, e.g.*, Mark A. Lemley, *Ex Ante versus Ex Post Justifications for Intellectual Property*, 71 U. CHI. L. REV. 129 (2004)). However, in order to provide creators and innovators with appropriate and adequate level of protection against certain types of copying or imitating the results of their human intellectual labour and against parasitizing on their goodwill, intellectual property laws went so far that they do not anymore cover only uses of intellectual property for commercial purposes, but include broadly defined uses of such intangible assets without limiting them to any commercial activity (*see, e.g.*, JESSICA LITMAN, *DIGITAL COPYRIGHT* (2d ed. 2017)).

(2) Accordingly, many daily activities which are considered as ordinary by the public can easily infringe intellectual property rights of third parties. This leads to the situation where millions of individuals infringe other people's intellectual property rights daily even without noticing it. Many of them have no or minimal negative impacts on legitimate interests of intellectual property right holders, but there are also infringing uses of intangible assets which have considerable harmful impacts on entire fields of industries, such as trade with counterfeited goods and widespread file-sharing of copyrighted works (*see, e.g.*, RIAJ, *RIAJ YEARBOOK 2017* (2017); and IFPI, *GLOBAL MUSIC REPORT 2017* (2017)).

(3) It is routinely argued that the reason of such prevalent disregard of intellectual property law by the public is that the public deals with intangibles (*e.g.* copyrighted works, sound recordings or trademarks) differently than with tangibles (*e.g.* cars, bicycles or houses). While the public considers stealing of tangible things as wrongful and very harmful, it allegedly deems normal to deliberately purchase counterfeited goods or to share copies of copyrighted works with strangers on online file-sharing platforms. The perceived need to provide intellectual property holders with more adequate and efficient legal protection has led to several key changes in the international (*e.g.* EU-Canada Comprehensive Economic and Trade Agreement 2016; and Comprehensive and Progressive Agreement for Trans-Pacific Partnership 2018) as well as national intellectual property laws in a number of developed countries, such as Japan, the United States (US) and member states of the European Union (EU) (*e.g.* the *Napster* and *Grokster* cases in the US, *KaZaA* cases in the Netherlands and Australia, *File Rouge* and *Winny* cases in Japan, and *Pirate Bay* case in Sweden).

(4) Those changes are based upon stressing the importance of deterrence (*i.e.* external factors such as severity and probability of punishment and other social sanctions) in regulating human behaviour by law (*see, e.g.*, Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968)). Nonetheless, in regulating human behaviour it is also important to take into account internal factors such as persuasion and internalization of legal norms by regulated subjects (*see, e.g.*, RICHARD H. MCADAMS, *THE EXPRESSIVE POWERS OF LAW* (2015); and *Symposium on the Internal Point of View in Law and Ethics*, 75 *FORDHAM L. REV.* 1143 (2006)).

## 2. 研究の目的

(1) The research aimed at filling the gap in the current copyright law literature in Japan as well as abroad, which tends to be either theoretical or doctrinal, by studying the efficiency and expressive power of the recent trends, which broaden the scope of copyright protection so that it covers various non-commercial uses of copyrighted works by the general public. The research thus concentrated at examining (i) factors which can affect views of the public on the wrongfulness of various non-transformative uses of copyrighted works and thus the effectiveness of any copyright enforcement measures towards the public which is targeted by them, and (ii) cross-country and cross-cultural differences with regard to those factors between studied countries, such as Japan, the US, France and Germany, which considerably differ in their approaches towards personal freedom and the role of social norms in regulating the human conducts. The research's aim was therefore to supply public policy discussions with so needed empirical data on the actual application of copyright law in everyday life by the public in the cases of

literary copying.

### 3 . 研究の方法

(1) As the research was an empirical, interdisciplinary and comparative study, it combined several types of qualitative and quantitative research methods. The qualitative analysis examined justifications used in courts' rulings, policymaking and literature dealing with copyright law and its enforcement regarding the non-transformative uses of copyrighted works. Based on the results of the qualitative analysis, several factors and model cases were identified, which were employed for designing multiple coded vignettes used for studying the views of the public on the wrongfulness of non-transformative copyright uses. The quantitative analysis thus scrutinized factors which affected individual internet users' views on the studied problems in countries with different social, economic and cultural environment.

(2) The public views on the non-transformative uses of other persons' copyrighted works were collected through 2 sets of online surveys with 500 respondents from each studied jurisdiction. The first set was collected between 19 and 21 February 2020 in Japan, between 19 and 25 February 2020 in the US and France, and between 3 and 10 July 2020 in Germany, and the second one between 27 February and 8 March of 2023 in Japan, the US and Germany. The collected samples reflected age and gender compositions of populations between 15 and 49 years old in the studied countries. The study was limited to this part of population because it presents main consumers of copyrighted works and often active users of online social networks.

(3) The surveys relied on vignettes, which consisted of the taking or stealing of a bicycle, copying of a movie DVD, downloading or uploading of sound recordings, plagiarizing of a song and copying of a shoe design, and into which several factors capable to affect respondents' judgments on the wrongfulness of such activities were coded. The coded factors consisted of a wrongdoer's intention to use a tangible or intangible object belonging to another person without the latter's permission, willingness to pay for such use, personal versus commercial or large-scale character of the activity, size of damage suffered by the affected copyright holder, benefits gained by the wrongdoer, fames of individual works and causal nexus.

(4) In order to eliminate respondents' possible biases and mechanical answers without properly reading questions and offered answers, questionnaires contained several control questions.

### 4 . 研究成果

(1) The results of quantitative analysis showed that the uploading of another person's copyrighted work is an act of copyright infringement in all the studied countries. However, as to the downloading of copyrighted works from the internet, there are notable differences between individual countries. For instance, the US copyright law employs the fair use doctrine, while the EU and Japanese copyright laws rely upon private copying exceptions. Several US court decisions then suggested that the downloading from file-sharing networks might not be covered by the fair use doctrine due to the scale of such activities. On the other hand, the Court of Justice of the EU pointed out that what matters under the EU copyright law is whether the downloading was made from legal or illegal sources and in the latter case it is not covered by the private copying exception. In Japan, the copyright law was amended in similar lines. (See, e.g., Branislav Hazucha, *Copyright Users and Non-Transformative Use: A Cross-Cultural Empirical Study*, the 16th Annual Conference of the EPIP Association "IP and the Future of Innovation", Spanish National Research Council, Institute of Public Goods and Policies, Madrid, Spain, 8-10 September 2021)

(2) The analysis of collected data on the views of the general public on various non-transformative uses of copyrighted works shed new light on the public views, and its results rejected several commonly presented and accepted arguments which tend to be quite influential in copyright policy and law making. For instance, it is habitually argued that while the public considers stealing of tangible things as wrongful, it has no problem with making copies of copyrighted works. Contrary to these common beliefs, the analysis of collected data clearly showed that the public deems making of the copies of copyrighted works comparably wrongful to the theft of tangible things (see, e.g., プラニスラヴ・ハズハ = 清水紀子「著作権法上の非変容的利用をめぐる人々の意識」日

米独仏の文化比較による実証研究」田村善之・山根崇邦(編集)『知財のフロンティア 第1巻』(2021年・勁草書房)285,303-311頁; and Branislav Hazucha, *Autorske pravo z pohladu pouzivatelov internetu v EU, USA a Japonsku*, in 5 NOVE TECHNOLOGIE, INTERNET A DUSEVNE VLASTNICTVO 67, 93-105 (Zuzana Adamova ed., 2021)). On the 5-point Likert-type scale from -2 to 2 for measuring the public views on the wrongfulness of assessed activities the means of all the 2,000 responses collected from the four studied countries equalled to  $-0,756 \pm 0.030$  in the bicycle vignette,  $-0,870 \pm 0.029$  in the movie DVD vignette, and  $-0,720 \pm 0.028$  in the music uploading/downloading vignette, *i.e.* respondents considered them wrongful on average.

(3) The analysis of collected data also demonstrated that the public perceives wrongful uses of another person's tangible thing similarly to those of another person's copyrighted works. In the case of tangible things, the most important aspect which influenced the public views on the wrongfulness of using another person's thing was the knowledge of the fact that the used thing belonged to another person (*see, e.g.*, ブラニスラヴ・ハズハ = 清水紀子, *supra*, at 304-305; and Hazucha, *supra*, at 94). Accordingly, difference in means regarding the knowledge factor in such case was statistically significant in the *t*-test and its value was  $0.853 \pm 0.057$  ( $N=2000$ ,  $t(1998)=15.0894$ ,  $p<0.0005$ ).

(4) Similarly, knowledge mattered for respondents in the song plagiarism and design copying vignettes. Differences in means regarding the knowledge factor in such case were statistically significant in the *t*-test and their values were  $0.579 \pm 0.056$  ( $N=2000$ ,  $t(1998)=10.3787$ ,  $p<0.0005$ ) and  $0.403 \pm 0.057$  ( $N=2000$ ,  $t(1998)=7.1013$ ,  $p<0.0005$ ), respectively. Moreover, when the knowledge factor was excluded from those vignettes, respondents struggled with the assessment of those copyright uses.

(5) However, once the character of using another person's property, *i.e.* private use versus commercial and other large-scale public uses, was taken into account, differences in treatment of tangible and intangible objects started to emerge. Although this aspect did not yield statistically significant results in the bicycle vignette, *i.e.* the use of another person's tangible thing, it was the most decisive with regard to non-transformative uses of copyrighted works (*see, e.g.*, ブラニスラヴ・ハズハ = 清水紀子, *supra*, at 306-307 and 309; and Hazucha, *supra*, at 98-99 and 102). Differences in means regarding this factor in the case of assessing the wrongfulness of using another person's copyrighted work without any prior license or other permission were statistically significant in the *t*-test and their values were as follows:  $0.279 \pm 0.057$  ( $N=2000$ ,  $t(1998)=4.8927$ ,  $p<0.0005$ ) with regard to the movie DVD vignette, and  $0.394 \pm 0.055$  ( $N=2000$ ,  $t(1998)=7.1348$ ,  $p<0.0005$ ) with regard to the music uploading/downloading vignette.

(6) Therefore, although it is constantly argued that the general public does not consider unauthorized uploading of music tracks as wrongful, the collected data distinctly showed that the public perceives such uses of copyrighted works as wrongful. Moreover, the knowledge that a copyrighted work was unlawfully uploaded to the internet influenced the US respondents' judgment on the wrongfulness of downloading the copies of sound recordings from such online sources (*see, e.g.*, ブラニスラヴ・ハズハ = 清水紀子, *supra*, at 309; and Hazucha, *supra*, at 102). Difference in means regarding the knowledge factor in the case of assessing the wrongfulness of downloading another person's copyrighted work was statistically significant in the *t*-test and its value was as follows:  $0.549 \pm 0.161$  ( $N=264$ ,  $t(262)=3.4146$ ,  $p<0.001$ ). Although the US copyright law does not recognize this aspect, it is in line with respective rules under the EU copyright law, under which copying of copyrighted works from unlawful sources cannot be covered by the private copying exception.

(7) In addition, the US respondents also took into account whether the uploader knew that the uploaded sound recording was copyrighted (difference in means was  $0.354 \pm 0.154$  ( $N=236$ ,  $t(234)=2.3014$ ,  $p<0.05$ )) and whether she obtained any benefits ( $0.392 \pm 0.153$  ( $N=236$ ,  $t(234)=2.5606$ ,  $p<0.05$ )). On the other hand, the German respondents were more sensitive to harm suffered by the concerned copyright holder (difference in means was  $0.423 \pm 0.148$  ( $N=251$ ,  $t(249)=2.8618$ ,  $p<0.005$ )).

(8) As expected, in Germany and the US it could be observed that respondents who were more active in downloading music free of charge had tendency to judge individual uses of copyrighted works as less wrongful, but it did not affect the results mentioned above. Accordingly, in those countries the wrongfulness of the uploading of copyrighted

works was increased by consequences of the activity.

(9) Here, it should be noted that the most respondents were not either copyists or purchasers of copyrighted works. Conversely, the most of them rarely copied or paid for copyrighted works. Although there were a few pure copyists of copyrighted works, a notable number of respondents copied as well as paid for copyrighted works. It seems that the main consumers of copyrighted works select between several ways of accessing the copyrighted works. Once they are strongly interested in a particular copyrighted work, they purchase its legal copy. If their interest is lower, they might opt for making a private copy from such a work.

(10) As already mentioned above, several notable differences were observed between individual countries. To a certain degree, they can be explained by divergences in the role of personal freedom and compliance with social and legal norms in the studied countries. The most significant difference was that the Japanese respondents were more sensitive and critical to individual types of using another person's tangible thing or copyrighted work. They judged the uses as more wrongful and were more open to imposing sanctions of some sort for such uses than respondents from the other 3 studied countries. As to remedies, the German respondents were somewhere between the Japanese ones on the one side and the US and French ones on the other. These results only confirm that the compliance with norms and the use of remedies are more accepted by respondents from Japan and Germany, contrary to those from France and the US, which are characterized by a higher level of individualism.

(11) As to individual remedies, the most respondents in all the studied countries found injunctions as appropriate measure (1,143 (57.15%) out of 2,000 respondents in the bicycle vignette, 1,039 (51.95%) respondents in the movie DVD vignette, and 969 (48.45%) respondents in the music uploading/downloading vignette). This emphasis on the injunction as the most appropriate remedy can be explained by the fact that the studied uses of copyrighted works were cases of literary copying (*see, e.g.*, Branislav Hazucha, *Online Content Removal in the Eyes of Copyright Users*, 2022 Conference of Asian Pacific Copyright Association, National University of Singapore, Singapore, 14-15 November 2022).

(12) Other remedies frequently used by respondents were apology, compensation, and transfer of gained profit. Here, the US respondents preferred with regard to wrongful uses of another person's copyrighted work the transfer of gained profit (*i.e.* 178 (35.60%) out of 500 respondents in the movie DVD vignette, and 169 (33.80%) respondents in the music uploading/downloading vignette) to compensation (*i.e.* 168 (33.60%) respondents in the movie DVD vignette, and 157 (31.40%) respondents in the music uploading/downloading vignette), contrary to the other 3 studied countries, where compensation was more often used as appropriate remedy.

(13) Accordingly, the research results demonstrated that the core of copyright law has strong and deep foundations in social norms recognized by the internet users and the public deems various remedies used in the cases of copyright infringement as appropriate under certain conditions. Moreover, as the studied cases in this research project were non-transformative uses of copyrighted work, *i.e.* literary copying, the public even recognized harsher remedies such as injunctions as appropriate ones more often.

5. 主な発表論文等

〔雑誌論文〕 計2件（うち査読付論文 1件/うち国際共著 0件/うちオープンアクセス 1件）

|   |                       |
|---|-----------------------|
| 1. 著者名<br>ブラニスラヴ・ハズハ = 清水紀子                       | 4. 巻<br>-             |
| 2. 論文標題<br>著作権法上の非変容的利用をめぐる人々の意識 日米独仏の文化比較による実証研究 | 5. 発行年<br>2021年       |
| 3. 雑誌名<br>田村善之・山根崇邦（編集）『知財のフロンティア 第1巻』（勁草書房）      | 6. 最初と最後の頁<br>285-312 |
| 掲載論文のDOI（デジタルオブジェクト識別子）<br>なし                     | 査読の有無<br>無            |
| オープンアクセス<br>オープンアクセスではない、又はオープンアクセスが困難            | 国際共著<br>-             |

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| 1. 著者名<br>Branislav Hazucha  | 4. 巻<br>5            |
| 2. 論文標題<br>Autorske pravo z pohladu pouzivatelov internetu v EU, USA a Japonsku  | 5. 発行年<br>2021年      |
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| オープンアクセス<br>オープンアクセスとしている（また、その予定である）  | 国際共著<br>-            |

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|---|
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| 2. 発表標題<br>Copyright Exhaustion in the Digital Age: A Cross-Country Study of Consumers' Views |
| 3. 学会等名<br>Digital Copyright: Japanese and European Approaches（招待講演）（国際学会）                    |
| 4. 発表年<br>2020年   |

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| 2. 発表標題<br>Autorske pravo z pohladu internetovych uzivatelov v EU, USA a Japonsku |
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| 3. 学会等名<br>北大知的財産法研究会                             |
| 4. 発表年<br>2021年                                   |

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| 1. 発表者名<br>Branislav Hazucha   |
| 2. 発表標題<br>Copyright Users and Non-Transformative Use: A Cross-Cultural Empirical Study          |
| 3. 学会等名<br>38th Annual Conference of the European Association of Law and Economics (EALE) (国際学会) |
| 4. 発表年<br>2021年  |

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| 1. 発表者名<br>Branislav Hazucha   |
| 2. 発表標題<br>Online Content Removal in the Eyes of Copyright Users         |
| 3. 学会等名<br>2022 Conference of Asian Pacific Copyright Association (国際学会) |
| 4. 発表年<br>2022年  |

〔図書〕 計0件

〔産業財産権〕

〔その他〕

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6. 研究組織

| 氏名<br>(ローマ字氏名)<br>(研究者番号) | 所属研究機関・部局・職<br>(機関番号) | 備考 |
|---------------------------|-----------------------|----|
|---------------------------|-----------------------|----|

7. 科研費を使用して開催した国際研究集会

〔国際研究集会〕 計0件

8 . 本研究に関連して実施した国際共同研究の実施状況

| 共同研究相手国 | 相手方研究機関                               |  |  |  |
|---------|---------------------------------------|--|--|--|
| フランス    | University of Strasbourg,<br>CEIPI    |  |  |  |
| ドイツ     | MPI for Innovation and<br>Competition |  |  |  |