

CYBER LAW IN JAPAN

MASAO YANAGA



Wolters Kluwer
Law & Business

Cyber Law in Japan

Masao Yanaga

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Cyber Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editor: Jos Dumortier



Wolters Kluwer
Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-3909-2

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

Table of Contents

The Author	3
List of Abbreviations	19
Preface	21
Introduction	23
Chapter 1. General Background of the Country	23
§1. GEOGRAPHY AND POPULATION	23
§2. STATE ORGANS	23
§3. COURT SYSTEM	24
I. The Organization of the Courts (Court Act [Law No. 59 of 16 April 1947], Articles 6 through 32)	24
A. The Supreme Court (<i>Saiko Saibansho</i>)	24
B. The High Court (<i>Koto Saibansho</i>)	24
C. The District Court (<i>Chiho Saibansho</i>)	24
D. The Summary Court (<i>Kan'i Saibansho</i>)	24
E. The Family Court (<i>Katei Saibansho</i>)	25
II. Appeals in Civil Cases	25
A. First Appeal (<i>Koso</i>)	25
B. Second Appeal (<i>Jokoku</i>)	25
§4. CHARACTERISTICS OF JAPANESE LAW	26
I. Public Policy (<i>Kojo</i>) and Public Morals (<i>Ryozoku</i>)	26
II. Abuse of Rights (<i>Kenri Ran'yo</i>)	26
III. Fidelity (<i>Shingi</i>) and Good Faith (<i>Seijitsu</i>)	26
§5. SOURCES OF LAW	27
I. The Constitution (<i>Kempo</i>)	27
II. Statutes (<i>Horitsu</i>)	27
III. Ordinances	27

Table of Contents

IV. Custom	27
V. Case Law	28
VI. <i>Jori (Recta Ratio)</i>	28
Chapter 2. Telecommunications Infrastructure	29
Chapter 3. The Information and Communications Technology Market	30
Chapter 4. E-Commerce: Facts and Figures	31
Chapter 5. E-Government Initiatives	32
§1. THE NEW IT REFORM STRATEGY	32
§2. PRIORITY POLICY PROGRAMME 2007	35
§3. A NEW STRATEGY IN INFORMATION AND COMMUNICATIONS TECHNOLOGY	36
Selected Bibliography	39
Part I. Regulation of the ICT Market	43
Chapter 1. Regulatory Framework of the ICT Sector	43
§1. TELECOMMUNICATIONS BUSINESS ACT	43
I. Registration Requirement	43
A. Registration	43
B. Application and Registration	43
C. Refusal to Register	44
D. Revocation of Registration	45
E. Striking Out the Record	45
F. Succession	45
G. Suspension and Discontinuation of Business	46
II. Notification Requirement	46
III. Tariffs and Interconnection	47
A. Tariffs	47
B. Duty to Provide Services	50
C. Category I Designated Telecommunications Facilities	51
D. Category II Designated Telecommunications Facilities	52
E. Order to Reopen Negotiations for Interconnection or Interconnect	53
IV. Telecommunications Facilities	54
A. Maintenance of Technical Conditions	54

Table of Contents

B. Administrative Rules of Telecommunications Facilities for Telecommunications Business	55
C. Chief Telecommunications Engineer	56
D. Standards for Telecommunications Numbers	57
§2. RADIO LAW	57
I. License	57
II. Application for a License for Specified Radio Stations	58
III. Application for a License for Radio Stations	58
IV. License and Examination	58
A. Provisional License	58
B. Examination Standards	59
C. Disqualification	59
D. Inspection after Provisional Licensing	59
E. Simplified Licensing Procedure	59
F. Other Required Procedures	60
1. Procedure Required to Meet Radio Regulations of the International Telecommunication Union	60
2. Qualification of a Radio Operator	60
3. Certification of Conformity with Technical Regulations for SRE	60
Chapter 2. Regulation of Competition in the ICT Market	61
§1. OVERVIEW OF COMPETITION REGULATION IN JAPAN	61
I. Unreasonable Restraint of Trade and Private Monopolization	61
II. Unfair Trade Practices	62
A. Concerted Refusal to Deal	62
B. Other Refusal to Deal	62
C. Discriminatory Pricing	62
D. Discriminatory Treatment on Transaction Terms	63
E. Discriminatory Treatment in a Trade Association	63
F. Unjust Low Price Sales	63
G. Unjust High Price Purchase	63
H. Deceptive Customer Inducement	63
I. Customer Inducement by Unjust Benefits	63
J. Tie-In Sales	63
K. Dealing on Exclusive Terms	64
L. Resale Price Restriction	64
M. Dealing on Restrictive Terms	64
N. Abuse of Dominant Bargaining Position	64
O. Interference with a Competitor's Transaction	65
P. Interference with Internal Operation of a Competing Company	65
III. Injunction and Damages	65
§2. EXEMPTIONS	66

Table of Contents

§3. FACILITATING COMPETITION IN THE TELECOMMUNICATION SERVICE MARKET	66
I. Deregulation of Telecommunications Charges	66
II. KDD Regulations	66
III. Interconnection of Networks	66
IV. Access Channel Technology	66
V. Restrictions on International Traffic Routing	67
VI. NTT	67
VII. Liberalization of Services	67
VIII. Foreign Investment	67
IX. Designated Facilities	67
§4. PROVISION OF TECHNOLOGICAL INFORMATION ON PLATFORM SOFTWARE	68
§5. SOFTWARE LICENSING AGREEMENTS	71
Chapter 3. Regulation of Cryptography and Other Dual Use Goods	74
Chapter 4. Legal Status of Standardization	75
§1. INDUSTRIAL STANDARDIZATION LAW	75
§2. JAPANESE INDUSTRIAL STANDARDS	75
§3. JIS MARKING SYSTEM	75
§4. JAPANESE INDUSTRIAL STANDARDS COMMITTEE	76
§5. AMENDMENTS TO THE INDUSTRIAL STANDARDIZATION LAW IN 1997	76
I. Speeding-Up of JIS Development Process	76
II. Japan Accreditation System for Product Certification Bodies of JIS Mark (JASC)	76
III. Japanese National Laboratory Accreditation (JNLA) System	77
Chapter 5. Legal Status of Out-of-Court Dispute Settlement in the ICT Sector	78
§1. ARBITRATION	78
§2. CONCILIATION	78

Table of Contents

§3. CONSULTATION	78
§4. OUT-OF-COURT DISPUTE SETTLEMENT FOR THE ICT SECTOR	79
Part II. Protection of Intellectual Property in the ICT Sector	81
Chapter 1. Application of Copyright in the Area of ICT	81
§1. 'WORK', 'PROGRAMME' AND 'DATABASE'	81
§2. AUTHOR'S RIGHT	81
§3. DERIVATIVE WORK	82
§4. DURATION OF COPYRIGHT	82
§5. INFRINGEMENT AND INJUNCTION	83
§6. ACTS DEEMED AS INFRINGING	83
§7. DAMAGES	84
Chapter 2. Legal Protection of Software	86
§1. COPYRIGHT	86
I. Copyright Protection	86
II. Employee's Work	88
III. Program Registration	89
A. Registration	89
B. Program Register	89
C. Procedure for Program Registration	89
D. Designated Registration Body	89
IV. Special Provision Regarding Infringement	90
§2. PATENT	90
I. Software-Related Inventions and Patentability	90
II. Guideline for Software-Related Inventions	91
III. 2002 Amendments to the Patent Act	93
IV. Non-obviousness	93
A. Application to Other Fields	94
B. Addition of a Commonly Known Means or Replacement by Equivalent	94
C. Implementation by Software of Functions that are Otherwise Performed by Hardware	94
D. Systematization of Human Transactions	94
E. Reproduction of a Known Event in Computerized Virtual Space	95

Table of Contents

F. Design Modification on the Basis of Known Facts or Customs	95
V. Patent Application	95
A. Applicant	95
B. First-to-File Rule	96
C. Patentee's Right	96
D. Effect of Registration	96
E. Permitted Exploitation	97
F. Joint Ownership	97
G. Exclusive License	97
H. Non-exclusive License	98
I. Pledge on a Patent	98
J. Infringement	98
K. Penal Provision	99
Chapter 3. Legal Protection of Databases	100
Chapter 4. Legal Protection of Computer Chips	102
§1. PROTECTION OF TOPOGRAPHY	102
§2. EFFECT OF REGISTRATION	102
§3. PERMITTED EXPLOITATION	103
§4. JOINT OWNERSHIP	103
§5. EXCLUSIVE LICENSE	103
§6. NON-EXCLUSIVE LICENSE	104
§7. PLEDGE ON A TOPOGRAPHY RIGHT	104
§8. INFRINGEMENT	104
§9. COMPENSATION	106
§10. PENAL PROVISION	106
Chapter 5. Other Intellectual Property Rights in the ICT Sector	107
§1. UTILITY MODEL	107
I. Utility Model and Invention	107

Table of Contents

II. Utility Model Right	108
III. Exclusive Licenses	108
IV. Non-exclusive License	108
V. Infringement	108
A. Injunction	108
B. Acts Deemed as Infringing	109
C. Calculation of Damages	109
D. Presumption of Damages	109
§2. DESIGN	109
I. Scope of Protection	109
II. Registration Application	110
III. Secret Designs	111
IV. Employees' Design	111
V. Design Right	111
VI. Permitted Exploitation	112
VII. Joint Ownership	112
VIII. Exclusive License	112
IX. Non-exclusive License	112
X. Pledge on a Design	113
XI. Effect of Registration	113
XII. Infringement	113
XIII. Penal Provision	114
Chapter 6. Internet Domain Name Registration	115
§1. INTERNET DOMAIN NAME REGISTRATION	115
§2. JP DOMAIN NAME DISPUTE RESOLUTION PROCEEDING	116
§3. TRADEMARKS, TRADE NAMES AND DOMAIN NAMES	117
§4. UNFAIR COMPETITION ACT AND DOMAIN NAMES	119
Part III. ICT Contracts	121
Chapter 1. Hardware Contracts	122
§1. NOTIFICATION OF ACTIONS	122
§2. WARRANTY	122
§3. TIME OF ACCEPTANCE OF PRODUCTS	124
§4. DISCLAIMER AND LIABILITY LIMITATION	124

Table of Contents

§5. EXPORTS OUTSIDE THE COUNTRY 125

Chapter 2. Software Contracts 126

§1. SOFTWARE LICENSING AGREEMENTS 126

 I. Conditions of License 126

 A. Restrictions on Installation 126

 B. Restrictions on Reproduction 126

 C. Prohibition to Provide to a Third Party 126

 D. Restriction on Alternation 126

 E. Assignment of the Licensee’s Right and Know-How 127

 F. Prohibition of Reverse Engineering 127

 II. Notification of Actions 127

 III. Warranty 128

 IV. Disclaimer and Liability Limitation 128

§2. SOFTWARE DEVELOPMENT AGREEMENT 128

 I. Examination and Test 128

 II. Grant of Rights 129

 III. Warranty 129

 IV. Others’ Intellectual Property 130

 V. Confidentiality Agreements 131

 VI. Subcontract 131

Chapter 3. Turnkey Contracts 132

§1. AREA FOR INSTALLATION 132

§2. INDEMNIFICATION 132

§3. TRAINING 132

Chapter 4. Distribution Agreements 134

§1. MASTER DISTRIBUTORSHIP AGREEMENT 134

§2. MINIMUM QUANTITIES 134

§3. PROPERTY RIGHTS 134

§4. CONFIDENTIALITY AGREEMENT 135

§5. EXPORTS OUTSIDE THE COUNTRY 135

§6. DISCLAIMER AND LIABILITY LIMITATION 135

Table of Contents

Chapter 5. Maintenance Contracts	136
§1. HARDWARE MAINTENANCE AGREEMENT	136
I. Scope of Services	136
II. Sole Maintenance Provider	136
III. Disclaimer and Liability Limitation	136
§2. SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT	137
I. Scope of Services	137
II. Support Limitation	137
III. Source Code	137
IV. Disclaimer and Liability Limitation	138
Chapter 6. Facilities Management	139
Chapter 7. Network Services	140
§1. ADMINISTRATIVE CONTROL	140
I. Limitation of Liability	140
§2. LIMITATION OF LIABILITY AND DISCLAIMER	141
I. Disclaimer	142
II. The Validity of Disclaimer	142
Chapter 8. Government Contracts	143
§1. TENDERING PROCEDURES	143
I. Three Procedures Available for Government Procurement	143
A. Open Tendering Procedures	143
B. Selective Tendering Procedures	144
C. Limited (Single) Tendering Procedures	144
II. Notification of the Request for Materials	144
III. Procurement Valued at No Less Than 800,000 SDR	145
IV. Meetings on Government Procurement	146
V. Collection and Dissemination of Information	146
VI. Qualification for Participating in Tender Procedures	147
§2. UNFAIR BIDS	148
§3. PERFORMANCE BOND	149
§4. LIMITATION OF LIABILITY	149
Part IV. Electronic Transactions	151

Table of Contents

Chapter 1. Legal Status of Electronic Transactions	151
§1. CONTRACT FORMATION	151
I. General Principles of Contract Formation	151
II. Exceptions to the Postal Rule in E-Commerce	152
III. Writing Requirement	152
§2. RECORD KEEPING	153
I. Record-Keeping Requirement	153
II. Electronic Ledger Storage Act	153
III. Commercial Code and Companies Act 2005	155
§3. EVIDENTIARY ISSUES	156
Chapter 2. Regulation of Electronic Signatures and Certification Services	157
§1. REGULATION OF ELECTRONIC SIGNATURES	157
§2. REGULATION OF ELECTRONIC CERTIFICATION SERVICES	157
I. Private Sector	157
A. A Law Concerning Electronic Signatures and Certification Services	157
B. Application for Accreditation	158
C. Disqualification	158
D. Requirements for Accreditation	159
E. Renewal of Accreditation	159
F. Succession	159
G. Business Closing	160
H. Duty of an Accredited Certification Service Provider	160
I. Mark	160
J. Revocation of Accreditation	161
K. Accreditation of a Foreign Certification Service	161
L. Designated Investigating Organization	161
M. Liability	164
II. Electronic Certification Services Based on the Commercial Registry	164
§3. ELECTRONIC NOTARY	165
Chapter 3. Legal Aspects of Electronic Banking	167
§1. PAYMENT AND SETTLEMENT SYSTEM IN JAPAN	167
I. BOJ-NET	167
II. Zengin Data Telecommunications System	168
III. Foreign Exchange Yen Clearing System	168

Table of Contents

§2. SOME ISSUES CONCERNING ELECTRONIC BANKING	168
I. Unauthorized Transfers	169
A. Funds Transfers	169
B. Electronic Banking	169
II. Incomplete Declaration of Intent	170
III. Network Liability	171
 Chapter 4. Protection of Users of Electronic Services	 172
§1. RIGHT TO REVOKE	172
I. Consumer Contracts Act	172
II. Law Concerning the Exceptions to the Civil Code	174
§2. STANDARD CONTRACTS OR GENERAL CONDITIONS	175
I. General	175
II. Self-Regulation in E-Commerce Industry	176
III. Consumer Contracts Act	176
IV. Act on Special Commercial Practices	178
V. Internet auction	178
 Part V. Non-contractual Liability	 179
 Chapter 1. Negligence	 179
§1. GENERAL	179
§2. FAULT	179
§3. UNLAWFULNESS	179
§4. BURDEN OF PROOF	180
§5. SCOPE OF LOSS TO BE COMPENSATED	180
§6. EMPLOYER'S LIABILITY	180
 Chapter 2. Liability of Network Operators	 182
 Chapter 3. Liability of Service Providers	 181
§1. BEFORE 2001 LEGISLATION	181
§2. ISP'S LIABILITY LIMITATION AND SENDER DATA DISCLOSURE ACT	184
 Chapter 4. Product Liability	 186

Table of Contents

§1. CIVIL CODE	186
I. Incomplete Performance	186
II. Seller's Liability for Hidden Defects	186
III. Torts	187
§2. PRODUCT LIABILITY ACT	187
Part VI. Privacy Protection	189
Chapter 1. Regulation of Personal Data Processing	189
§1. PROTECTION OF PERSONAL INFORMATION HELD BY ADMINISTRATIVE ORGANS	189
§2. CREDIT DATA PROTECTION	190
§3. MITI GUIDELINES	191
§4. JIS Q 15001	191
§5. 'PRIVACY PROTECTION MARK' SYSTEM	195
§6. PERSONAL INFORMATION PROTECTION ACT	197
I. Definition	197
II. Duties of Personal Information Service Businesses	197
III. The Competent Minister's Authority	199
Chapter 2. Protection of Telecommunications Privacy	201
§1. STATUTORY PROVISIONS	201
§2. SELF-REGULATION	201
Part VII. Computer-Related Crime	203
Chapter 1. General Legal Development	203
Chapter 2. Application of Substantive Criminal Law in the Area of ICT	205
§1. FORGING DOCUMENTS	205
§2. FORGERY OR UNAUTHORIZED ALTERATION OF SECURITIES	206
§3. DESTRUCTION OF ELECTRO-MAGNETIC RECORDS	207

Table of Contents

§4. COMPUTER SABOTAGE	207
§5. PROPERTY CRIMES	208
§6. ELECTRONIC CERTIFICATION	208
I. Application for Untrue Electronic Certification	208
II. Illegal Use of Mark of an Accredited Certification Service Provider	208
§7. UNAUTHORIZED COMPUTER ACCESS	209
§8. ASSISTING UNAUTHORIZED COMPUTER ACCESS	210
§9. ASSISTANCE PROVIDED BY A PUBLIC SAFETY COMMISSION	210
Chapter 3. Application of Criminal Procedure Law in the Area of ICT	212
§1. SEARCH AND SEIZURE	212
§2. WIRETAPPING	213
I. BEFORE 1999.	213
II. The Law Concerning the Wiretapping of Communications for the Investigation of Crimes	213
§3. ELECTRO-MAGNETIC RECORD AND EVIDENCE	213
Conclusions	215
Index	217

Cyber Law in Japan

Masao Yanaga

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Cyber Law.

General Editor: Roger Blanpain
Associate General Editor: Michele Colucci
Volume Editor: Jos Dumortier



Wolters Kluwer

Law & Business