Japan’s Copyright Law Revisions, Disruptive Innovation, and User-Generated Content

Salil K. Mehra

In 2010, several revisions to Japan’s Copyright Law became effective. In particular, knowingly downloading infringing copies of several varieties of copyrighted files was removed from an existing safe harbor for private copying. (Uploading infringing material had already been carved out.) Although specific penalties for the newly prohibited conduct were not set forth in the revisions, the change effectively sets down a marker concerning permissible conduct, and the government and copyright industry have widely publicized the effects of this change. Recent cases involving indirect liability for the creation of software used by others engaged in filesharing or unauthorized access shows that disruption may be met with prosecution.

The Copyright Law revisions, by their terms, did not move solely in the direction of stronger protection for copyright holders. Specifically, in the same set of revisions, data storage copies of others’ copyrighted works made in the context of computer processing, including by Internet search and indexing sites (such as Google, Yahoo! and Bing) were granted an explicit safe harbor from infringement actions.

On balance, these sets of changes have the clear impact of favoring copyright industry-controlled distribution channels. And in particular,
user-generated content and its distribution are likely to face increased hurdles to compete with the newly favored players. The result may be a tendency to ossify – or even roll back – the current structure of the Internet as experienced by Japanese users. The costs to a deeply wired nation’s relationship with the Internet may well be considerable.