

Copyright issues concerning Japan's university entrance exams

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ON 11 March 2008, two separate groups of Japanese authors filed legal actions against two preparatory schools, in both cases accusing the schools of copyright infringement (*Daily Yomiuri*, 2008). These marked the first instances in which authors had taken such action against preparatory schools. However, three years earlier, a group of 11 authors brought a complaint against one of the publishers of the *akahon* (red book) series, which are collections of universities' past entrance exams. Similar to the preparatory schools, the publishers of the *akahon* were also accused of violating copyright regulations (*Yomiuri Shimbun*, 2005).

The three legal actions share a common link in that all were aimed against corporations that are in the business of preparing students for the challenges of Japanese university entrance exams. However, it may not be just the preparatory schools and *akahon* that are involved in questionable copyright practices; the universities themselves may be involved as well. Murphey (2005) writes that when Japanese universities prepare their entrance exams, they not only use copyrighted material, they do so without providing reference to the original authors and regularly make alterations to the texts they use. In short, they seemingly participate in a similar practice to that which was the cause of the legal actions against the preparatory schools and *akahon*.

Murphey's conclusions should come as a surprise to few foreign English language professors in Japan; that universities use pre-existing works without providing acknowledgment (or compensation) to the authors is recognized widely. At issue, then, is the legality of this practice. It is important to ascertain whether universities are indeed guilty of copyright infringement on their entrance exams, and if so, determine if anything can be done to rectify the situation.

Methodology

The entrance exam English reading passages of 33 universities located throughout the country were analyzed in this study. The exams were obtained by visiting the web pages of various preparatory schools which had posted them on their websites

Keywords

authors' rights, copyright laws, text alteration, university entrance exams

Japanese universities commonly use previously published material when they create their entrance examinations. Moreover, because a number of universities do not cite the authors whose works they utilize, and often alter the original passages, many believe they are thus guilty of copyright infringement. In this study, the author analyzes the English reading passages from 33 university entrance exams, almost all of which used already published works. Those that did not provide references to their sources appear to be in violation of Japanese copyright laws. However, although most universities made changes to the original texts, it is difficult to determine whether this also constitutes a copyright violation.

日本の大学は既出版された題材を入学試験によく使用している。しかも、多くの大学は使用する題材の著者名は引用していないし、しばしば題材の内容も変更するので、著作権を侵害していると思われる人も大勢いる。本論では、殆ど全てが既出版された題材を使用した33大学の入試の英語の読解問題を分析する。出典を引用していない大学は日本の著作権法を侵害している様にも見える。しかし、殆ど全ての大学が使用題材の内容に変更を加えているが、これも著作権の侵害にあたるかどうかを決定することは難しい。

(the ability for anybody on the internet to do just this is the basis of one of the legal actions mentioned earlier). The preparatory schools generally post exams from those universities with well-established reputations, and the majority of the institutions whose exams were studied were considered to have fairly rigorous standards for admission.

Exams were first checked for any acknowledgments that reading passages were from previously published works. If such citations were not present, an internet search was conducted through Google's search function (at the time of the search, the author did not have access to online plagiarism detectors such as Turnitin). If it was determined that material on a reading passage came from a published source, both the original and that which appeared on the exam were then compared in order to discern whether any alterations of the source material had occurred. If the original source was from a journal or magazine available online, making comparisons was a simple matter. For reading passages that used excerpts from books, the online shopping website Amazon's "search inside" function proved immeasurably useful.

Results

Using (and citing) pre-existing works, and acknowledging alterations

Results of the search determined that 31 out of the 33 universities' exams used previously published material in at least one of their English reading passages. For the remaining two exams, the search provided no conclusive results for one, and it was determined that the material on the other was original.

As indicated in Table 1, of the 31 university exams that used previously published material, more than half did not cite any of the works they had used. Three cited sources for at least one of their passages, but did not acknowledge others. One of these universities administered separate English exams from several different departments, of which, one department utilized previously published essays for both its reading passages, but provided a reference for the second passage only. The passage that was not cited appeared mostly original, but included one sentence that was copied almost verbatim from that of an already published article. The exams from the other departments always cited material when applicable. 12 exams cited the material for every passage.

Table 1. Frequency with which original sources of reading passages were cited

Frequency of citation	No. of exams
Every reading passage	12
Some, but not all, passages	3
Never cited	16

On all 31 exams that made use of copyrighted material, there was some manner of alterations to the original text in at least one of the reading passages. As seen in Table 2, on 12 of the 15 exams in which at least some references were provided, for every passage in which alterations to the original source had occurred, acknowledgments of such were provided. On two exams, citations were provided without mention that changes had been made to the original sources. On one exam alterations were acknowledged with some of its passages, but not for others.

Table 2. Acknowledgments that original sources had been altered

Frequency of acknowledging alterations	No. of exams
Every reading passage	12
Some, but not all, passages	1
No acknowledgment	2

Examples of changes to the original material

On the majority of the exams, it seemed that changes to the original texts were made to make the level of English more accessible to the exam takers. In doing so, difficult vocabulary or expressions were often omitted or simplified. A small sampling of such changes can be seen as follows (words and phrases on the left are from the original text; those on the right are what appeared on the exam reading passages):

- Virtually – Almost
- Traumatic – Serious
- Segregation – Separation
- Constructive – Positive
- Disproving – Challenging
- Largesse – Generosity

- Clunky – Poor-looking
- Deities – Gods
- Downright nuts – Insane
- Lie at the very core – Are central to
- A functional magnetic-resonance imager (fMRT) – The latest medical machine
- Empirical definition for – Way
- Inflicting collateral damage – Causing connected damage
- The narrative presented – The explanation given

With a few notable exceptions, changes to pre-existing material did not alter the meaning significantly.

Other examples of changes included terms such as “inches” or “pounds” in the original text being altered to their equivalents in “centimeters” or “kilograms.” Additionally, one exam had no changes in one of its passages other than replacing contracted words such as “that’s” and “it’s” that appeared in the original piece with “that is” and “it is” respectively.

In a few passages, sections of the original texts were changed for no discernible reason other than what appeared to be exam committee members’ discomfort with the source material. One exam, for example, included a piece which centered on the occasionally unorthodox ways in which English can be used by non-native speakers. In describing the manner in which Japanese people tend to mix Japanese and English, the original author used the term “Japlish.” Perhaps finding the first three letters of that word problematic, the creators of the exam replaced the word with “Janglish.” In another published essay, the author recalled a harrowing period of time in his life during which he was abusing alcohol and drugs. In the revised edition, all mention of drugs was omitted from the text. Perhaps not coincidentally, Japan has extremely strict laws concerning drug possession and use. In yet another work, in a lengthy sentence, several job professions had been listed. On the exam, merely one revision was made to the original sentence: “prostitute” was replaced by “airline pilot.”

Finally, there were changes that appeared to be accidental, likely occurring when the original sources were edited. In one passage, a “Doctor Martin Paulus” from the original document was referred to as “Dr. Martin.” In another, the “2,000,000 computers” mentioned in the published text became “200,000 computers” in the exam version.

Discussion

Copyright law exemption for entrance exams

Japanese copyright laws grant authors economic and moral rights. Those who believe these rights have been infringed upon may take legal action against the alleged transgressor, similar to the cases mentioned at the beginning of this paper. Based on the information outlined in the previous section, Japanese universities appear to engage in the same practice that has culminated in the lawsuits and injunctions being filed against the preparatory schools and publishers of the *akahon*. No lawsuit, however, has been issued against the universities. This is because, in the case of entrance exams, universities are provided an exemption to standard copyright laws. Paragraph One in Article 36 of the Japan Copyright Law (see Appendix) states that universities may use passages from already published texts on their exams, with the implied assumption that prior authorization is not necessary.

Article 36, however, also includes a caveat to this exemption. Paragraph Two states, “A person who makes such reproduction or public transmission for profit-making purposes shall pay a copyright owner compensation the amount of which corresponds to an ordinary rate of royalty” (Copyright Research and Information Center, Chapter 2). Exam fees can extend to over 30,000 yen per applicant. Considering that several of the bigger schools can expect to receive such fees from thousands of applicants every year, universities may appear to be profiting handsomely. Murphey (2004, 2005) notes that upper echelon universities can expect to earn millions—or even billions—of yen from the exams annually.

Universities, however, can avoid paying compensation by arguing that financial gain from the exams is not their primary intention. Rather, determining those applicants who are most suitably qualified to enter the university is the main objective. Additionally, considering the administrative costs of the exam process, such as printing fees, payment for those who create and grade the completed tests, exam monitors, and rental charges if the exam is being held in a building that is not university-owned, the exams may not be particularly lucrative for the universities.

Copyright infringement?

At entrance exam committee meetings, copies of Article 36 are often provided to committee members as evidence that universities are allowed to use already published material without the authors’ prior consent. Moreover, if such consent is not necessary, and if authors are not being provided compensa-

tion, there is little impetus for universities to cite the authors whose works they use. However, many universities are seemingly unfamiliar with Article 48, which provides information concerning citation requirements. Article 48 stipulates, "In any of the following cases, the source must be clearly indicated in the manner and to the extent deemed reasonable by the form of the reproduction or exploitation" (Copyright Research and Information Center, Chapter 2), with the Article 36 exemption clause listed among these cases. It further adds that the author's name must be mentioned provided the source is not anonymous. Those universities that are not providing citations for their reading passages are therefore not following, however unwittingly, the guideline set forth by Article 48.

The issue of alterations to the original texts, and whether these changes unreasonably prejudice the authors, is not as clear. It can be argued that by making changes to the source material, universities are infringing upon the authors' moral rights. The Japan Copyright Research and Information Center (CRIC), a government authorized public service corporation, states that "the pre-existing work used for an examination should not be modified unless the modification is unavoidable in the light of the purpose of the examination" (Copyright Case Study). What constitutes "unavoidable" modification, however, is undefined. Removing words from parts of the passage in order to conduct a cloze test would likely be considered acceptable, as would scrambling the word order of sentences and then including a problem in which exam-takers were required to return the sentence to its correct order. In neither of these instances has the author's language been permanently altered. However, other, more substantial changes may not fit under the category of unavoidable, according to CRIC, which claims that "rewriting of difficult parts or deleting some parts without notice probably constitutes infringement of the rights of integrity" (*ibid.*). If this is so, it would appear that those university exams which alter the pre-existing works are violating copyright laws.

Here, however, there is a gray area. Although CRIC proposes that changes do infringe upon the authors' rights, the use of "probably" in its statement is almost an acknowledgment that it cannot declare this definitively. Moreover, while it is true that Article 36 does not provide a clause allowing universities to alter the source material, it also does not specifically forbid them from doing so. There is enough ambiguity that a university can claim that some changes to the original sources are unavoidable in order to adjust the level of difficulty of the exam to the English levels of the applicants. This may be a tenuous argument, but since Article 36 has already provided

an exception to standard copyright laws in Japan, universities may feel empowered to do what they wish with the original source documents.

If universities do claim they are within their rights to alter the texts, the question remains as to what extent they should be allowed to do so, even if they acknowledge having made changes. Many of the published works used on the exams included quoted testimonies in which speakers were identified by their full—and real—names, while their comments were bracketed in quotation marks. In a few of the reading passages, the names and quotation marks remained, but the content of the quotations had been changed. Even with the most liberal interpretation of copyright laws, it is difficult to believe that changing direct quotations could fall under the category of "unavoidable."

Writing one's own passages?

Much of the uncertainty concerning copyright issues could be resolved if professors were to write their own passages for the exams. An additional advantage is that these passages would be created by those with the greatest familiarity with the abilities expected of incoming students, and theoretically, be written at an appropriate level of difficulty. However, there are a number of reasons why this practice has not become widespread. Published works are appealing in that they are credible; simply being published establishes them as authoritative. They are also likely to be free of grammatical and structural errors. This is especially important to those Japanese professors who do not have confidence in their own abilities to write mistake-free passages, which will be scrutinized and evaluated by the preparatory schools following the exam period.

Of as much importance is the issue of time. Creating the content and layout of an exam is a lengthy process even when all tasks proceed smoothly. For professors, most of whom are likely involved with numerous other committees, it is simply less hassle to choose already published papers and make a few alterations to them than to write passages of their own.

It would perhaps be beneficial if exam committees always included a native English speaker. Certainly, most universities employ at least one such professor, who presumably should be able to write passages without basic errors. However, even if native English speaking professors were to be involved with the creation of the exams, there is no guarantee that these professors would in fact write original passages. Some may resent being asked to create a disproportionately large section of the exam; likewise, Japanese committee members may be hesitant about assigning such a large task for

fear they are overburdening the professor. Additionally, other professors may entertain doubts—however correct—about the native speaker's ability to produce appropriate passages.

Conclusion

Japanese university entrance exams are enshrouded in secrecy. Those professors who find themselves on exam committees are counseled not to discuss the content of the exams with anybody who is not also on the committee. Additionally, they are strongly encouraged to keep all exam-related material locked in a secure area and to shred older drafts of the tests. By no means are they to transmit possible exam content to other members of their committee via email. Universities would consider it disastrous if their exam material were somehow leaked to the public ahead of the scheduled exam date. One reason Article 36 was created was due to fear that the secrecy of the exams could be jeopardized if universities were required to obtain prior authorization from authors to use their works (CRIC, Copyright Case Study). In its most basic form, Article 36 exempts universities from having to do this.

Even with the Article 36 exemption, however, it would appear that a number of universities are violating Japanese copyright laws by not citing their sources. Concerning text alterations, however, it is less clear if legal infringement is occurring.

It is worth noting that once the exam period is completed, the material from the tests becomes much more accessible. That it was possible to find the majority of the original material used on the exams through a simple Google search indicates that universities are not purposefully concealing the fact that they use already published sources, and likely do not believe they are doing anything underhanded by making changes to them. Moreover, considering the vague manner in which the issue is presented in Japanese copyright laws, they may be correct in their assessment. Assuming that universities continue the practice of using published works on their exams, to avoid potential confusion, it may be beneficial for Article 36 to be revised, with the new version specifically addressing the question of text alteration. Additionally, at the very least, universities need to be made aware of Article 48, and provide citations for all sources utilized on their exams.

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Appendix

Japan Copyright Law, Article 36, 1st Paragraph

It shall be permissible to reproduce or make the public transmission (excluding the broadcasting or wire diffusion, and including the making transmittable in the case of the interactive transmission; the same shall apply in next paragraph) of, a work already made public for an entrance examination or other examinations of knowledge or skill, or such examination for a license, to the extent deemed necessary for such purpose; provided, however, that such transmission does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the form of the transmission (Copyright Research and Information Center, chapter 2).

