

5 Typeface Protection in Japan

A typeface is a set of characters, etc. that has been created for use for printing, display, etc. based on a concept relating to shape. While the creation of a typeface requires certain labor and costs, it is easy to imitate one from printed materials, etc. Therefore, typeface creators require some sort of legal protection for typefaces. In addition, there is no express provision on typeface protection in the current Japanese intellectual property law system. Therefore, it is worth considering an appropriate form of typeface protection in Japan.

In this study, the actual conditions of typeface creation and transactions in Japan and problems such as the imitation of typefaces were determined and organized. The current status of problems related to typefaces and specific measures to handle those problems were then discussed, along with the need for a new framework for legal protection under the intellectual property law system, with the aim of setting a definite direction for desirable typeface protection in Japan.

I Introduction

1 Purpose of This Study

Typefaces are becoming increasingly important in various media with the progress of digitization. While the creation of a typeface requires certain labor and costs, it is easy to imitate a typeface from printed materials, etc. Therefore, typeface creators have a need for some sort of legal protection of typefaces. However, as is also pointed out in the “Intellectual Property Strategic Program 2007,” according to the current interpretation of the Copyright Act, typeface designs per se that are not embodied in computer programs are not deemed to be copyrightable. In addition, there is no express provision on typeface protection in the current intellectual property law system. Therefore, appropriate protection of typefaces is worth considering.

Against the backdrop of this situation, we conducted surveys on the current status of legal protection of typefaces – mainly under the intellectual property law system – in Japan and other countries, in the course of the study “Current Status and Problems Concerning Typeface Protection in Foreign Countries” (hereinafter referred to as the “fiscal 2006 study”), which was implemented in fiscal 2006. This fiscal 2006 study revealed that the scope of typefaces protected under

the current law in Japan is limited, and that, in other countries, there are very few court precedents related to typefaces despite the existence of governing legislation that recognizes typeface protection.

In light of these results, in this study, we discussed problems related to typefaces and the need for typeface protection under the intellectual property law system, after gaining an understanding of and organizing the actual conditions and problems of typeface transactions, and also considered the future direction of desirable typeface protection in Japan.

2 Study Method

(1) Domestic Questionnaire Survey and Domestic Interview Surveys

In order to understand the actual conditions of creation and transactions of typefaces, as well as problems such as imitation of typefaces, we conducted a questionnaire survey targeting creators and users, etc. of typefaces in Japan. In addition, we selected about 20 respondents (including individuals), mainly creators and companies, who had answered in the questionnaire survey that a problem related to typefaces had arisen, and conducted interview surveys with them in person or by phone. We thereby gained a more detailed understanding of the actual conditions of creation and transactions

of typefaces and problems related to them, and used it as a basis for considerations in this study.

(2) Overseas Interview Surveys

In order to survey the actual conditions of practical operation of legal protection of typefaces and the current status of problems such as imitation in other countries, we conducted interview surveys with relevant government offices, persons of learning and experience, law firms, typeface creators and typeface-related companies in the United States, Europe (United Kingdom, Germany, France and the Netherlands) and the Republic of Korea.

(3) Consideration by the Committee

For consideration and analysis from a technical perspective, we formed a committee for this study, consisting of 13 experts. In light of the results of the fiscal 2006 study, the domestic questionnaire and interview surveys and the overseas interview surveys, over six meetings, the committee discussed (i) the current status of problems related to typefaces and the need for a new framework for their legal protection under the intellectual property law system and (ii) specific measures to handle problems related to typefaces, and considered a definite direction for desirable typeface protection in Japan.

This report summarizes the results of the above-mentioned discussions and considerations with regard to desirable typeface protection in Japan.

II Characteristics of Typefaces

1 Definitions of Terms

In this report, terms related to typefaces are defined as follows.

• Typeface

“Typeface” means a set of characters, etc. that has been created based on a concept relating to shape. As it is intangible, when it is used for printing or display, etc., it is used

in the form of a font that is suited for the equipment. It generally refers to “type style.”

• Font

“Font” means a typeface that has been made usable in equipment that is mainly for printing or display. It includes analog fonts, such as phototypesetting fonts that are used for phototypesetting machines, and digital fonts that are used for computers.

2 Outline of Creation and Distribution of Typefaces

(1) Creation of Typefaces and Fonts

It can be said that typefaces are created to make fonts, which are used for a practical purpose – that is, efficient communication of information by printing or display, etc.

Creation of a typeface starts with the creation of original characters in accordance with a basic concept regarding character shape and form, which has been decided based on an idea for a new font, by hand or on a computer. After converting these original characters into digital data as needed, the shapes of individual characters and their positional relationship are corrected while outputting various combinations of characters; thereby, the information necessary for making the characters into a font is collected. Data corrected in this manner is converted in accordance with the standard based on which the characters are made into a font, and it becomes a complete font after inspection as goods and is made public and sold.

In the course of creating typefaces, many font vendors spend the most effort testing and correcting the balance between individual characters and between designs of those characters in actual vertical or horizontal typesetting. This is because the value of a font as a product is determined based not only on the aesthetic characteristic of the forms of individual characters, but also on the readability and balance of the characters in actual typesetting.

(2) Distribution of Typefaces and Fonts

Major contracts that are concluded in terms of the distribution of typefaces and fonts include contracts concluded between a designer who creates a typeface and a font vendor who converts the typeface into a font, and contracts concluded between a font vendor and font users.

Firstly, under a contract between a designer and a font vendor, the designer gives the font vendor a license for converting the typeface in question into a font while providing the basic concept regarding the shapes and forms of the characters of the typeface (elements of characters, counter space, etc.), as well as sample characters. In addition, under this contract, the designer and the font vendor generally promise to cooperate in work relating to the process from the creation of original characters to the completion of a font. The process conducted in cooperation by a designer and a font vendor often includes the following steps: (i) the designer creates a certain number of fundamental characters and characters with a distinctive shape; (ii) persons engaged in the process on the font vendor's side disassemble these fundamental characters and characters with a distinctive shape with respect to each element, and create other necessary characters by combining the elements; (iii) after a set of characters is created, the designer finally confirms whether the shapes of the characters as a whole are based on the basic concept, and makes any necessary corrections.

Next, a contract between a font vendor and users is often concluded in the form of a shrink-wrap contract or click-on contract. The object of such a contract is generally a font, and the contract allows users to use the font within the scope of licensed use. Thus, a typeface is not the direct object of such a contract.

3 Characteristics of a Collection of Characters of a Typeface

Since a typeface consists of "a set of characters, etc.," it is considered to have the following characteristics.

The shapes of the individual characters of a typeface are created under the constraint of recognizability as characters. In addition, habituation to character form has a considerable effect on the readability of characters. Therefore, highly practical typefaces, in particular, are similar to each other by necessity.

Next, the number of symbols and kanji characters that make up a "set" of characters, etc. of a typeface is not clearly determined. This is because there are fonts only for kana characters or alphabetic characters, and because, in some cases, the number of characters, etc. of a typeface is increased or reduced through the addition of missing characters, etc. even after a set of characters has been made into a font.

Moreover, in order to make a highly practical font by increasing readability, exceptional processing based on a fixed rule is applied to the individual characters that make up a typeface. A typeface is a set of characters, etc. created in accordance with the basic concept of a designer; however, looking at the details objectively, it is not the case that all the characters that make up a typeface have the same characteristics.

In addition, it is difficult to objectively determine at what point the creation of a typeface is completed during the course of the creation process. At the point when a basic concept is decided, the concept is a designer's idea and a typeface cannot be specified in concrete form. At the point when a set of characters, etc. is created, before conversion into a font, the shapes of the individual characters that make up a typeface are expected to be subtly altered through corrections that are made for increased readability when converting the characters into a font. At the point when the creation of

a font is completed, it is expected that missing characters will be added in some cases even after completion. Taking all of this into consideration, none of these points can be said to be the time of completion of a typeface.

III Present Legal Protection of Typefaces

1 Legal Protection of Typefaces in Japan

(1) Legal protection of typefaces under the current law

There is no express provision on typeface protection in the current law of Japan. However, past court judgments indicate that a typeface can become subject to protection under the current law if it meets certain requirements.

Firstly, regarding protection under the Copyright Act, the Supreme Court has indicated that a type style with remarkable originality and excellent aesthetic characteristics could be protected under the Copyright Act, though there has been no court judgment that found the copyrightability of typefaces.

Secondly, regarding protection under tort law, the lower court has held in its judgment that the act of making/selling a type style by imitating the characteristics of another type style that is not entitled to protection under the Copyright Act but is truly creative and has peculiar characteristics compared to other conventional type styles in its entirety shall fall under the category of torts. However, there has been no case in which protection of a type style under tort law was recognized.

Thirdly, regarding protection under the Unfair Competition Prevention Act, there is a lower court judgment in which the court found the establishment of unfair competition under the old Unfair Competition Prevention Act with regard to a type style, which is an intangible item, by holding that an intangible item can be

“goods” as referred to in said Act if it is independently made subject to transaction. Therefore, there is room for protection under said Act if other requirements for protection (serving as an indication of goods or business and being well known, as well as the existence of the possibility of occurrence of confusion, etc.) under said Act are fulfilled.

Moreover, with regard to digital fonts, if a digital font is expressed as a combination of orders given to a computer so as to indicate a specific character in a specified size based on an order from other software, it can be covered by protection under the Copyright Act as one type of program as referred to in the Copyright Act.

In the case where there is a contractual relationship regarding a typeface or a font, if one party to the contract violates the contract, the other party thereto can terminate the contract, claim damages or take other actions in accordance with the provisions of the contract.

(2) Views in Academic Theories Regarding Legal Protection of Typefaces

There is no express provision on typeface protection in the current intellectual property law of Japan. However, in terms of academic theories, there is no objection to deeming typefaces as intellectual property because of the following reasons: (i) in creating a typeface, it is necessary to adjust the balance of designs of individual characters, which make up the typeface, under the constraint of recognizability as characters, in order to increase readability when the characters are arranged, and the adjustment largely depends on the designer’s originality and ingenuity and requires considerable labor and time; and (ii) a typeface, which is the outcome of creative activities, is considered to have economic value.

However, with regard to the mode of legal protection of typefaces as intellectual property, there are different opinions based on the idea of the subject matter of protection. For example, in one opinion, the subject matter of

protection is considered to be the incentive for typeface creation in the future, while in another opinion, it is considered to be the invested capital and labor that have been spent to create a typeface. In addition, according to another opinion, since characters function as a medium for communication, typeface creation involves constraints in terms of expression, which are attributable to the basic shapes of characters. Then, if excessively strong protection is granted for typefaces, creation by other persons and smooth communication may be inhibited. Therefore, even in the case of granting legal protection for typefaces, only limited protection should be granted.

2 Actual Conditions of Legal Protection of Typefaces in Other Countries

The following actual conditions of typeface protection were revealed through interview surveys in the United States, Europe and the Republic of Korea.

(1) Actual conditions of typeface protection in the United States

In the United States, typefaces have been deemed to be protectable by design patent under the category of “font of type” from the very start of the introduction of the design patent system. Originally, “fonts” are deemed to be protectable by design patent as they include the means of manufacture, including block letters. However, from the very start of the introduction of the design patent system, fonts have been registered based only on the shapes of characters while omitting block letters. Therefore, in practice, the United States Patent and Trademark Office (USPTO) will not refuse a design patent application for such a font without physical form (including a digital font) on the grounds that it does not fulfill the “article of manufacture” requirement. However, the specific scope to which a design patent right for a typeface extends is not clear because there is no relevant court precedent. Typeface protection under U.S. copyright law has been

denied under case law, and typefaces are not protected under copyright law. On the other hand, font programs for creating typefaces are copyrightable.

With regard to the methods of imitation, etc. of typefaces, there is frequent distribution of pirated digital fonts and fonts whose design is only subtly different from the design of the original typeface. Regarding the issue of such imitation, etc., designers and font vendors protect their own commercialized fonts; specifically, they protect typeface designs by design patent and font programs by copyright. In actual practice, they also try to protect fonts from imitation, etc. based on contracts. In addition, with regard to the issue of distribution of pirated digital fonts, they take advantage of the Business Software Alliance. Though practitioners regard the protection of typefaces by design patent as one of the means of protecting font designs, they do not use it much because the term of protection granted under the design patent system is too short for typefaces, which are used over a long period of time, and because it is also possible to protect typeface designs indirectly by contract or copyright. On the other hand, copyright registration of font programs is used as a measure against pirated copies, etc. since the term of protection by copyright is long.

(2) Actual conditions of typeface protection in Europe

The EU Design Directive was established in order to harmonize design systems within the European Community and strengthen protection of designs. It was examined so as to include all visible two or three-dimensional designs in the subject matter of protection under the design system. Consequently, typefaces were also included in the subject matter of protection. Therefore, it was expressly provided in the Council Regulation on Community Designs, which is based on the EU Design Directive, that typefaces are included in the subject matter of protection under the design system.

Through revision of domestic design laws by each EC Member State in accordance with said Directive, the law was revised to expressly provide that typefaces are included in the subject matter of protection under the design system. Under the Council Regulation on Community Designs, the subject matter of protection by design rights associated with typefaces includes tangible items such as types and font disks of phototypesetting machines (analog fonts). However, digital typeface data (including digital fonts) is not included in the subject matter of protection, since computer programs are excluded from the definition of “product.” In addition, the specific scope to which a Community design right for a typeface extends is not clear, as there is no relevant court precedent. Incidentally, digital fonts are protected as programs under the copyright law of each EC Member State.

With regard to the issue of imitation, etc. concerning typefaces in Europe, there is distribution of pirated fonts and fonts whose design is only subtly different from the design of the original typeface, and imitated fonts are sold under other product names by third parties. Popular typefaces are more likely to be imitated. Designers and font vendors use two means of protecting their own commercialized fonts from such imitation, etc.; specifically, they protect typefaces by design patent and font programs through copyright registration. Copyright registration of digital fonts is actively pursued, because there are concerns that a judge who does not have expertise in typefaces would determine similarity between the registered design and infringing design in the case of a lawsuit based on a design right for a typeface, and because the distribution of pirated copies, including dead copies, is handled by using copyrights for font programs, for which the term of protection is longer than for a design right. On the other hand, the design system is not utilized.

(3) Actual conditions of typeface protection in the Republic of Korea

In the Republic of Korea, at the time of revision of the Design Act in 2004, the Korean Intellectual Property Office changed the title of the law to “Industrial Design Protection Act,” and introduced express provisions on typeface protection in the Act by defining “articles” as including “styles of calligraphy” and thereby deeming a “style of calligraphy” as an “article.” A “style of calligraphy” under the Industrial Design Protection Act does not include design of the style of calligraphy per se, but the subject matter of protection by design right for a style of calligraphy is understood as including analog fonts such as types and font disks of phototypesetting machines, and digital fonts such as electronic data pertaining to calligraphy style design that is recorded in computers or electronic media, etc. and used for indicating or printing the style of calligraphy. Although a design right is a monopolistic exclusive right, there are provisions on limitation of the effects of such a right for a typeface, stipulating that the effects do not extend to the use of the style of calligraphy in an ordinary process such as typing, typesetting or printing and the result from using the style of calligraphy.

One issue of imitation, etc. concerning typefaces is the distribution of unauthorized copies of digital fonts via the Internet, etc. Typefaces that have been registered as designs under the Industrial Design Protection Act so far are distinctive styles of calligraphy that fulfill strict requirements, such as novelty and difficulty of creation, and these styles are not liable to suffer damages from imitation, etc. as their distribution is more limited than the distribution of styles of calligraphy for text that are in general use. Therefore, the effect of introducing the legal protection system for typefaces based on the Industrial Design Protection Act as a means of protecting against damages from imitation, etc. has yet to be sufficiently analyzed. On the other hand, the introduction of this protection system is generally highly valued

by right holders, etc. since a new means of protecting fonts has become available. However, in terms of the status of use of the system, it is used for advertising to users at the time of concluding a contract concerning a typeface, and as a means of obtaining a certificate for a new style of calligraphy from a public institution, rather than for eliminating imitation, etc. of typefaces.

IV Circumstances Surrounding Typefaces

The domestic questionnaire survey and domestic interview surveys revealed that the following problems are arising in Japan in relation to typefaces, etc.

1 Problems for Designers

Over 30% of typeface designers (34.6%) answered that they have discovered problems related to the theft of a design of a typeface they have created. There are various forms of theft, including the selling of similar fonts by companies that have not concluded a license contract, publication of similar typefaces as the creations of third parties, and distribution of pirated fonts that have been made based on the original typefaces. In addition, over 20% of designers (23.1%) have experienced problems such as violation of a contract with regard to typefaces they have created. The types of violation of a contract are often use beyond the scope of licensed use or use in more terminals than licensed. The following are cited as the specific forms of such theft of a typeface design and violation of a contract: (i) use of a typeface created by a designer for a logo or a TV ticker, etc. without authorization and (ii) distribution of pirated fonts.

With regard to the problems of theft of typefaces and violation of contracts, designers handle these problems through making a complaint by issuing a letter of warning. Consequently, in many cases these problems are solved when the designer in question receives monetary compensation or the other party stops selling and recalls the

products in question. On the other hand, such a complaint is also often ignored on the grounds that there is no right for typefaces.

2 Problems for Font Vendors

Over 40% of font vendors (41.7%) answered that they have experienced a problem related to the theft of a design of a font they have created. The forms of theft include the selling of similar fonts by other persons and circulation of reproduction fonts, as well as selling by other companies of fonts that are different from the original fonts but are printed in the same appearance as the originals. In addition, although contract problems sometimes occur in relationship to designers through receipt of a warning to the effect that the font vendor is selling a font based on the theft of a typeface of the designer, problems in relationship to users concerning violation of contracts are more frequent, including use of a font beyond the scope of licensed use and use thereof in more terminals than licensed. Distribution of pirated fonts was cited as a specific form of such theft of font designs and contract problems.

With regard to the problems of theft of font designs and violation of contracts, font vendors handle these problems through making a complaint by issuing a letter of warning. Consequently, in many cases these problems are solved when the font vendor in question receives monetary compensation or the other party stops selling and recalls the products in question. On the other hand, such a complaint is also often ignored on the grounds that there is no right for typefaces. According to the domestic interview surveys, some font vendors ask the Association of Copyright for Computer Software to handle the problem of distribution of pirated fonts.

3 Problems for Users

As for users, problems such as receipt of a warning rarely occur in terms of use of fonts. With regard to font license contracts,

which users conclude with font vendors, users seem to be dissatisfied with the following points: (i) the relevant procedure is complicated; (ii) the scope of licensed use is unclear; (iii) it is cumbersome to confirm the scope of licensed use of individual fonts since the scope of such use differs with respect to each font vendor; (iv) it is necessary to conclude a new contract to use the same font when the equipment used or type of font is changed or when software is upgraded.

V Problems Related to Typefaces, etc.

In considering how typefaces should be protected under law in Japan, on the basis of the results of the domestic questionnaire survey and domestic interview surveys, relationships among parties concerned were classified and organized based on their positions – specifically, designer, font vendor and user (in what follows, designer and font vendor are collectively called “supplier” in some cases) – and the existence of a contractual relationship. Then, the committee considered the identification of problems related to typefaces, etc. in each area and approaches to solving these problems based on the current legal protection of typefaces, as well as the handling of these problems.

1 Identification of Problems and Approaches to Solution Thereof

(1) Problems Between a Supplier and a User Who Have a Contractual Relationship

The following are cited as problems that arise between a supplier and a user who have a contractual relationship: (i) use of a font beyond the scope of licensed use (commercial use of a font of which commercial use has not been licensed) and (ii) use of a font at more terminals, etc. than licensed (for example, the act of installing a font, for which use at only one terminal has been licensed, on ten terminals). These problems are basically matters of violation of contract. It is thus possible to question the responsibility under contract law of a party to the contract who

has used the font beyond the scope of the font license contract. On the other hand, as the difficulty for users to understand the content of licenses presented by font vendors is cited as one of the causes of such violations, if font vendors standardize the way of presenting the content of a font license contract to users to make it easier for users to confirm the content of a font license, etc. and also encourage users to improve their awareness of compliance with the content of contracts, the solution of problems will be promoted to a certain extent.

(2) Problems Between a Supplier and a User Who Do Not Have a Contractual Relationship

The following are cited as problems that arise between a supplier and a user who do not have a contractual relationship: (i) distribution, etc. of pirated digital fonts and (ii) use of pirated fonts and similar fonts. In addition, (iii) use of a typeface for a logo, etc. is cited as a problem that arises between a designer and a user.

Regarding approaches to the solution of these problems, for (i), it is possible, in some cases, to cope with pirated font software based on the Copyright Act, deeming it as a product that infringes a program copyright. In addition, solution of the problem will be promoted to a certain extent by taking technical measures, such as setting copy protection pertaining to a font in cooperation with manufacturers of software, computers and other equipment related to the operation of fonts, in order to prevent the distribution of pirated copies.

For (ii), the problem of distribution of similar fonts is now not common. In addition, solution of this problem will be promoted to a certain extent by preventing the distribution of pirated fonts because, in fact, similar fonts are often made by making some alterations to pirated fonts. In addition, it is considered important that designers and font vendors carry out educational activities so that those who do not have a contractual relationship will not use pirated or similar fonts.

For (iii), it is difficult for designers to handle the problem based on current systems for the legal protection of typefaces. However, even if a new type of legal protection is granted for typefaces, it is considered inappropriate to extend legal protection – which should be granted for a typeface as a set – to logos, etc. in which part of the typeface is used. This is because such an extension of protection is likely to inhibit the smooth use of characters by users.

(3) Problems Between Competitors Who Do Not Have a Contractual Relationship

The following are cited as problems that arise between competitors who do not have a contractual relationship (between designers, between font vendors or between a designer and a font vendor): (i) creation of similar typefaces and (ii) sale of similar fonts. According to interview surveys that were conducted targeting those who had answered in the domestic questionnaire survey that such problems exist, the reality of these problems consists of use beyond the scope of licensed use by users and the making and distribution of pirated fonts by extracting font data from equipment with the original fonts installed. The survey revealed that problems (i) and (ii) have seldom occurred in recent years between competitors who do not have a contractual relationship.

It was also pointed out that creating a new framework of legal protection in addition to existing frameworks for legal protection is not necessarily an effective approach to solving most existing problems, under the present circumstances where the problems of creation and sale of similar typefaces and fonts are not frequent, since it is even possible to protect typefaces and fonts under tort law or the Unfair Competition Prevention Act at present.

2 Handling of Problems

With regard to typefaces, there are few problems that are based on their characteristics. Many committee members

stated that the active need for establishing new legal protection beyond the protection granted under the current law has not been sufficiently clarified at this moment.

In addition, with regard to problems related to fonts, it was pointed out that these problems are similar to those arising in terms of license contracts for reproducible information in general or programs and computerized information in general, and that the solution of the problems will be promoted to a certain extent by handling them based on protection under contract law and current intellectual property law or by suppliers' taking technical measures as self-help efforts. Moreover, with regard to problems between suppliers and end users, such as unauthorized use of a font beyond the scope of licensed use and distribution of pirated copies, there was an opinion that, though it is necessary to consider the possibility of taking realistic measures because of the large scale of the problems and the large number of relevant cases, the need for new legal protection for typefaces should not be found from this point, since the legal base – including the possibility of handling based on the infringement of a program copyright – has already been established to a certain extent, irrespective of the existence of a contractual relationship. On the other hand, those in the typeface-related industry expressed the following opinion: in making a typeface into a font, a designer claims that “the typeface is his/her own creation,” and the designer and a font vendor conclude some sort of license contract for the typeface as a commercial practice; however, the method of handling the infringement of typefaces by third parties is seen as a problem since there is no clear legal protection for typefaces, which are the object of such contracts. In this regard, there was an opinion that the specific legal problems to which such concerns point and the limits of handling based on legal protection under current law are still unclear.

VI Possibility of New Legal Protection for Typefaces

Problems based on the characteristics of typefaces are not clear at the present moment. However, the committee considered a desirable new method of legal protection on the basis of the characteristics of typefaces as intellectual property, since there were no objections to the point that typefaces fall under the category of intellectual property.

1 Possibility of Protection Under the Current Design Act

With regard to the possibility of protection under the current Design Act, there is room to consider including typefaces in the subject matter of protection under the Act – which is aimed at encouraging the creation of designs through promoting the protection and utilization of designs and thereby contributing to the development of industry – because typefaces are created from a practical viewpoint, or from the viewpoint of industrial application.

However, protection of typefaces under the current Japanese Design Act does not fit with the characteristics of design rights, the framework of the design system – including the requirements for protection under the Design Act – and the part related to the basis of design rights. In other words, as typefaces are created based on a common recognition within a literate culture, the more practical a typeface is, the more likely it is to be similar to existing characters. Therefore, if rights for typefaces extend to similar designs like design rights and negligence at the time of infringement is presumed, the development of practical typefaces is particularly likely to be curtailed. This may conflict with the purpose of the Design Act. Moreover, typefaces are the shapes of characters that cannot be categorized as articles, and are used not only in running a business but also for various purposes in daily life. Therefore, if a design right – which is an exclusive right to work the registered design and designs similar thereto

as a business – is granted for a typeface, which is an intangible item, the right will have significantly wide-reaching effects and become excessively strong compared to the design rights for articles. This not only lacks balance between such rights but may also inhibit the smooth communication of information. Furthermore, in terms of actual practice, the committee members expressed many concerns about the method of examination in terms of novelty and difficulty of creation, and the method of determining similarity in the case of infringement where typefaces are protected under the design system, in the current situation where neither the method nor standard for determining similarity between typefaces has been established, even within the typeface-related industry.

To include typefaces in the subject matter of protection under the Design Act, it is necessary to set special provisions that are only applicable to typefaces or to implement a fundamental review of the design system. However, it is not conceivable at present to subject the Design Act to a drastic and immediate revision for the sole purpose of protecting typefaces, taking into account the point that problems based on the characteristics of typefaces are not currently clear, as well as the effect of reform of the design system on users of the design system as a whole and on the creation and distribution of typefaces.

2 Desirable New Method of Legal Protection

The committee considered a desirable method of legal protection for typefaces in the case of granting protection for typefaces based on a new protection system distinct from the framework of the existing intellectual property law system, since parts of the current system, including the Design Act, do not suit typeface protection. Specifically, the committee considered the purpose of legal protection of typefaces, and formality and substantive requirements for protection and

the scope of legal protection granted for typefaces.

However, granting some sort of legal protection for typefaces, which are based on characters that serve as the medium of communication, may affect not only the industry but also the lives of the general public, depending on the scope of legal protection. Therefore, it is necessary to establish a system that will not curtail the use of typefaces, and it is thus necessary to carefully consider the legal protection to be granted in line with specific problems. Consequently, it is too early to grant new legal protection for typefaces, under the current situation where problems based on the characteristics of typefaces are not necessarily clear, since there remain many problems that have to be carefully considered when deciding a desirable method of protection in order to establish a new framework for legal protection. For this reason, the committee decided to organize the points at issue regarding a desirable new method of legal protection in light of the characteristics of typefaces. The need for new legal protection for typefaces is expected to be examined when problems based on the characteristics of typefaces become obvious in the future. We hope that, at that time, the matters discussed by this committee will serve as a basis for taking the necessary measures to solve the problems.

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