

No. 3076

**UNITED STATES OF AMERICA
and
JAPAN**

**Exchange of notes constituting an agreement relating to
copyright protection. Tokyo, 10 November 1953**

Official texts : English and Japanese.

Registered by the United States of America on 20 December 1955.

**ÉTATS-UNIS D'AMÉRIQUE
et
JAPON**

**Échange de notes constituant un accord relatif à la protection
du droit d'auteur. Tokyo, 10 novembre 1953**

Textes officiels anglais et japonais.

Enregistré par les États-Unis d'Amérique le 20 décembre 1955.

No. 3076. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND JAPAN RELATING TO COPYRIGHT PROTECTION. TOKYO, 10 NOVEMBER 1953

I

The American Ambassador to the Japanese Minister for Foreign Affairs

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA
AMERICAN EMBASSY

No. 794

Tokyo, November 10, 1953

Excellency :

With regard to the conversations that have been held recently between representatives of the Governments of the United States and Japan in connection with copyright protection by our respective countries for works by nationals of the other, I have the honor to confirm that the Government of the United States since April 28, 1952, the date of the coming into force of the Treaty of Peace between our respective countries,² has been according to nationals of Japan copyright protection on substantially the same basis as to its own citizens. It is my understanding that citizens of the United States have likewise been accorded, since that date, copyright protection in Japan on substantially the same basis as that accorded by Japan to its own nationals.

Upon receipt of a Note stating that, pursuant to Article 12 of the Treaty, and since April 28, 1952, citizens of the United States have been accorded copyright protection in Japan on substantially the same basis as that accorded to nationals of Japan and will continue to be accorded such protection for a period of four years from such date pending the conclusion of a new copyright agreement, the President of the United States is prepared to have issued a Proclamation, a copy of which is enclosed herewith, which will verify that since April 28, 1952, national treatment has been accorded by the Government of the United States to nationals of Japan in copyright matters.

I have further the honor to inform Your Excellency that it is the understanding of the Government of the United States that our two Governments will seek to

¹ Came into force on 10 November 1953, with retroactive effect from 28 April 1952, by the exchange of the said notes and in accordance with their terms.

² United Nations, *Treaty Series*, Vol. 136, p. 45 ; Vol. 163, p. 385 ; Vol. 184, p. 358, and Vol. 199, p. 344.

conclude, at the earliest practicable date, a mutually satisfactory copyright agreement to regularize the copyright relationship between the two countries. I would be grateful for your confirmation of this understanding.

Accept, Excellency, the renewed assurances of my highest consideration.

John M. ALLISON

Enclosure :

Copy of Proclamation

His Excellency Katsuo Okazaki
Minister for Foreign Affairs of Japan

COPYRIGHT—JAPAN

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS section 9 of title 17 of the United States Code, entitled "*Copyrights*," as codified and enacted into positive law by the Act of Congress approved July 30, 1947, 61 Stat. 652, provides in part that the copyright secured by said title shall extend to the work of an author or proprietor who is a citizen of a foreign state or nation only :

"(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work ; or

"(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection, substantially equal to the protection secured to such foreign author under this title or by treaty ; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto ;" and

WHEREAS section 1 of the said title 17 provides in part as follows :

"Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right :

* * * * *

"(e) To perform the copyrighted work publicly for profit if it be a musical composition ; . . . *Provided*, That the provisions of this title, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after July 1, 1909, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights." ; and

WHEREAS section 9 of the said title 17 further provides that "The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this title may require . . ."; and

WHEREAS Article 22 (6) of the Copyright Law of Japan accords rights similar to those extended by section 1 (e) of title 17 of the United States Code ; and

WHEREAS Article 12 of the Treaty of Peace with Japan, signed at San Francisco September 8, 1951 provides that Japan will, during a period of 4 years from the first coming into force of the Treaty, accord to an Allied Power national treatment in regards copyright protection to the extent that national treatment is accorded to it by the Allied Power concerned ; and

WHEREAS the United States and Japan have each, in fact, since April 28, 1952, the date of the coming into force of said Treaty of Peace, accorded to the nationals of the other copyright protection on substantially the same basis as to its own citizens ;

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do declare and proclaim :

That since April 28, 1952, the conditions specified in sections 9 (b) and 1 (e) of title 17 of the United States Code have existed and have been fulfilled with respect to the nationals of Japan, and that nationals of Japan have since that date been entitled and will continue to be entitled for a period of 4 years from the first coming into force of the Treaty of Peace, to all the benefits of the said title 17 except those conferred by the provisions embodied in the second paragraph of section 9 (b) thereof regarding the extension of time for fulfilling copyright conditions and formalities.

Provided, that the enjoyment by any work of the rights and benefits conferred by the said title 17 shall be conditioned upon compliance with the requirements and formalities prescribed with respect to such works by the copyright laws of the United States ;

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this tenth day of November in the year of our Lord nineteen hundred and fifty-three and of the Independence of the United States of America the one hundred and seventy-eighth.

[SEAL]

Dwight D. EISENHOWER

By the President :

John Foster DULLES
Secretary of State

[TRANSLATION¹ — TRADUCTION²]

MINISTRY OF FOREIGN AFFAIRS

Tokyo, November 10, 1953

Mr. Ambassador,

I have the honor to acknowledge the receipt of Your Excellency's note of today's date which reads as follows :

[See note I]

I have the honor to inform Your Excellency that, pursuant to article 12 of the Treaty of Peace, and since April 28, 1952, citizens of the United States have been accorded copyright protection in Japan on substantially the same basis as that accorded to nationals of Japan and will continue to be accorded such protection for a period of four years from such date pending the conclusion of a new copyright agreement.

I have further the honor to confirm that it is also the understanding of my Government that our two Governments will seek to conclude, at the earliest practicable date, a mutually satisfactory agreement to regularize the copyright relationship between the two countries. In this regard I wish to take this occasion to record the view of my Government that the negotiations for such an agreement should not be prejudiced in any way by the present provisional arrangement.

I avail myself of this opportunity to renew to Your Excellency, Mr. Ambassador, the assurance of my highest consideration.

KATSUO OKAZAKI
Minister for Foreign Affairs

His Excellency John M. Allison
Ambassador Extraordinary and Plenipotentiary
of the United States of America in Japan

III

The American Ambassador to the Japanese Minister for Foreign Affairs

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA
AMERICAN EMBASSY

Tokyo, November 10, 1953

Excellency :

I have the honor to refer to the Notes exchanged between us today concerning the reciprocal grant of copyright national treatment by our two countries to the

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

citizens or nationals of the other, pursuant to Article 12 of the Treaty of Peace with Japan, and to request Your Excellency to confirm, on behalf of the Government of Japan, the following understandings of the Government of the United States of America under such Notes :

1. Any right given by the law of either party to translate copyrighted works without authorization shall, as regards musical compositions, apply only to the words thereof.
2. The provisional arrangement under Article 12 of the Treaty of Peace with Japan, as implemented by the exchange of notes mentioned above, does not affect any right acquired prior to April 28, 1952, by nationals of either party under the laws of either party, applicable treaties or conventions concerning copyrights, or any such right which is confirmed by Article 19 (*d*) or by any other provision of the Treaty of Peace with Japan.

I have further the honor to inform Your Excellency that, with regard to translation rights in works published prior to April 28, 1952, the period of protection to be granted by my Government, from and after such date, shall be that period of time, which, if added to the period between the date of first publication of the work and April 28, 1952, would equal the total period of protection available under the law of the United States. I would appreciate, Your Excellency, a corresponding statement on behalf of the Government of Japan.

Accept, Excellency, the renewed assurances of my highest consideration.

John M. ALLISON

His Excellency Katsuo Okazaki
Minister for Foreign Affairs of Japan

[TRANSLATION¹ — TRADUCTION²]

MINISTRY OF FOREIGN AFFAIRS

Tokyo, November 10, 1953

Mr. Ambassador,

I have the honor to refer to Your Excellency's letter of November 10, 1953, requesting my confirmation, on behalf of the Government of Japan, of the understandings of the Government of the United States of America under the exchange of notes of today's date which established a provisional copyright arrangement between our two countries.

I am pleased to confirm, on behalf of the Government of Japan, the understandings of the Government of the United States of America as stated in Your Excellency's letter under reference.

I have further the honor to inform Your Excellency that, with regard to translation rights in works published prior to April 28, 1952, the period of protection to be granted by my Government, from and after such date, shall be that period of time, which, if added to the period between the date of the first publication of the work and April 28, 1952, would equal the total period of protection available under the law of Japan.

I avail myself of this opportunity to renew to Your Excellency, Mr. Ambassador, the assurance of my highest consideration.

[SEAL]

KATSUO OKAZAKI
Minister for Foreign Affairs

His Excellency John M. Allison
Ambassador Extraordinary and Plenipotentiary
of the United States of America in Japan

¹ Translation by the Government of the United States.

² Traduction du Gouvernement des États-Unis d'Amérique.

[TRANSLATION¹ — TRADUCTION²]

MINISTRY OF FOREIGN AFFAIRS

Tokyo, November 10, 1953

Mr. Ambassador,

I have the honor to refer to the notes exchanged between us today concerning the reciprocal grant of copyright national treatment by our two countries to the nationals or citizens of the other, pursuant to article 12 of the Treaty of Peace with Japan, and to request Your Excellency to confirm, on behalf of the Government of the United States of America, the following understandings of the Government of Japan under such notes :

1. During the period of the war and occupation, the provisions of the Convention regarding the Protection of Copyright between Japan and the United States of America signed at Tokyo on November 10, 1905,³ were considered in effect and applicable to protection of works of Japanese nationals in the United States.

2. Article 14 (a) 2 (I) of the Treaty of Peace with Japan is a treaty recognition of the right of the United States of America to dispose of copyrights of Japanese nationals which on the first coming into force of the Treaty of Peace were subject to its jurisdiction. However, as a matter of policy the United States has not vested Japanese owned copyright property in the United States since the date of the coming into force of the said Treaty of Peace, and it is not contemplated that further vesting of Japanese works will take place under present circumstances.

3. If and when Japanese nationals fulfill the conditions and formalities of the United States Copyright Law after the issuance of the Presidential Proclamation, they may file suits in United States courts for copyright infringements, including infringements taking place before the issuance of the Presidential Proclamation, on the same basis as United States nationals.

I avail myself of this opportunity to renew to Your Excellency, Mr. Ambassador, the assurance of my highest consideration.

[SEAL]

KATSUO OKAZAKI
Minister for Foreign Affairs

His Excellency John M. Allison
Ambassador Extraordinary and Plenipotentiary of the
United States of America

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

³ *De Martens, Nouveau Recueil général des Traités*, deuxième série, tome XXIV, p. 715.

VI

The American Ambassador to the Japanese Minister for Foreign Affairs

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA
AMERICAN EMBASSY

Tokyo, November 10, 1953

Excellency :

I have the honor to refer to Your Excellency's letter of November 10, 1953, requesting my confirmation, on behalf of the Government of the United States of America, of the understandings of the Government of Japan under the exchange of Notes of today's date which established a provisional copyright arrangement between our two countries.

I am pleased to confirm, on behalf of the Government of the United States of America, the understandings of the Government of Japan as stated in Your Excellency's letter under reference.

Accept, Excellency, the renewed assurances of my highest consideration.

John M. ALLISON

His Excellency Katsuo Okazaki
Minister for Foreign Affairs of Japan