

# The Criminalisation of Copyright Infringement in Japan and What This Tells Us about Japan and the Japanese

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## Abstract

This paper reviews the criminal provisions of the copyright infringement laws in Japan and their justifications. In this context, this paper considers some of the theories which seek to explain Japanese legal behaviour including the traditionalist representation of the Japanese as a homogenous group that avoids law because of cultural beliefs. This paper asserts that criminal enforcement of copyright infringement rebuts a traditionalist view and contends that criminal copyright enforcement is economically rational for Japan, given the institutional disincentives to litigate civilly and the comparative wealth of prosecutorial and police resources. This paper also suggests that while the criminalisation of copyright infringement in Japan is path-dependent, Japan is leading moves for global convergence in intellectual property norms in the area of enforcement.

## I. Introduction

By any standard of measurement, intellectual property infringement is rampant. One source estimates the total value of pirated and counterfeit products bought and sold worldwide to be 65 trillion yen annually (AUD\$638,753 billion).<sup>1</sup>

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<sup>1</sup> Editorial, 'Public Must Join Fight Against Fakes' *Daily Yomiuri/The Yomiuri Shimbun* (Tokyo, Japan) 11 June 2005.