



Title	The Future of Intellectual Property Law and Competition Law in the AI Era : A Comparative Socio-Legal Study between France and Japan: Introduction
Author(s)	Yoshida, Etsuko
Citation	Osaka University Law Review. 2020, 67, p. 47-48
Version Type	VoR
URL	<a href="https://hdl.handle.net/11094/73751">https://hdl.handle.net/11094/73751</a>
rights	
Note	

*The University of Osaka Institutional Knowledge Archive : OUKA*

<https://ir.library.osaka-u.ac.jp/>

The University of Osaka

**JSPS Bilateral Joint Research Projects (SAKURA Program)  
The Future of Intellectual Property Law and Competition  
Law in the AI Era - A Comparative  
Socio-Legal Study between France and Japan**

**Introduction**

*Etsuko YOSHIDA*<sup>\*</sup>

This study aims to compare, in detail, the legal situations of Japan and France and the latest discussions about specific problems with intellectual property law and competition law in the artificial intelligence (AI) era to obtain a useful view of each of them. This research does not hold out excessive expectations for AI, but instead considers it a tool, one that should be kept in mind when looking for monopolies and oligopolies by IT platforms and oriented toward a decentralized economic order. This study is based on several decades' exchanges of various law fields between Toulouse 1 Capitole University and Osaka University and the dense exchanges between Toulouse 1 Capitole University and Hitotsubashi University.

There are two key elements in our research. First, it is necessary to consider the ideal intellectual property system for protecting the large amount of data that AI learns. For instance, regarding the intellectual property protection of collected data, analysis technology, and analysis results (learned algorithms, etc.), by giving an incentive of intellectual property rights, while use is expected, there may be concerns that widespread use may be hindered. By contrast, copyright law does not necessarily protect simple data accumulation (a feature of law common to both Japan and France). Although protection of trade secrets is conceivable, the legal systems for protecting them are very different between Japan and France. We have conducted a comparative study based on this aspect of the discussion.

Second, we focus on the protection of AI-generated products by intellectual property law, in particular, inventions, designs and copyright works. For instance, in the drug discovery field, where the probability of product success is said to be 1 in 30,000, what should be protected to switch to innovative drug discovery

---

\* Specially Appointed Research Fellow, Osaka University Intellectual Property Center

technologies based on AI/Big Data? Perspectives such as human contribution, medical data distribution, and the profit distribution of deliverables are required. When autonomous AI products take the form of paintings or music, there is a debate about whether to authorize copyrights in both Japan and France. If a copyright is granted to such products, how should we distinguish between human creations and AI creations, and when deciding on the rights holder, the content monopolies of giant IT platforms? There is a need for vigilance.

Based on the above topics, what is an invention or work? Who is the author? What purposes do patent law and copyright law serve, and what is the relationship with competition order? We will compare the measures that can be taken under Japanese–French law. Our goal is to provide a perspective for thinking about truly fundamental issues in light of AI issues.

We will also have seminar for announcing research results in Japan and France. Sakura Program's Kick-Off-Seminar was held in Japan on 15th May 2019. In this issue, as part of the research results will be introduced. The contents are as follows.

- 1) "AI and Intellectual Property Aspects", Alexandra Mendoza-Caminade, Toulouse 1 Capitole University
- 2) "Autonomous Car and Personal Data", Guillaume Guégan, Toulouse 1 Capitole University
- 3) "Using AI in Biotechnology and connected Health", Diogo Costa Cunha, Toulouse 1 Capitole University

On 2nd December, 2019, we plan to announce the research results of the Japanese side at Toulouse 1 University with the following contents.

- 1) "Rights Restrictions for Text Data Mining under Japanese Copyright Law", Makoto Nagatsuka, University Hitotsubashi
- 2) "Discussion of Copyright Protection for AI-created Works in Japan", Hiroya Aoki, Osaka University
- 3) "A Preliminary Study of Computer-generated Invention and Inventive Step, Written Description Requirements", Etsuko Yoshida, Osaka University