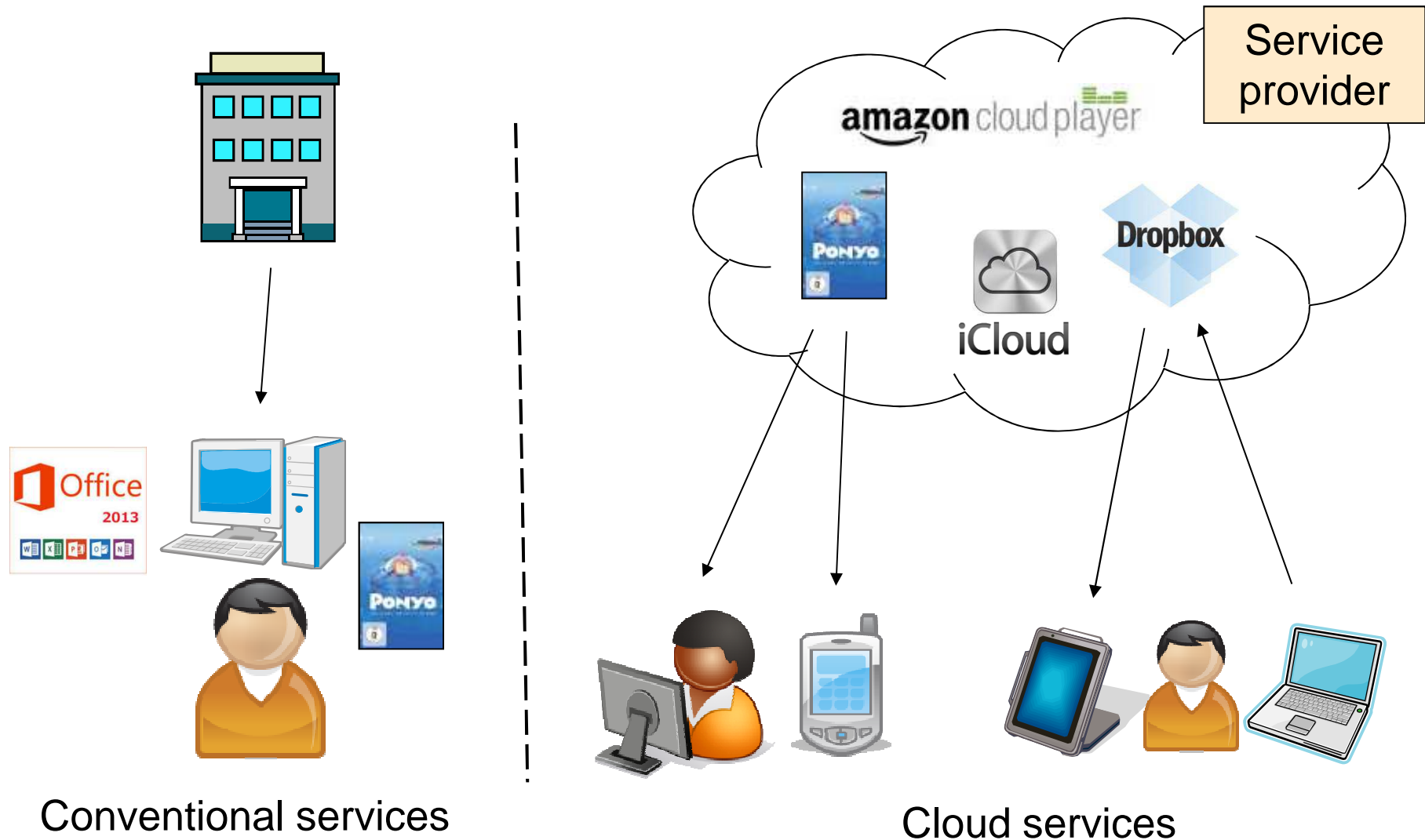


Moral rights in the “cloud” environment

Prof. Tatsuhiro Ueno
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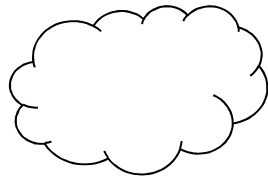
Cloud computing



Outline

- Introduction
- The right of integrity in the cloud environment
 - Digital network environment and moral rights
- The right of integrity needs to be reduced?
 - Two types of standard
 - Objective standard (“honor or reputation”)
 - Subjective standard
 - Proposals to reduce the right of integrity
 - Theory and statutory provision to strike a balance
 - The concept of “balance of interests”
 - Statutory provision on exception to moral rights
- Conclusion

Digital technology and moral rights



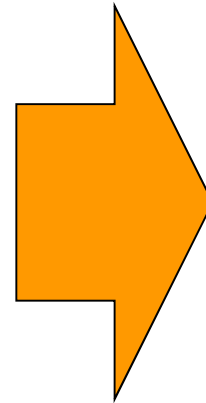
Cloud computing



Network environment



Digital technology



The right of divulgation

The right of paternity

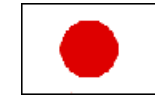
The right of integrity

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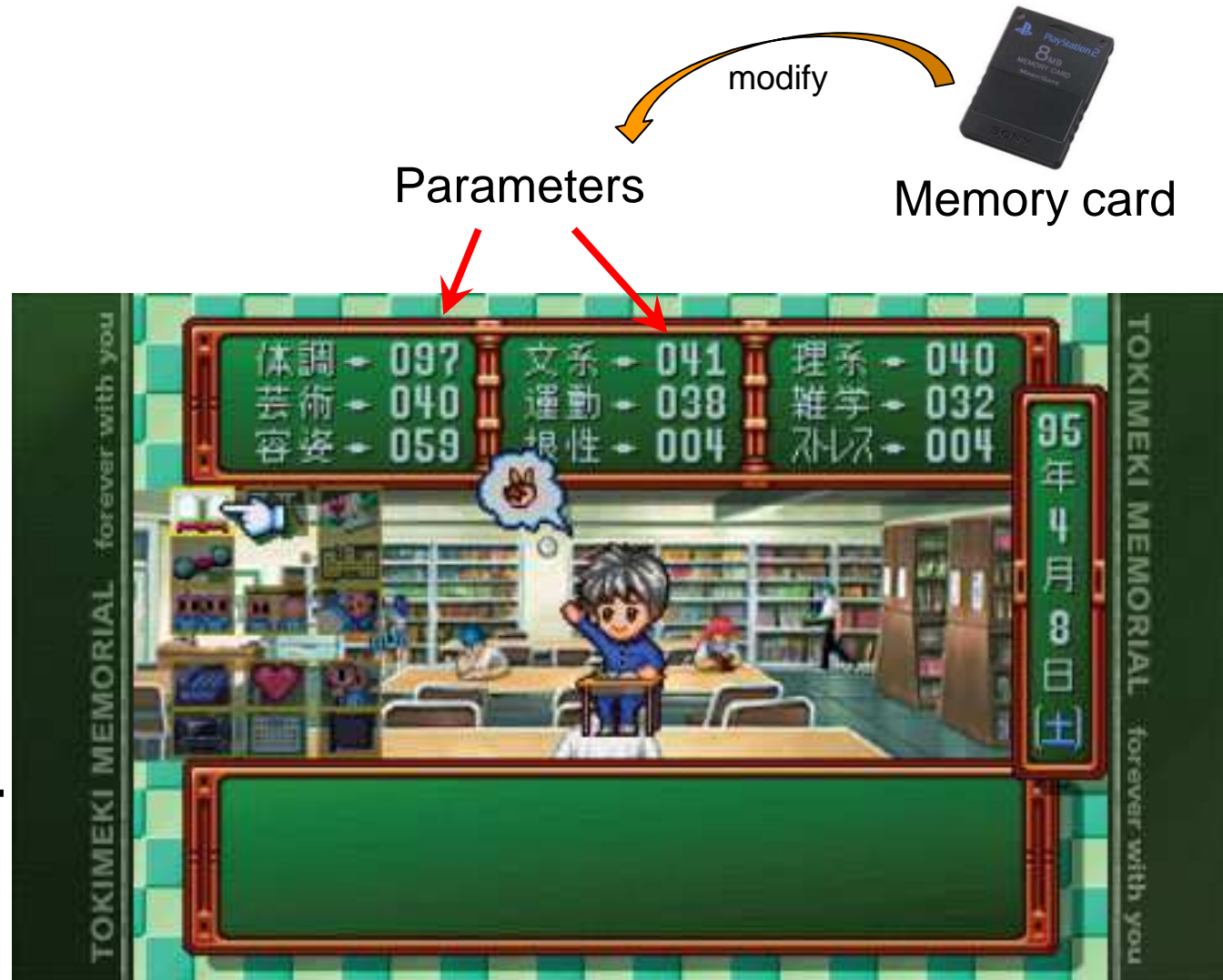


Author

Tokimeki Memorial Case



Tokimeki Memorial



Tokimeki Memorial Case



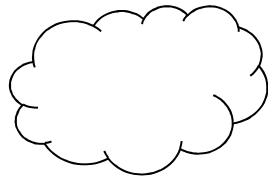
Judgment of the Supreme Court

“The use of the memory card is to modify the game software and infringes the right of integrity (Art. 20(1)). ...The use of the memory card means that the player’s personality, which is expressed through parameters authorised by the game software, is modified and, as a result, the storyline in the game software develops beyond the envisaged boundaries, bringing about a modification of the storyline.

The defendant imported and sold the memory card with the sole objective of modifying the game software and numerous people actually purchased the memory card with the same objective. ... It follows that the right of integrity of the game software was infringed by the use of the memory card. If the defendant’s acts had not taken place, the infringement of the right of integrity of the game software would never have taken place.

Accordingly, the defendant, who imported, sold and distributed the memory card envisaging others to use it, with the sole objective of modifying the game software, in-fringed the right of integrity of the game software developers through others’ use and should be held liable for damages to the plaintiff.”

Digital technology and moral rights



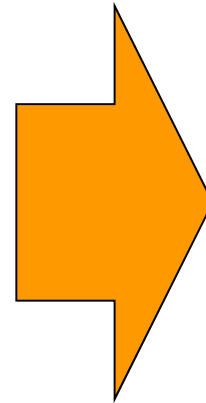
Cloud computing



Network environment



Digital technology



The right of divulgation

The right of paternity

The right of integrity

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Author

(1) Objective standard



Berne Convention

Art. 6*bis*

The author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his **honor or reputation**.



Objective standard

Proposal by the Italian Government 1928

... which would be prejudicial to **his moral interests**.

Subjective standard

(2) Subjective standard



German Copyright Act 1965

Art. 14 Modification of works

The author shall have the right to prohibit any distortion or any other derogatory action of his work which would jeopardize his **legitimate intellectual or personal (moral) interests** [berechtigten geistigen oder persönlichen Interessen] in the work



The draft [Referentenentwurf] 1954

... **honor or reputation [Ansehen oder Ruf]** ...

Subjective standard

Objective standard

(2) Subjective standard



Japanese Copyright Act 1970

Art. 20(1)

The author shall have the right to maintain the integrity of his work and its title, and no distortion, mutilation or other modification thereof shall be made **against author's intent**.

Modification

Subjective standard

Art. 113(6)

An act of exploitation of a work prejudicial to **the honour or reputation** of the author shall be considered to constitute an infringement on his moral rights.

Other derogatory action

Objective standard

Proposal to restrict the right of integrity



Japanese Copyright Act 1971

Art. 20(1)

The author shall have the right to maintain the integrity of his work and its title, and no distortion, mutilation or other modification thereof shall be made **against author's intent**.



Proposal

Subjective standard

...which would be prejudicial to **the honour or reputation** of the author

Objective standard

European Copyright Code



European Copyright Code 2010

Art. 3.4(1)

The right of integrity is the right to object to any distortion, mutilation or other modification, or other derogatory action in relation to the work, which would be prejudicial to **the honour or reputation** of the author.

Objective standard

An upward-pointing arrow is positioned above the 'Objective standard' box, pointing towards the phrase 'the honour or reputation' in the text above.

Question

Q The right of integrity based on the subjective standard needs to be reduced into the objective minimum (“honor or reputation) standard?

The author shall have the right to maintain the integrity of his work and its title, and no distortion, mutilation or other modification thereof shall be made **against author's intent**.



Proposal

Subjective standard

...which would be prejudicial to **the honour or reputation** of the author

Objective standard

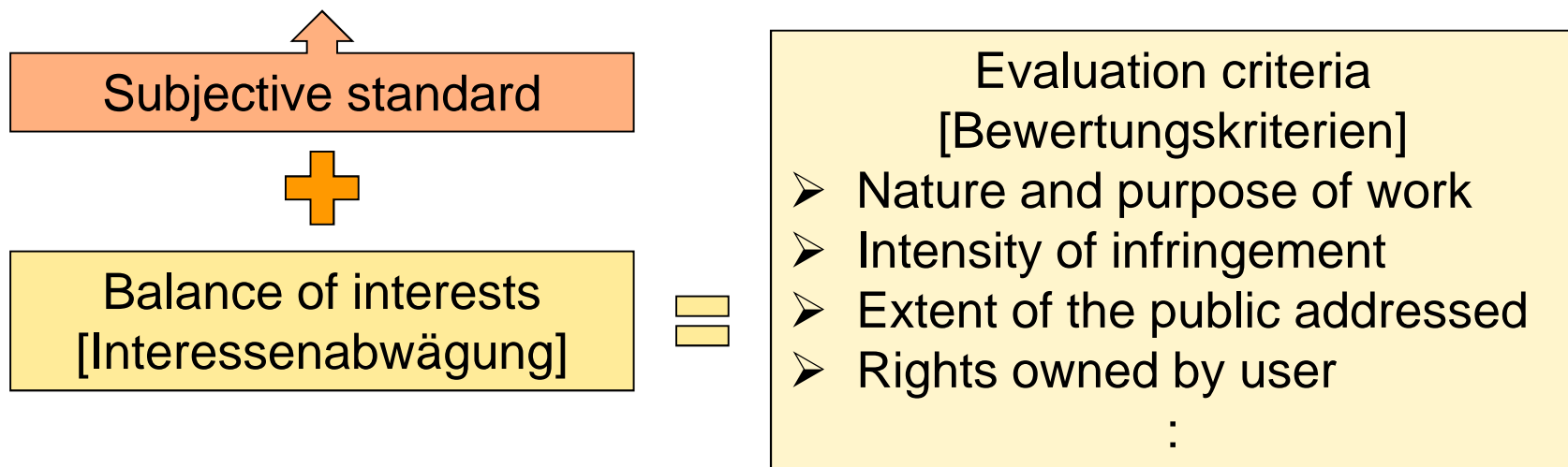
Theory of “balance of interests”



German Copyright Act 1965

Art. 14 Modification of works

The author shall have the right to prohibit any distortion or any other derogatory action of his work which would jeopardize his **legitimate [berechtigten]** intellectual or personal (moral) interests in the work



Statutory provision on exception



Japanese Copyright Act 1970

Art. 20(2)

The provisions of the preceding paragraph shall not apply to the following modifications:

- (i) change of ideographs or words or other modifications deemed unavoidable for the purpose of **school education**....;
- (ii) modification of an **architectural work** by means of extension, rebuilding, repairing, or remodeling;
- (iii) modification which is necessary for enabling to use on a particular computer a **program work** which is otherwise unusable on that computer, or to make more effective the use of a program work on a computer;
- (iv) **other modifications** not falling within those mentioned in the preceding three items, which are deemed **unavoidable** in the light of the nature of a work as well as the purpose and the manner of exploiting it.

Specific provisions



General clause

Statutory provision on exception



European Copyright Code 2010

Art. 3.6(1)

The moral rights recognised in article 3.1 will **not be enforced** in situations where to do so would harm the **legitimate** interests of third parties to an extent which is manifestly disproportionate to the interests of the author.

A general clause

A yellow rectangular box with a black border contains the text 'A general clause'. A white arrow with a black outline points upwards from the top center of the box towards the word 'legitimate' in the text above.

Comments & Conclusion

Q

The right of integrity based on the subjective standard needs to be reduced into the objective minimum (“honor or reputation) standard?



Objective standard



Objective standard



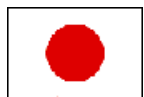
General clause



Subjective standard



Balance of interests
[Interessenabwägung]



Subjective standard

Objective standard

Modification

Other derogatory action



General clause

Thank you



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