

— ICER (Innovation Center for Educational Resource) FD —

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Digital Educational Material Copyright Seminar

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This document's content

- ※ The contents are an abstract from Cybersecurity Foundations “Copyright” information course.
- ※ We referred to the Agency for Cultural Affairs Copyright document.
http://www.bunka.go.jp/seisaku/chosakuken/seidokaisetsu/pdf/h27_text.pdf
- ※ We quoted parts from Professor Motofumi Yoshida's “Digital Educational Material Copyright Seminar”. (Slides 25-28, 32, 36-44) http://www.icer.kyushu-u.ac.jp/sites/default/files/copyright_seminar_ppt_20150928_4.pdf

Digital Educational Material Copyright

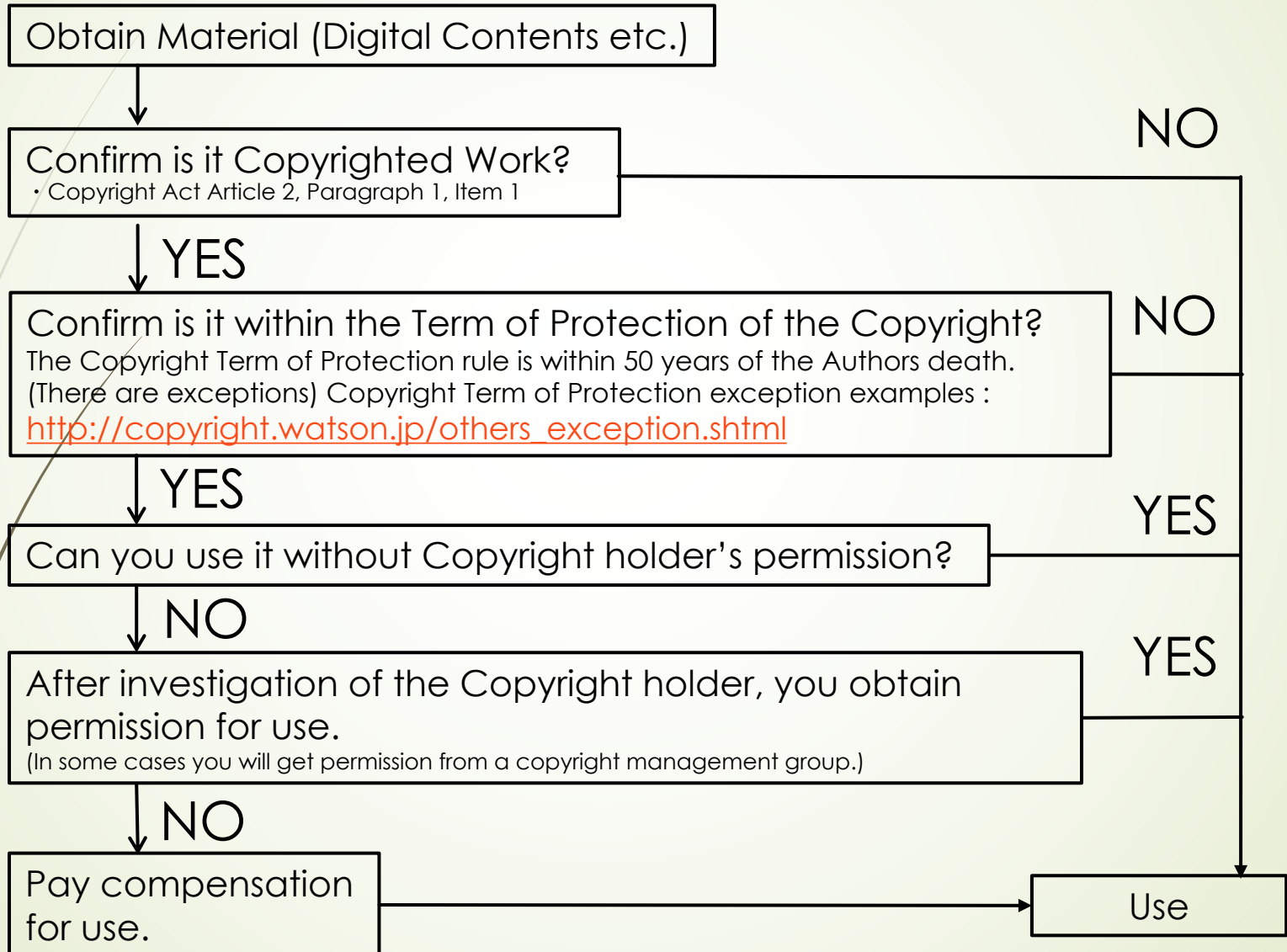
Points to be considered with regards reproducing or using Copyrighted works (online contents etc.)

- Background to the Digital Educational Material Copyright Seminar.
- Procedures for use of Copyrighted Works.
- Copyrighted works, Author, Copyright, Copyright holder.
- An example of using Copyrighted material without obtaining permission.
- (Copyright Act and related Copyright laws)

Background of Digital Educational Material Copyright Seminar

- The requirement to list a reference when using existing copyrighted material in a report, paper or educational material.
 - = > Conforming with the Copyright Act.
- The expanding popularity of the World Wide Web and internet.
- The existence of countless digital contents (digitalized documents) on the Internet (Cyberspace).
- The ease of Digital Contents Reproduction.
- The need to be careful when using, referencing, and releasing digital contents in Cyberspace.

Procedures for use of Copyrighted Works

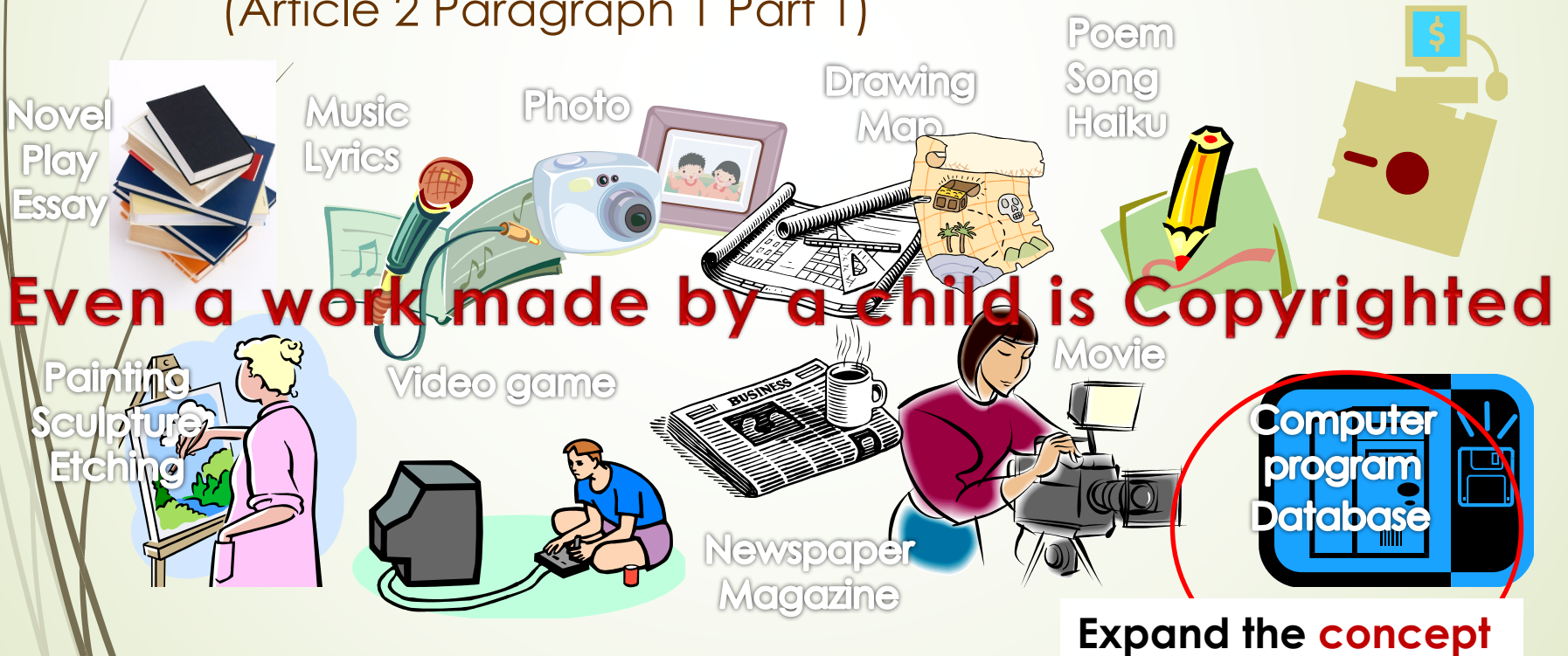


Copyrighted Work, Author, Copyright, Copyright holder

➤ Copyrighted Work=defined as

“a production in which thoughts or sentiments are creatively expressed and which falls within the literary, academic, artistic or musical domain”

(Article 2 Paragraph 1 Part 1)



Things that are not Copyrighted work

- By the **“thoughts or sentiments”** condition, **“just data”** is not included as Copyrighted work.
- By the **“creative”** condition, another persons work that is a “copy” or if the contents are “unoriginal” is not included as Copyrighted work.
- By the **“expressed”** condition, “ideas” are not included as Copyrighted work. However written work describing “ideas” is included as Copyrighted work.
- By the **“falls within the literary, academic, artistic or musical domain”** condition, “manufactured products” are not included as Copyrighted work.

Reference Link

<http://chosakuken.bunka.go.jp/naruhodo/outline/4.1.html>

Things that are not Copyrighted work

- By the **“thoughts or sentiments”** condition, **“just data”** is not included as Copyrighted work.

- Examples
 - Weather data
 - Japan Meteorological Agency website Terms of Use
 - <http://www.jma.go.jp/jma/kishou/info/coment.html>
 - Geographical data
 - Geospatial Information Authority of Japan contents Terms of Use
 - <http://www.gsi.go.jp/kikakuchousei/kikakuchousei40182.html>
 - Graduate student name list (publishing without permission is a violation of the Protection of Personal Information Act)

Things that are not Copyrighted work

- By the “**creative**” condition, another persons work that is a “copy” or if the contents are “unoriginal” is not included as Copyrighted work.
- If no matter who expresses a concept, generally it is expressed the same, this can be considered as not creative.
- Example
 - A copy of a TV animation or comic character
=> **an imitation**
 - Photographing a picture from the front
=> **not creative**

(publishing a copy of the character or picture would infringe copyright)

Things that are not Copyrighted work

- By the “**expressed**” condition, “ideas” are not included as Copyrighted work. However, written work describing “ideas” is included as Copyrighted work.
- Even the same idea, if the method of expression has creativity, this is Copyrighted work.
- Example
 - A magic trick(idea) is used in a detective drama to commit a crime.
=> **The drama is Copyrighted work.**

Things that are not Copyrighted work

- By the “**falls within the literary, academic, artistic or musical domain**” condition, “manufactured products” are not included as Copyrighted work.
- A Manufactured products design(shape and color, mass-produced • moveable) is registered.
- Example
 - Scissors or ball-point pen’s design => **Industrial Designs**

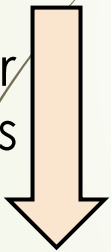
Copyrighted material, Author, Copyright, Copyright holder.

Author = The person who created the Copyrighted Work

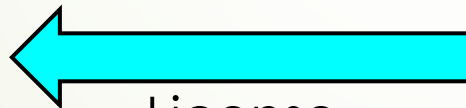


Copyright (the Moral Right of the Author, and Property Right) comes into existence at the same time the work is created.
[No method principle]

Transfer
of rights



Copyright (Property Right) can be transferred.



License
application



Publisher

Copyright holder = The person who has copyright.

Copyrighted material, Author, Copyright, Copyright holder.



Author

Moral Rights of Authors

- Right to make a work public
- Right of attribution
- Right to integrity



Copyright holder

Copyrights (Property Rights)

- | | |
|--|----------------------------------|
| ■ Right of reproduction | ■ Right to transfer |
| ■ Stage and musical performance rights | ■ Right of rental |
| ■ Rights of on-screen presentation | ■ Right to distribute |
| ■ Right to communicate | ■ Right to translate/modify |
| ■ Right to recite | ■ Rights to use derivative works |
| ■ Right to exhibit | |

Difference between Moral Rights of Authors and Copyrights (Property rights)

Moral Rights of Authors

- 1) **The aim of this right**
The right to have the authors moral interests protected.
- 2) **Transfer of rights**
This is not transferable from the author. (exclusive to the author)
- 3) **Protection period**
If the author dies, this is nullified. (However, these have to be respected after death)

Copyrights (Property rights)

- 1) **The aim of this right**
The right to have the authors financial profit protected.
- 2) **Transfer of rights**
Like general property, these can be transferred to another party.
- 3) **Protection period**
Rules, after the authors death this copyright continues for 50 years. (There are exceptions to this rule)

Content of Authors moral rights

■ Right to make a work public

The author has the right to decide “to publish or not to publish”.

■ Right of attribution

The author has the right to decide “to display the authors name or not to display”.

This includes the right to pick between using their real name or using a pseudonym(pen name).

■ Right to integrity

The right not to have your Copyrighted works altered against your will.

Content of Copyright (Property rights)

- ① **The right to create Reproductions(Copies) .**
- ② **The right to distribute Reproductions (Copies).**
- ③ **The right to without using Reproductions(Copies) transmit your work.**
- ④ **The right to Modify (translate, re-arrange, modify, adapt).**

Note)

The aim of the above listed right to ○○ : the person holding the rights, have

[The right not to allow ○○ to happen without their permission].

⇒ [The right to stop another person doing ○○ without permission].

Content of Copyright (Property rights)

① The right to create Reproductions(Copies).

- The right of reproduction (all Copyrighted Works)

Note)

“Reproduction” does not just mean “copy”, it incorporates all “audio/video recording”, “photographing”, “hand written copying”, “copying to a PC hard disk”, etc.

② The right to distribute Reproductions (Copies).

- Right to Transfer (excluding “Movie Copyrighted works”)
- Right of Rental (excluding “Movie Copyrighted works”)
- Distribution Right (only “Movie Copyrighted works”)

Note) [Distribution] = [Transfer] + [Rental]

Content of Copyright (Property rights)

③ The right to without using Reproductions(Copies) transmit your work.

- Stage performance right

("Language Copyrighted work" "Dance/Mime Copyrighted work")

- Musical performance right ("Music Copyrighted work")

- Rights of on-screen presentation (All Copyrighted work)

- Right to communicate to public (All Copyrighted work)

Note) Right to communicate to public =>

"Broadcast", "Wired broadcast", "**Internet transmission**" and
"Responding to a request from the public to send via fax"etc.

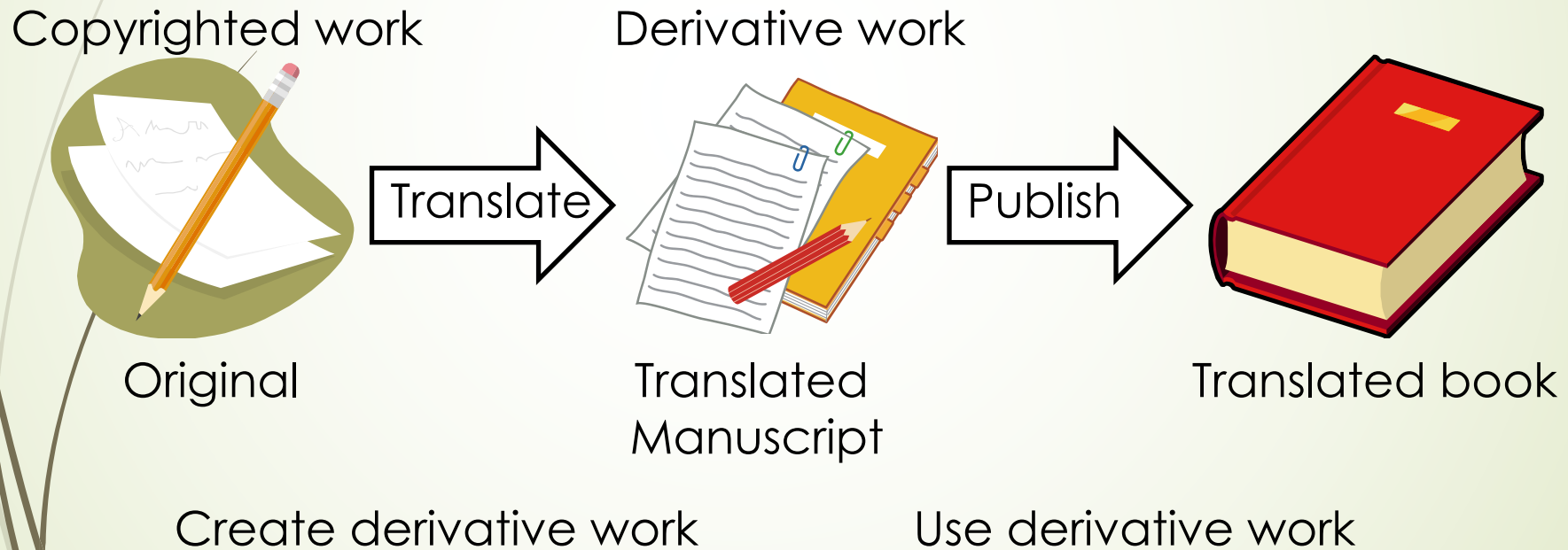
- Right to recite ("Language Copyrighted work")

- Right to exhibit ("Art Copyrighted work" and unpublished
"Photograph Copyrighted work" originals)

Content of Copyright (Property rights)

④ The right to **Modify (translate, re-arrange, modify, adapt)**.

- The right to create derivative work. (All Copyrighted work)
- The right to use derivative work. (All Copyrighted work)



What is the Copyright Protection Period?

Intellectual Property Rights

➤ Copyright

➤ Rights of the Author

Protect Copyrighted work

(From the creation of the work until 50 years after the Authors death)

➤ Neighboring Rights

Protect Stage performance

(50 years from the time of the stage performance)

➤ Industrial Property Rights

➤ Patent rights

➤ Utility model rights

➤ Etc.

➤ Others.

When you can use Copyrighted work without getting the permission of Copyright holders

- Copying for “**private use**” (Article 30)
- Copying for “**Quotation**” (Article 32)
- Copying in “**an Educational Institution**” (Article 35 Paragraph 1)
- Sending in “**an Educational Institution**” (Article 35 Paragraph 2)
- Copying or sending for use as “**Examination questions**” (Article 36)
- For “**Non profit/Free**” presentation (Article 38 Paragraph 1)
- When you know the Copyright holder allows “**unauthorized use**”

When you can use Copyrighted work without getting the permission of Copyright holders(1)

- ▶ You can copy “**For private use**” (Article 30)
 - ▶ When use is limited to individual or home use, and is being used for non-work purposes, the final user of the copyrighted work can reproduce it. (Exceptional Rule) (There are also situations when the above exceptional rule allows reproduction for work use.)
- [Concrete example]
- ▶ Recording a broadcasted TV programme to watch **for your own enjoyment.**
 - ▶ Saving a diagram or a photo etc. to your computer **for your own enjoyment.**

When you can use Copyrighted work without getting the permission of Copyright holders(2)

- Copying for “**Quotation**” (Article 32)
 - In presentation materials or a report you can quote and use another persons work. (Exceptional Rule)

Concrete examples

- When a school teacher, uses “quotation” to include **one part** of one of his students book reviews in a document to show class progress.
- When to show what they have learnt about history, children create a report which includes using “quotation” **one part** of a history document they obtained from a museum homepage.
- When Art club students in a presentation report about art, use “quotation” include **several** works of art.

Requirements for using 'Quotation' Summary

- ▶ Fair use of Quotation

There is a reasonable **major-minor relationship** between your Copyrighted works and the other persons Copyrighted works that you quote.

The quoted part is **clearly separated** from your work.

- ▶ You only quote as much as is legitimately needed for your purpose. (There is **a need to use** the quote.)

- ▶ The quote comes from a work already made public.

- ✘ Even if satisfying the above conditions, it is a rule that you must **indicate the source**.

Problems with the exceptional rules in Article 32 (Quotation)

- ▶ “If you satisfy the set conditions, you can quote work without obtaining permission”, however this “condition” is ambiguous.
- ▶ Even if Publishing companies and Copyright holding organization’s own Copyright usage guidelines match the Copyright Act Article 32 rules, it’s not a perfect situation. (Explained later)
- ▶ In some cases conditions of “Quotation” conflict with the idea of “**comprehensibility, memorability**”

Problems with Copyright guidelines set by Publishing companies and Copyright holding organizations

STM Permissions Guidelines

(Science, Technology, Medicine Publishers Organization)

~there is an understanding between Publishers etc. ...

It is possible to **use up to 3 figures**, from **one journal article**, or **one chapter** from a book, but **not more than 5 figures** from **one book or journal**.

Japan Medical Publishers Association

(About quotation and reprinting)

➤ How to specify the source

<in the case of an academic journal>

Author, Article Title, Journal title, Volume, Issue number, Page, Year of Issue.

➤ When material is quoted it must be the same as the original.

Translation, Modification(change)

- ▶ “Translation” of the quoted part.
 - ▶ This is allowed according to Copyright Act Article 43.
- ▶ “Modification” of the quoted part.
 - ▶ This is not allowed by Copyright Act Article 43.
 - ▶ We must give consideration to the authors Right to integrity (Moral rights of authors). They have the right for their work not to be changed contrary to their intention.
 - ▶ Isn't changing the work to make it **'comprehensible and memorable'** allowed?

According to the Publishers and Copyright holder's guidelines...

- Kyushu University 90 minute Lecture educational materials

	Slides in one lecture	Average ±Standard deviation
Slide	27-173 slides	87.5±34.9
Other persons Copyright Work	0~73 items	22.8±16.2

- 6 Universities, 25 educational materials: 2018 Slides
 - Slides which included another persons Copyrighted Work: **820 slides(41%)**
 - Slides where 'Method of specifying the source was insufficient': **658 slides(80% of the above number)**
 - Tried to apply quotation but...
 - Between one quarter and a third 'violated the maximum 3 figures from a journal article or book chapter rule'.
 - Used many images from Clinical Practice guidelines etc.
 - There were many incidents where 'No journal titles were listed' and/or the original copyrighted work had been 'altered'.

When you can use work without getting the permission of Copyright holders(3)

- ▶ Copying in an “Educational Institution” Article 35 Paragraph 1
 - ▶ Exceptional rules apply to: teachers or children, copying and distributing another persons Copyrighted work for **use as educational material.**
- ▶ (Example)
 - ▶ When a **teacher** copies part of a picture book for use in a class and passes copies out to the students.
 - ▶ When a **student**, copies a newspaper article for use in an “investigative learning” **lesson** and hands out the copies to other students.

When you can use work without getting the permission of Copyright holders(3)

- **Copying in an “Educational Institution” Summary**
 - Reproduction in a school or other educational institution
 - Reproduction for use during the course of a class
 - Reproduction by the teacher in charge of class or students taking the class
 - Reproduction limited to as much as is strictly necessary
 - Reproduction of (only) already ‘published’ Copyrighted works
 - While satisfying the Copyright Act’s conditions, reproduction must not unfairly infringe on the Copyright holders profit

When you can use work without getting the permission of Copyright holders(4)

- ▶ “Transmission in an Educational Institution” (Article 35 Paragraph 2)
 - ▶ Exceptional rule applies to: a class being held at the “main venue”(where another persons work is being used as educational material), this class is being simultaneously broadcast to students at a remote location(“sub venue”).
- ▶ (Example)
 - ▶ When at a “**main venue**” a teacher shows educational material using a projector, the lesson (including the Copyrighted work "map", "chart" etc.) is being broadcast to another remote location(“**sub-venue**”).

Problems with the exceptional rule (Reproduction, etc. in schools and other educational institutions) of Article 35

- For general eLearning, in other words on demand streaming of recorded lectures and making educational materials available to learners for download. Existing Article rules do not cover this type of situation.
- In the current situation, it can be interpreted that the exceptional rules do not cover the case where online access to a online material is restricted to users who have an ID and password.

When you can use work without getting the permission of Copyright holders(5)

- Copying or transmission for “Examination Questions” (Article 36)
 - Exceptional rules apply when copying and distributing examination questions for entrance examination papers or certificates **that include another persons Copyright work**, and also transmitting said examination questions over the internet.

Example

- When setting an examination question that uses a book or editorial.
- When transmitting over the internet an examination question that uses a book or an editorial.

When you can use work without getting the permission of Copyright holders(6)

- ▶ **“Non-profit • Free” presenting etc. (Article 38 Paragraph 1)**
 - ▶ Exceptional rules apply when presenting, performing, reciting(reading aloud) • screening another persons work at a School Art Festival, Culture Festival, School Club etc.

Examples

- ▶ Playing a song during the School sports day group gymnastics.
- ▶ Brass band club performance or drama club theatrical performance during School Culture festival.

When you can use work without getting the permission of Copyright holders(7)

- ▶ When the Copyright holder displays “consent to use without permission”.

Example

- ▶ User License

- ▶ Creative Commons License

<http://creativecommons.jp/licenses/>

- ▶ Free Use Mark

<http://www.bunka.go.jp/jiyuriyo>

 Attribution, BY

 Non-commercial

 No Derivative Works

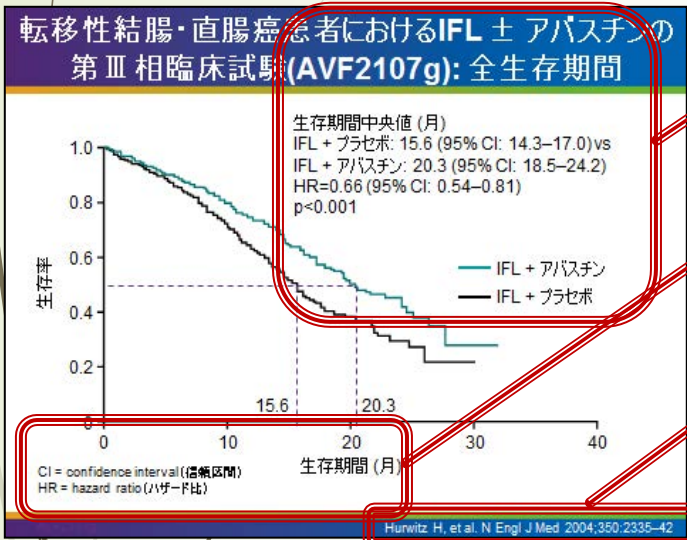
 Share Alike



An example of the Copyright process required to use of Educational material which includes another persons Copyrighted Works possible: License application and answer.

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Before use

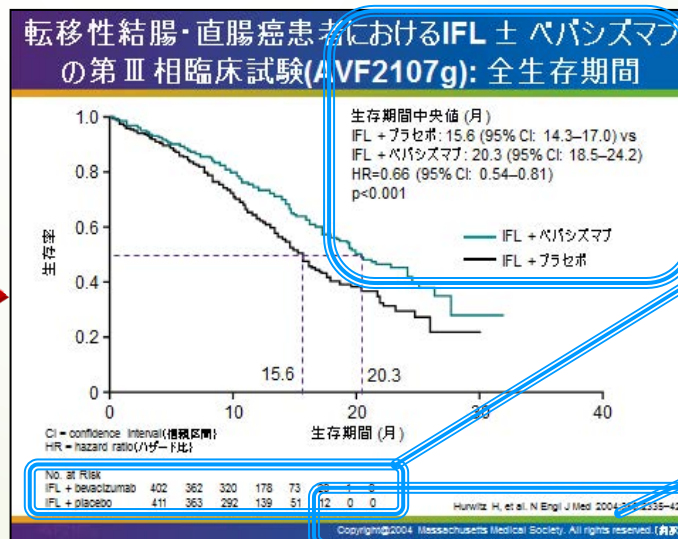


Replace the Brand name

Delete part of the graph data

The source information is insufficient

After amendments



Return to the generic name

Return to the original, add table information

Add a credit line + (translate)

As per Publishers instructions

How to use another persons copyrighted work in online educational material (Summary)

- Create slides which conform to the “Quotation” conditions
 - Specify(cite) the source
 - Consult the guidelines
 - Translation
 - If you fulfill the “Quotation” conditions, then translation is legal
 - Modification(alteration)
 - Do this while giving consideration to the authors right to integrity
- When you don't fulfill the “Quotation” requirements, you must request permission to use
 - There is a possibility that for translation, modification you will have to:

On top of having already obtained permission to reproduce the original, unchanged work, will need to get permission again to use the work once it has been modified.

Comprehensive measures (Higher Education Institution~administration)

- Equip staff with special knowledge and skills
- Faculty instruction(FD,SD)
- Multiple facilities discuss about Copyright dealing policy
- Creators of educational material should set and publish Copyright guidelines
- Work to influence and amend laws(Agency for cultural affairs, Copyright Division)
- Make a legal battle and set precedent (!?)

Precedents <http://current.ndl.go.jp/node/31257>

- In 2008, 3 publishing companies: Oxford University Press, Cambridge University Press and SAGE Publications, supported by the Association of American Publishers(AAP), brought a case against Georgia State University stating their digital media system for students, (E-Reserve) had infringed copyright.
- On 2012 August 10th, Georgia Northern District Judge Orinda Evans, dismissed the plaintiffs injunction. (The 3 publishing companies lost)
- On 2012 September 10th, the three plaintiffs appealed against the Federal District Courts May 11th ruling.
- On 2013 April 25th, 2013年4月25日、the Library Copyright Alliance filed a “friend of the court” brief supporting Georgia State University.
- On 2014 October 17th, US Federal eleventh circuit court of appeals, found that the copyright material being stored and used without fee by Georgia University was unjust and referred the case back to the District court.
- On 2014 November 6th, in light of the Georgia State case, the North American Association of Research Libraries(ARL) published the “Fair Use Decision Making Post-Georgia State” document
- On 2016 March 31st, the US Federal District Court(Georgia State/Northern District), stated its reason for judgment on the Georgia state E-reserves case.
- With the US Federal eleventh circuit court of appeals having overturned and referred the case back to the district courts, of the 48 counts brought by the plaintiffs(Oxford University Press, Cambridge University Press, SAGE Publications) the district court found that in 41 cases the use was found to be fair. Only 7 cases were found in favor of the plaintiffs.
- **※ We need to note that Japanese and American legal systems are different so just because this judgment was found in America does not mean the same would apply in Japan.**

Organizations formed with the intention of improving the Learning Resources Use Environment

- ▶ Ganpro(Japan Cancer Professionals)e-learning cloud
 - ▶ They publish lecture videos on their website where access is limited to members of their organization
 - ▶ They created a set of guidelines for participating organizations to use when creating educational materials
- ▶ University Educational Materials Consortium for Learning Resources (CLR)
 - ▶ An inclusive, comprehensive policy with Copyright holders, the goal is to create an environment where copyright works can be used more freely.
 - ▶ “Use of Copyrighted Works and Copyright in University Learning Resources” http://www.icer.kyushu-u.ac.jp/sites/default/files/CLR_guideline_20160412.pdf

Important points to note when dealing with images when reproducing items other than “Academic papers and textbooks”

Care must be taken with the types of image's use listed below, Modification, removing, and limiting the scope of publication of images may be required.

1. Personal information(E.g. Patients image diagnosis, face photo)
2. Education/Research Facilities background or people
3. Professional sports person, cartoon character etc.
4. Products that can only be released to certain professions.

“Q&A on the Creation and Use of Digital/Online Educational Materials containing Copyrighted Work in University Education”

<http://catalog.lib.kyushu-u.ac.jp/recordID/1440766>



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“Copyright and Digital Resources in University Education Q&A”

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1. Can I use works of others as educational materials without authorization?
2. What is “copyrighted work”?
3. What should I do when using foreign copyrighted works as educational materials in Japan or using Japanese copyrighted works as educational materials abroad?
4. Do I need to obtain prior authorization to use copyrighted works even in academic institutions such as universities?
5. Can I use a DVD I purchased or a video published on the web for classes?
6. What should I do to obtain authorization from copyright owners?
7. How can I obtain authorization when using charts etc. published in academic journals as educational materials?
8. How can I distribute educational materials including works of others on a website?
9. Can I modify and use the works of others(e.g. figures and tables)?
10. How can I indicate sources?
11. Can I translate and use copyrighted work if it's used as a quote?
12. What should I do with regards copyright processing to publish a recorded lecture?

Reference

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- ▶ An example contract between Copyright holder and user.
<http://journals.plos.org/plosone/s/content-license>
- ▶ Will TPP settle copyright issues such as “if not reported it is still a crime”, “70 years after author’s death”.
<http://www.itmedia.co.jp/news/articles/1507/28/news071.html>
- ▶ Ministry of Education, Culture, Sports, Science and Technology Japan Copyright Sub-committee legislation/ Fundamental Issues sub-committee(Number 4).
http://www.bunka.go.jp/seisaku/bunkashingikai/chosakuken/hoki/h27_04/
- ▶ Understanding users needs, to better facilitate the use of Copyright works etc. (Agency for Cultural Affairs, Copyright Division)
<http://www.bunka.go.jp/seisaku/chosakuken/needs/>



Copyright Information Links

- ▶ Copyright Research and Information Center CRIC
<http://www.cric.or.jp/qa/hajime/hajime1.html>
- ▶ A web course about the Copyright
<http://copyright.watson.jp>
- ▶ Copyright precedent database
<http://tyosaku.hanrei.jp/>
- ▶ Medical Imaging Copyright
<http://www.esite-hc.com/cn04/copyright.html>



In conclusion

- ▶ Thank you for taking the time to view these slides.
- 