

Q&A

on the Creation and Use of Digital/Online
Educational Materials containing
Copyrighted Work in University Education



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Q&A

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Introduction

In the past it was common to use printed textbooks/handouts and a whiteboard in lectures. However, as the environment of the lecture room develops with new projectors, screens and the increase in popularity of presentation software, it is now normal to create digital educational materials and lectures using PCs. Since Kyushu University started promoting the students' BYOD (Bring Your Own Device) and introduced e-Learning environments such as the wireless LAN services, students and teachers have been able to learn and teach using e-Learning materials anytime and anywhere on the campuses. The provision of e-Learning materials means students may carry out self-study prior to classes and teachers may give more advanced exercises, discussions and lectures in face-to-face classes. The improvement of PC performance and presentation software functions has made it possible to create digital educational materials more easily and faster than before. On the other hand, when we place digital materials on the Internet, we must take care not to infringe "copyright" when including copyrighted works of others. For that reason, this handbook has been issued to answer questions faculty staff may have when creating and using digital/online educational materials that include copyrights of others.

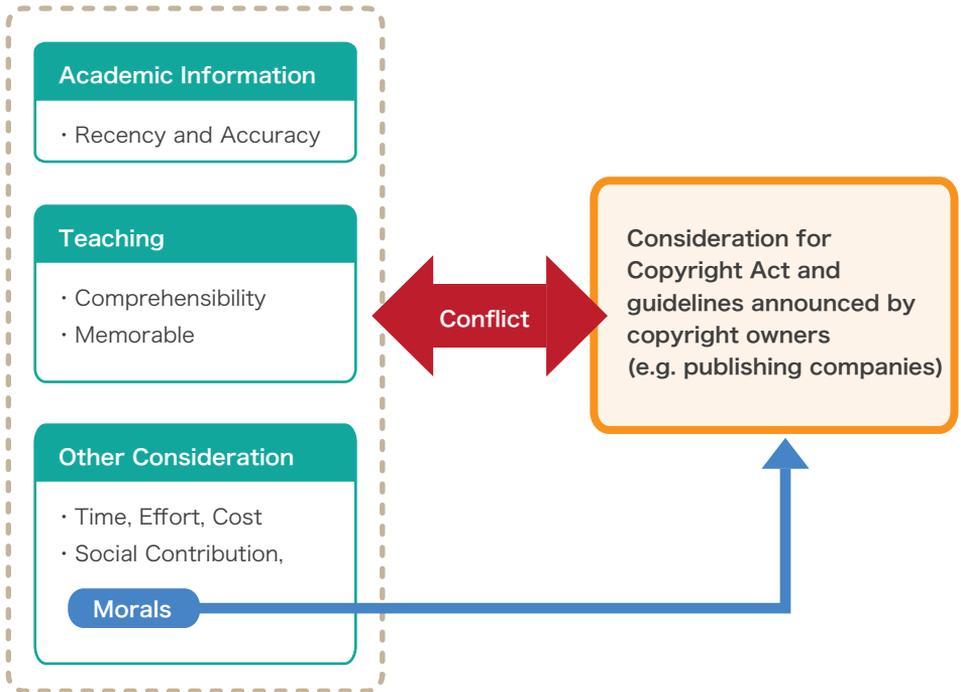
Issuing the first edition of this handbook was one of the efforts of Kyushu University library's "Digital/Online Educational Material Preparation Support Program" as an EEP (Enhanced Education Program) educational innovation grant project in 2009. The contents of that workshop, along with the questions and answers from the participants were summarized as Q&A (<http://catalog.lib.kyushu-u.ac.jp/recordID/19755>). Following EEP, the responsibility for seminars on the copyright of digital/online educational materials was handed over to ICER (Innovation Center for Educational Resources) established at Kyushu University Library in 2011. The handbook was used in the seminars held regularly at each campus as FD activities. Then, in line with the needs of the participants, the seminar contents were improved, the contents of the handbook renewed, and the second edition was issued. An FAQ was added based on the previous 3 years of seminars, and in order to make it easier for participants to understand, the contents were re-organized and more diagrams introduced. Because of increasing references from outside the University, "University Education" was added to the title, and the name of the issuing organization was changed to ICER. Also we have recently published the third edition after correcting the contents of the 2nd edition, and with the globalization of universities, and the necessity for lectures in English, ICER has produced this English version of the handbook.

Lastly, we would like to express our appreciation for the former professor at the Faculty of Medical Sciences, Department of Medical Education at Kyushu University, Motofumi Yoshida (currently professor at the International University of Health and Welfare) who took charge of seminars on the copyright of digital/online educational materials. Also, I would like to thank all participants in those seminars held by ICER for their cooperation in issuing this handbook.

April 2017

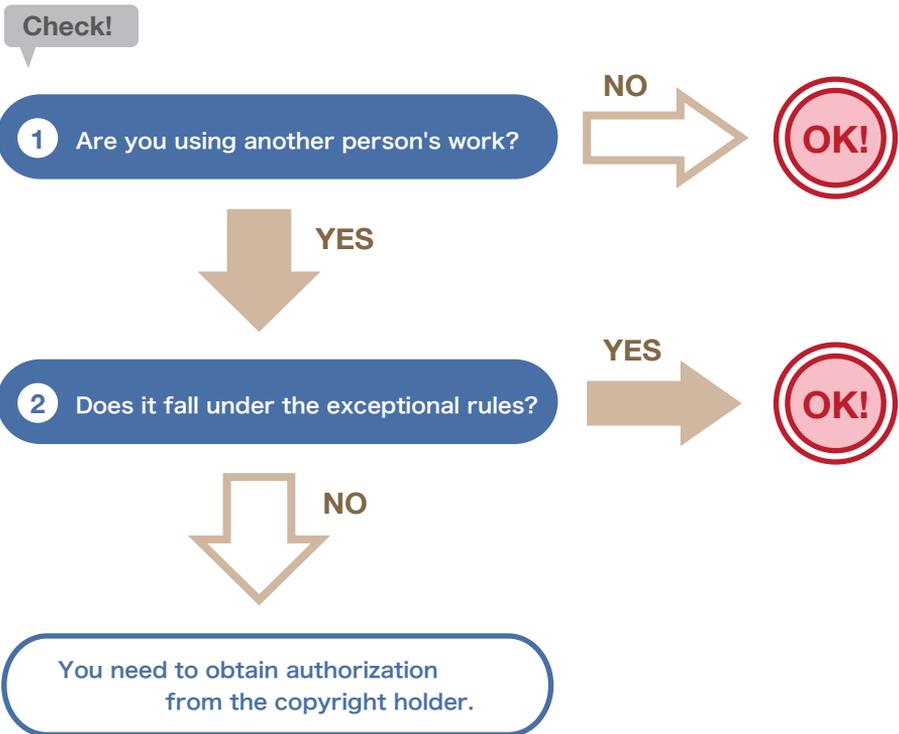
Yoshihiro Okada, Director
ICER (Innovation Center for Educational Resource),
Kyushu University

● Overcoming dilemmas when creating digital/online educational materials



Q.01 Can I use works of others as educational materials without authorization?

When you create a work, the Moral Rights of Authors and Copyright (Property Rights) is granted automatically, and it is protected under the Copyright Act. Therefore, when using another person's work as part of educational materials, in principle you must obtain authorization; however, there are Exceptional Rules (See Q4, Q5, Q8) which allow us to use copyrighted work without authorization. Also, if part of the Copyright (Property Rights) for papers which you wrote and published is transferred to an academic association or publishing company, unless it falls under these exceptional rules, you must obtain authorization from the transferee.



Q.02 What is "copyrighted work"?

"Copyrighted work" or "work" is defined as "a production in which thoughts or sentiments are creatively expressed and which falls within the literary, academic, artistic or musical domain" in Copyright Act. Simple data such as the height of Fukuoka Tower is 234 meters, that is not creative, that is commonplace, ideas that are not expressed by sentences, etc. are excluded from the copyrighted work.

Copyright Act

(Definitions)

Article 2 (1) In this Act, the meaning of the terms set forth in each of the following items is as prescribed in that item:

- (i) "work" means a production in which thoughts or sentiments are creatively expressed and which falls within the literary, academic, artistic or musical domain;
- (ii) "author" means a person who creates a work;

(Examples of works)

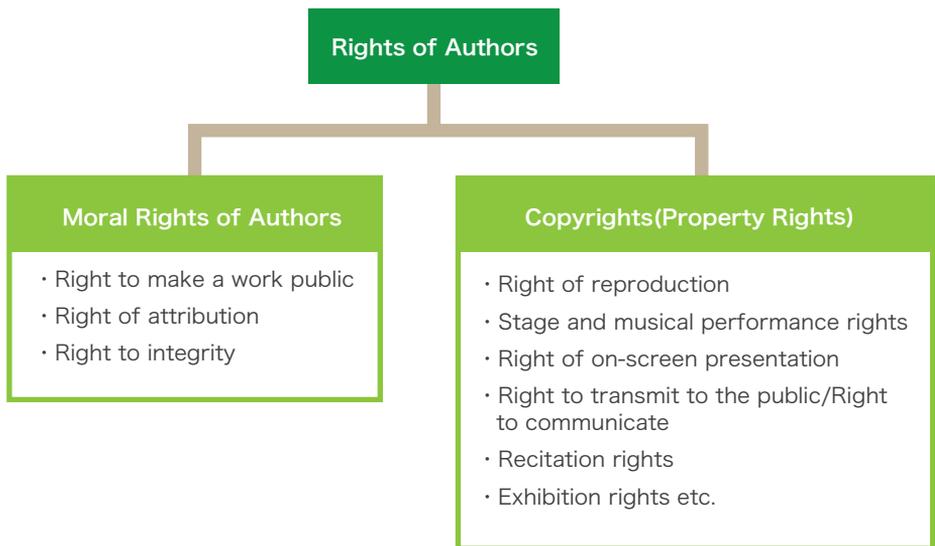
Article 10 (1) The following gives an illustrative example of what is meant, on the whole, by the term "works" as it is used in this Act:

- (i) novels, scenarios, articles, lectures, and other literary works;
- (ii) musical works;
- (iii) works of choreography and pantomime;
- (iv) paintings, woodblock prints, sculptures, and other works of fine art;
- (v) works of architecture;
- (vi) maps and other diagrammatic works of a academic nature, such as plans, charts, and models;
- (vii) cinematographic works;
- (viii) photographic works;
- (ix) works of computer programming.

Source: Japanese Law Translation Database System <<http://www.japaneselawtranslation.go.jp>>

Q.03 What should I do when using foreign copyrighted works as educational materials in Japan or using Japanese copyrighted works as educational materials abroad?

A country's Copyright Act's effective power is limited to that country's territory (called the territorial principle). So, the Copyright laws of the country where the copyrighted work is used apply.



Q.04 Do I need to obtain prior authorization to use copyrighted work even in academic institutions such as universities?

In the case where you are using another person's copyrighted work without prior permission, in a face to face class with students at University, in general one of the exception rules applies and allows use, Article 35 of the Copyright Act (Reproduction, etc. in schools and other educational institutions). However, the same article cannot be applied to on-demand delivery where students can freely download online digital educational materials. In that case, please refer to Q.08.

Conditions of reproduction in an educational institution are as follows:

1. Must be used in an educational institution founded for non-commercial purposes.
2. Must be reproduced by a person in charge of teaching or a person taking classes.
(Teacher or student can also request another person to make copies on their behalf)
3. The copies must be used in the course of classes.
4. The number of copies produced must not exceed the amount needed for class.
5. The work being reproduced must already have been made public.
6. You must take into account the type and use of the work, and not unfairly impinge on the profits of the copyright owner. (Note. This is not applicable to items such as software and student drill exercise books etc. which have been created for the purpose of sales to individual learners.)
7. Where it is common practice, you need to explicitly indicate the source.

▲ Agency for Cultural Affairs "Copyright Textbook -for beginners- 2016"
p.67, Article 35: Reproduction in educational institutions (※Japanese text only)

Copyright Act

(Reproduction, etc. in schools and other educational institutions)

Article 35 (1) A person in charge of teaching or a person taking classes at a school or other educational institution (except one founded for commercial purposes) may reproduce a work that has been made public if and to the extent that it is found to be necessary for the purpose of use in the course of classes; provided, however that this does not apply if the reproduction would unreasonably prejudice the interests of the copyright owner in light of the nature and purpose of the work, as well as the number of copies and the circumstances of its reproduction.

(2) If, in the course of classes at an educational institution referred to in the preceding paragraph, the original or copies of a work that has been made public are offered or presented to persons who directly attend a class and thus exploited, or if such a work is exploited through a stage performance, musical performance, on-screen presentation, or recitation for such persons pursuant to the provisions of Article 38, paragraph (1), it is permissible to transmit these to the public (and also to make them available for transmission, if they are to be transmitted to the public via automatic public transmission) for any persons who are taking that class simultaneously at a place other than that where the class is being held; provided, however, that this does not apply if transmitting these to the public would unreasonably prejudice the interests of the copyright owner in light of the nature and purpose of the work, as well as the circumstances of the transmission.

Source: Japanese Law Translation Database System <<http://www.japaneselawtranslation.go.jp>>

Q.05 Can I use a DVD I purchased or a video published on the web for classes?

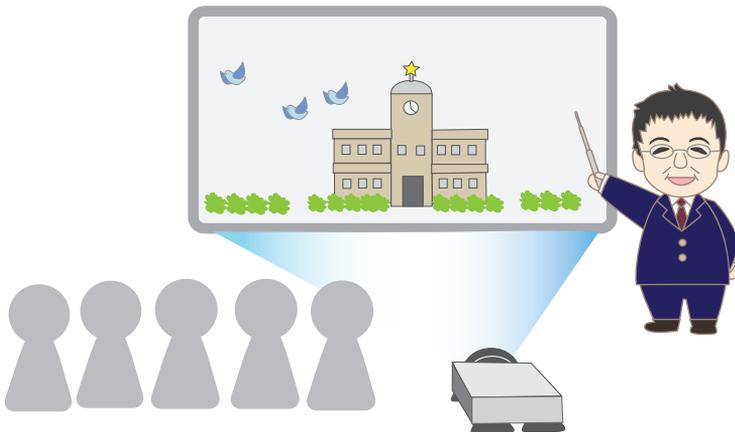
Published works can be used in university classes or academic lectures.

Copyright Act

(Stage performances, etc. for non-commercial purposes)

Article 38 (1) It is permissible to publicly give a stage performance or a musical performance, make an on-screen presentation, or give a recitation of a work that has been made public, if this is done for non-commercial purposes and without charging a fee to the listening or viewing audience (a fee meaning anything of value received in exchange for offering or presenting the work to the public, regardless of what it is called; the same applies hereinafter in this Article); provided, however, that this does not apply if a performer or reciter is paid any remuneration for the stage performance, musical performance, on-screen presentation, or recitation.

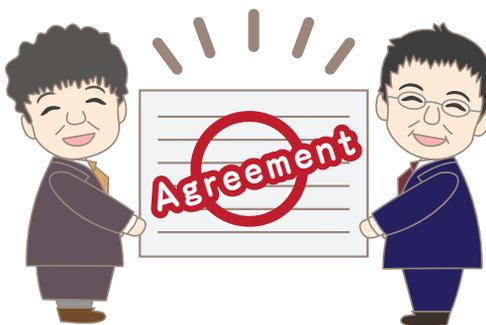
Source: Japanese Law Translation Database System <<http://www.japaneselawtranslation.go.jp>>



Q.06 What should I do to obtain authorization from copyright owners?

There is no set method to obtain authorization. If both parties agree on the use, then even a verbal agreement is sufficient and binding. However, it is advisable to exchange written documents to preserve evidence.

An example "Copyright Permission Request Form" is available on the ICER website.



Some works copyrights have been entrusted to Copyright Management Service companies registered with the Agency for Cultural Affairs. To get permission to use these works, authorization is obtained through set procedures. Please refer to the Agency for Cultural Affairs website regarding the registration status of Copyright Management Service companies.



Q.07 How can I obtain authorization when using charts etc. published in academic journals as educational materials?

For some English academic journals, you can use an online system for license and payment of copyright fee. However, these are based on the premise that the publisher owns the copyright, so please make sure to establish who actually owns the copyright. In addition, if Article 30 of the Copyright Act (Property Rights) applies then you do not need to obtain a license or to pay the copyright fee.

- 1 In the literature search tool of Kyushu University Library, search by keywords for the article you want to use, the name of the author, etc.
- 2 Click the desired paper from the search results.
- 3 Click on a link such as "Get Permissions" or "Reprints and Permissions" to move to the website (Rightslink etc.) operated by Copyright Clearance Center.
- 4 If you select the required item from the pull-down menu, the charge will be displayed. Once you create an account, you can proceed with payment.

▼Example of online payment

Quick Price Estimate

1) I would like to ▶ use in classroom materials/academic course

2) Requestor Type ▶ University

3) Portion ▶ Figures

4) Format ▶ Electronic

5) Number of figures ▶ 1

6) Are you the author of this article? ▶ No

7) Select your currency ▶ JPY-¥

Quick Price

6,598JPY

journal

Q.08 How can I distribute educational materials including works of others on a website?

Because the Copyright Act, Article 35 (Reproduction, etc. in schools and other educational institutions) cannot be applied, it is generally interpreted that Article 32 (Quotation) should be applied. The requirements are as follows.

Conditions when quotation can be applied:

- 1 The work has already been published.
- 2 There is a need to quote a work of others.
- 3 The quoted part is clearly distinguished from the rest of the text.
- 4 The quotation length is the minimum necessary.
- 5 The quoted part is subordinate to the work as a whole.
- 6 In principle the quoted part retains its original form.
- 7 Use does not damage the author's honor and you do not use it contrary to the author's intention.
- 8 The source is clearly indicated.

Copyright Act

(Quotation)

Article 32 (1) It is permissible to quote from and thereby exploit a work that has been made public. In such a case, the work must be quoted consistent with fair practices and within a scope that is justified by the aim of the news report, critique, study, or other place in which the work is quoted.

(2) It is permissible to reprint public relations materials, research or statistical materials, reports, and other works of a similar character which have been prepared by a national or local government agency, incorporated administrative agency, or local incorporated administrative agency with the goal of making them widely known to the general public, and which have been made public under the authorship of such agency, as explanatory materials in a newspaper, magazine, or other printed publication; provided, however, that this does not apply if it is expressly indicated that this is prohibited.

Source: Japanese Law Translation Database System <<http://www.japaneselawtranslation.go.jp>>

Q.09 Can I modify and use the copyrighted works of others (e.g. figures and tables)?

We must be careful not to infringe on the authors "Right to integrity" (one of Moral Rights of Authors), which is the right not to have their work modified contrary to their original intention. Furthermore, we must remember that modification of quotations is not permitted (see copyright Act 43 of Q 11).



Copyright Act

(Right to integrity)

Article 20 (1) The author of a work has the right to preserve the integrity of that work and its title, and is not to be made to suffer any alteration, cut, or other modification thereto that is contrary to the author's intention.

(2) The provisions of the preceding paragraph do not apply to the following modifications:

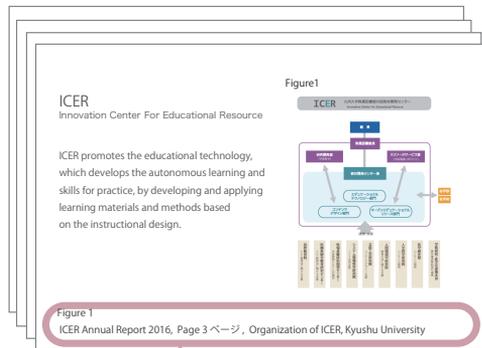
(i) the alteration of a written character or word, or any other modification that is found to be unavoidable from the perspective of school education purposes, when a work is exploited pursuant to the provisions of Article 33, paragraph (1) (including when these apply mutatis mutandis pursuant to paragraph (4) of the same Article), Article 33-2, paragraph (1), or Article 34, paragraph (1);

(ii) the modification of an architectural work by means of extension, rebuilding, repair, or remodeling;

(iii) a modification that is necessary for a work of computer programming that otherwise cannot be used on a particular computer to be compatible with that computer, or for a work of computer programming to be used more effectively on a computer;

(iv) a modification other than ones set forth in the preceding three items, which is found to be unavoidable in light of the nature of the work and the purpose and circumstances of its exploitation.

Source: Japanese Law Translation Database System <<http://www.japaneselawtranslation.go.jp>>



↑ The source is indicated here.

Copyright Act

(Indication of source)

Article 48 (1) In a case set forth in one of the following items, the source of the work must be clearly indicated in the manner and to the extent considered reasonable, commensurate with the circumstances of its reproduction or exploitation:

(i) a work is reproduced pursuant to the provisions of Article 32; Article 33, paragraph (1) (including when application mutatis mutandis is provided for pursuant to the provisions of paragraph (4) of the same Article); Article 33-2, paragraph (1); Article 37, paragraph (1); or Article 42 or 47;

(ii) a work is exploited pursuant to the provisions of Article 34, paragraph (1); Article 37, paragraph (3); Article 37-2; Article 39, paragraph (1); Article 40, paragraph (1) or (2); or Article 47-2;

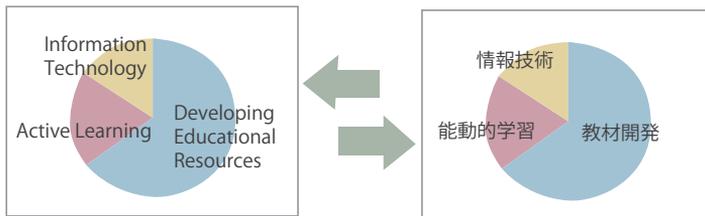
(iii) a work is exploited other than by its reproduction pursuant to the provisions of Article 32 or is exploited pursuant to the provisions of Article 35; Article 36, paragraph (1); Article 38, paragraph (1); Article 41; or Article 46, and it is common practice to indicate the source.

(2) In a source indication as referred to in the preceding paragraph, the name of the author that appears on the work must be cited, except if the author's name is clear from the source indication or if the work is anonymous.

(3) If a work is exploited by translation, musical arrangement, reformulation, or adaption pursuant to the provisions of Article 43, the source must be indicated pursuant to the provisions of the preceding two paragraphs.

Q.11 Can I translate and use the copyrighted works as educational materials?

If it is within the quotation, it can be translated without application for authorization (Copyright Act Article 43 (i)(ii)). So when quotation is used translation is allowed without getting permission.



Copyright Act

(Exploitation by means of translation, adaptation, etc.)

Article 43 If it is permissible to exploit a work pursuant to the provisions set forth in one of the following items, it is also permissible to exploit that work in accordance with the provisions set forth in that item by the means set forth in that item:

- (i) Article 30, paragraph (1); Article 33, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (4) of the same Article); Article 34, paragraph (1); and Article 35: translation, musical arrangement, reformulation, and adaptation;
- (ii) Article 31, paragraph (1), item (i); Article 32; Article 36; Article 37, paragraph (1) or (2); Article 39, paragraph (1); Article 40, paragraph (2); Article 41; or Article 42: translation;
- (iii) Article 33-2, paragraph (1): reformulation and adaptation;
- (iv) Article 37, paragraph (3): translation, reformulation, and adaptation;
- (v) Article 37-2: translation and adaptation.

Source: Japanese Law Translation Database System <<http://www.japaneselawtranslation.go.jp>>

Q.12 What should I do with regards copyright processing to publish a recorded lecture?

Firstly, prior to recording the lecture, you should check your slides content. If you used any copyrighted work then you must do one of the following: remove and create new content yourself, quote the author, or obtain authorization from the copyright holder. If you have already recorded the lecture, and it features copyrighted work, then you should edit the video to remove the copyrighted work.



An example "Videotaping Agreement Form" can be found on the ICER website.

Reference

Do you know there are public copyright licenses that enable authors to show they allow free distribution of their copyrighted work?

▼ Creative Commons license



Attribution, BY



Noncommercial, NC



Share Alike, SA



No Derivative Works, ND

For details, please refer to the website of Creative Commons Japan.

▼ Free Use Marks (provided by the Agency for Cultural Affairs in Japan)



コピーOK
Copy OK



障害者OK
Handicapped OK



学校教育OK
Education OK

For details, please refer to the website of the Agency for Cultural Affairs.

※Japanese text only

Reference

The guidelines issued by each organization and publisher are introduced in "Links -Copyright Information-" on the website of ICER "About copyright".

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

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Innovation Center for Educational Resource

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