

Points of attention in Copyright Act for education and research : Mainly about the revision of the Copyright Act in 2018

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Points of attention in Copyright Act for education and research — Mainly about the revision of the Copyright Act in 2018 —

Information session of the partial revision of
the Copyright Act
December 21st, Fri. 2018

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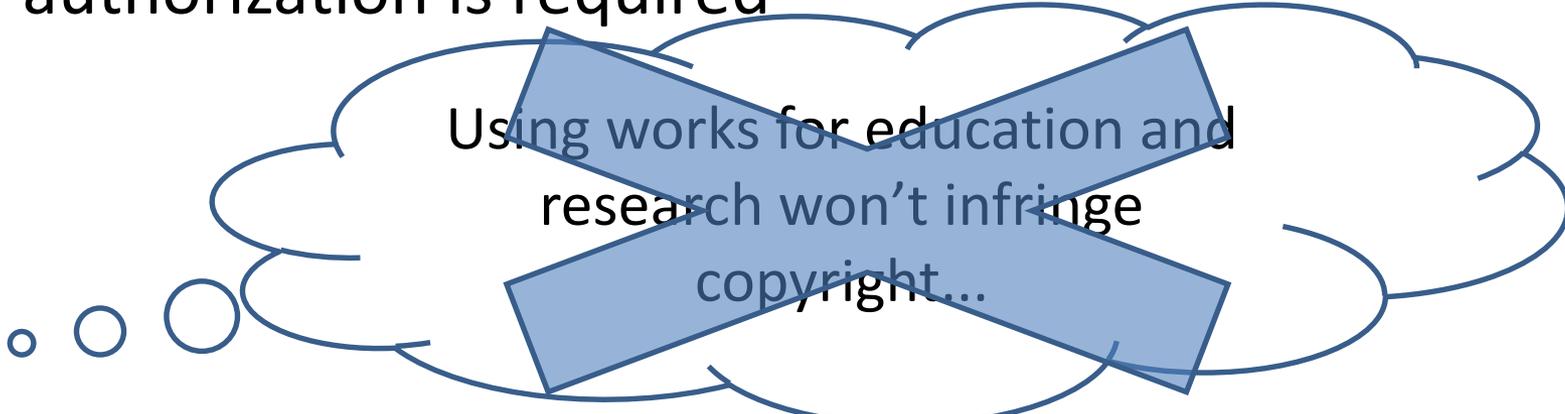
BASIC STRUCTURE OF COPYRIGHT ACT

Basic structure of Copyright Act

- Scope of Copyright Act
 - Reproduction, adaptation, transmission to the public (upload to the internet), public on-screen presentation, etc.
 - → **Comprehensive**
- Limitation of Copyright Act
 - Quotation, personal reproduction, non-commercial on-screen presentation, etc.
 - → **Individual and concrete**
 - → Revised on 2018 : The flexible limitations on copyright

Exploitation of works in education and research

- There are no limitations on rights **comprehensively** allow using works for the purpose of education and research
 - → When using a work within the scope of the copyright...
 - Unless matches the **limitations** on copyright
 - authorization is required



Using works for education and research won't infringe copyright...

Copyright Act revised on 2018

- Expansion of the limitations on copyright
 - Prepare flexible limitations on copyright
 - Correspondence to computerizing education, etc.
 - → Leaning toward the extension of the permissible range to use a work without the authorization of the copyright owner.

However, about correspondence to computerizing education,

- Expansion of the limitations on rights + **deposit**
- Effective date would be within 3 years from the promulgation date (May, 2018)

**CORRESPONDENCE TO COMPUTERIZING
EDUCATION(ARTICLE 35)**

Article 35 (Reproduction, etc. in schools and other educational institutions)

- Pre-revision

About the use of works in the teaching process,

- Photocopy (**Reproduction**)

- Transmission through network (Transmission to the public) for remote collaborative class

were only to be allowed

- 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.

Article 35 (Reproduction, etc. in schools and other educational institutions)

- Post-revision
 - **Public transmissions** etc. are applied widely
 - Right to demand a **compensation** is granted to the right holders
 - No-charge action on current law (reproduction etc.) maintains for free

For using manaba

- Inserting works on manaba = falls under public transmissions etc.
- Post revision : Insertion available to the extent that this is found to be necessary for the purpose work in the process in the course of classes (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)
 - However compensation payment is needed

About compensation system

- Designated Manager System by single organization
 - Only the administrator designated by the Agency for Cultural Affairs can exercise the right to demand the compensation
- Amount of the compensation: Multiply the annual amount of the compensation by number of students
- Payment obligor= the person who establishes the educational institution
- Distribution of the compensation ← Usage condition of works in educational scenes : Sample survey (Hear the opinions from affiliated educational organizations to prevent excessive load)

Notes on use of manaba

- Examples considered as impermissible at present and also at post-revision
 - Upload the whole data of a book
- Examples considered as impermissible at least at present
 - Upload theses, newspaper articles, or video files made by others (Posting links is considered that there are no problems)
 - Upload PowerPoints or outlines which works by others inserted without corresponding aspect of “quotation”

Quotation

- Reproduction or transmission to the public etc. may allowed when corresponding the “Quotation” (lawful quotation) of Copyright Act.

Article 32(Quotation) (1) It shall be 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.

- Cf. Indication of source (Article 48)

Criteria for quotation

– Two-factor theory → Overall consideration theory

- Explicitly distinctiveness
 - Appurtenant nature
- } Two-factor (← Supreme court decision of the parody case)
- Is it within the legitimate range for quotation purposes?
 - Match with fair practices
 - Indication of source
 - The method and mode, the type and nature of the copyrighted work used, the presence or absence and degree of influence on the copyright holder

**SIGNIFICANCE OF FLEXIBLE
LIMITATIONS ON RIGHTS AND
PROBLEM OF COPYRIGHT ACT**

Bias of the policy formation process in the Copyright Act

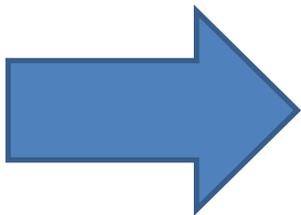
Profit of industry and business



Profit of user and public

Profit easy to organize
→ Easy to be reflect on legislation by lobbying

Diffused profit
→ Difficult to reflect on legislation



Rights holders' rights are more likely to expand beyond socially desirable levels

The gap between the text and general understanding

- Text of Copyright Act

(Right of reproduction)

Article 21 The author of a work has the exclusive right to reproduce the work.

(Stage performance rights and musical performance rights)

Article 22 The author of a work has the exclusive right to give a stage performance or musical performance of the work with the purpose of having it seen or heard directly by the public (hereinafter referred to as "publicly").

(Right of on-screen presentation)

Article 22-2 The author of a work has the exclusive right to publicly present a work via an on-screen presentation.

- Commonly considered Copyright Act



Such an act won't infringe copyright...

Fair Use

- General clause of copyright restrictions
 - Fair Use : Copyright Act of 1976, 17 United States Code § 107. If it is a fair use, it will not be a copyright infringement

U.S. fair use factors

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

- Merit ▪ ▪ ▪ Flexible response will be possible
- Demerit ▪ ▪ ▪ Lack of predictability

The revision of the copyright act in 2012

- Flexible response to changes in technical environment
- Remedy from formal right infringement
- Japanese version of the “Fair Use”?
- The revision of the copyright act in 2012
 - Exploitation of incidental objective works (Article 30 bis.): so-called “reflection”
 - Exploitation in the course of an examination (Article 30 ter.)
 - Exploitation for the use in a test for the development or the practical use of technology (Article 30 quater.)
 - Exploitation for information processing required for the preparation of offering information by using information transmission technology (Article 47 novies.)

Failure to introduce Japanese version of the “Fair Use”

The revision of the copyright act in 2018

- **Flexible limitations on copyright**

- Flexible regulation

- Non-enjoyment use (Article 30 quater.)
- Usage accompanying use of copyrighted work in electronic computer (Article 47 quater.)

- Fairly flexible regulation

- Minor utilization accompanying provision of results of information processing by electronic computers creating new knowledge / information (Article 47quinquies.)

Flexible limitations on copyright

layer 1

Action type that can be evaluated as **not normally harming the profit** of the right holder.

layer 2

Action type with **minor disadvantages** to right holders.

layer 3

Action type although copyrighted material **may conflict with market**, promotion of use of copyrighted material is expected to realize **public benefit policy**.

社会
↑
·
公益性等

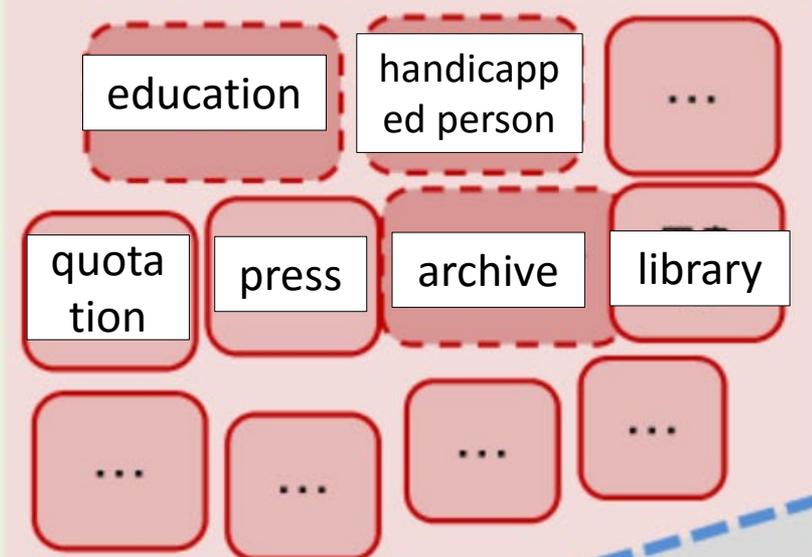
Social significance,
Public interest

In the case that you do not use it for the purpose of enjoying the work (appreciation etc).

- Examples
- Copy served only for internal processing of computers.
 - Survey analysis of software for security

In the case that copyrighted materials are used in a minor form accompanying the provision of services that create new information and knowledge.

- Examples
- Location search service
 - Information analysis service



Develop "Flexible rights restriction regulation"

In the act of not enjoying the expression of the copyrighted work or in the service which creates new knowledge and information by using the information processing technology and creates the added value, it allows the act of using the copyrighted work incidentally in a slight form.

→It will develop an environment that makes it easy to create innovations utilizing AI, IoT, and big data, and will accelerate the "Fourth Industrial Revolution".

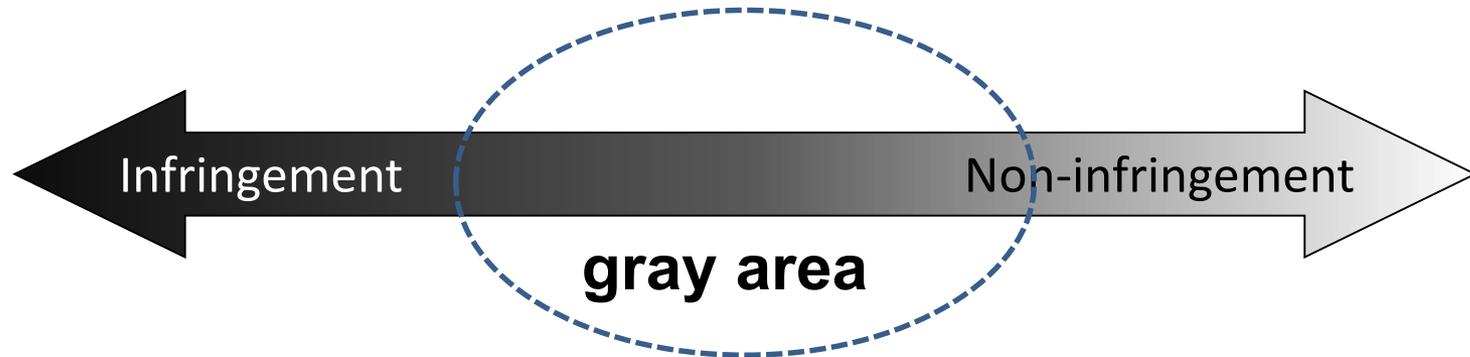
The area unfairly harmful to the profit of the right holder

Disadvantage to the right holder

The bound of flexible limitations on rights

- Intrinsic use that may conflict with the market of copyrighted work → Deal with it by individual regulations
- Example: Copy for research
 - Conventional theory: In-house copying or copying on duty does not fall under "Reproduction for private use (Article 30)"
 - On the other hand, there is also a theory that copying a book for individual research belongs to private reproduction.

“Interpretation” of the text



- Safe plan \Rightarrow don't use / get copyright clearance \Rightarrow Chilling effect
- Given the bias problem . . .
 - Beyond acts actually bringing out a dispute / In spite of the economic disadvantage given to copyright holders, to obligate the wording of the text of the copyright act may in fact hinder the bias correction.

The problem of copyright act in present days.

- Spread of internet and digital technology
 - → Secure effectiveness of the copyright
 - → Secure the freedom that a citizen uses copyrighted works personally

Article 1 (Purpose) The purpose of this Act is to provide for authors' rights and neighboring rights with respect to works and performances, phonograms, broadcasts and cablecasts, and to ensure **protection for the rights of authors, etc.** while according **attention to the fair exploitation** of these cultural products, and thereby to **contribute to the development of culture.**

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