



The Copyright Act

What those in education and research need to know

一般社団法人

学術著作権協会

Japan Academic Association For Copyright Clearance

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1. The structure of Copyright Act (Basic knowledge)



Attributes of Copyright Act

	Copyright Act		Patent Act
Purpose	Development of culture	↔	Development of industry
Subject matter	Expression	↔	Technical thought (idea)
Requirements	Creativity (originality)	↔	Novelty, unobviousness
Procedures	No formalities	↔	Registration with examination
Character of right	Relative exclusivity	↔	Absolute exclusivity
Term	70 years*	↔	20 years from application

*Works for hire: 70 years from publication

Movies: 70 years from publication

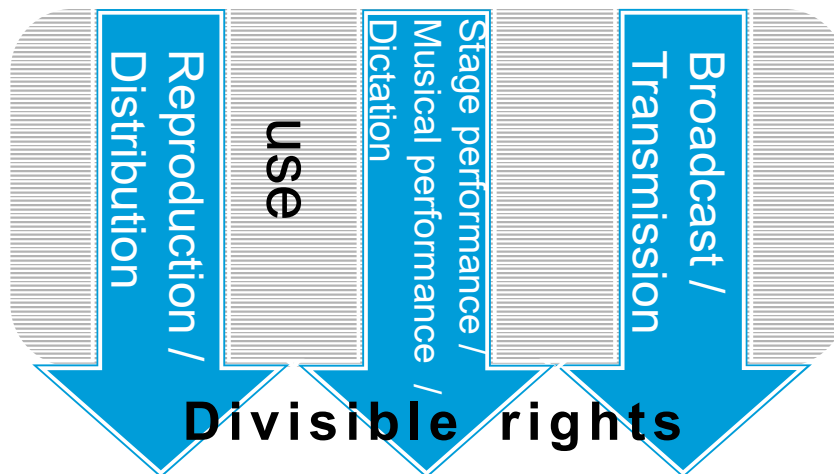
Consecutive publications: 70 years after from last publication



Difference between Copyright and Patent

Copyright (Divisible rights)

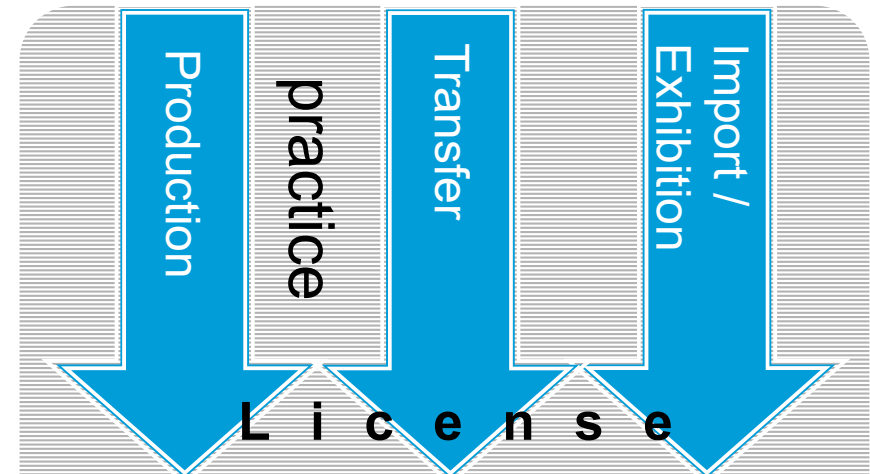
Creative works



Use the works

Patent (License)

Create invention



Use the invention

A copyright has 12 divisible rights, each of which can be exercised independently. A patent is the right to practice the patent itself as a right of license. There is a big difference in that points.



Moral Rights of Authors

Moral Rights of Authors

Make public



Whether, how and when to publish

Attribution



Display or omit author's name
Real name or pseudonym

Integrity



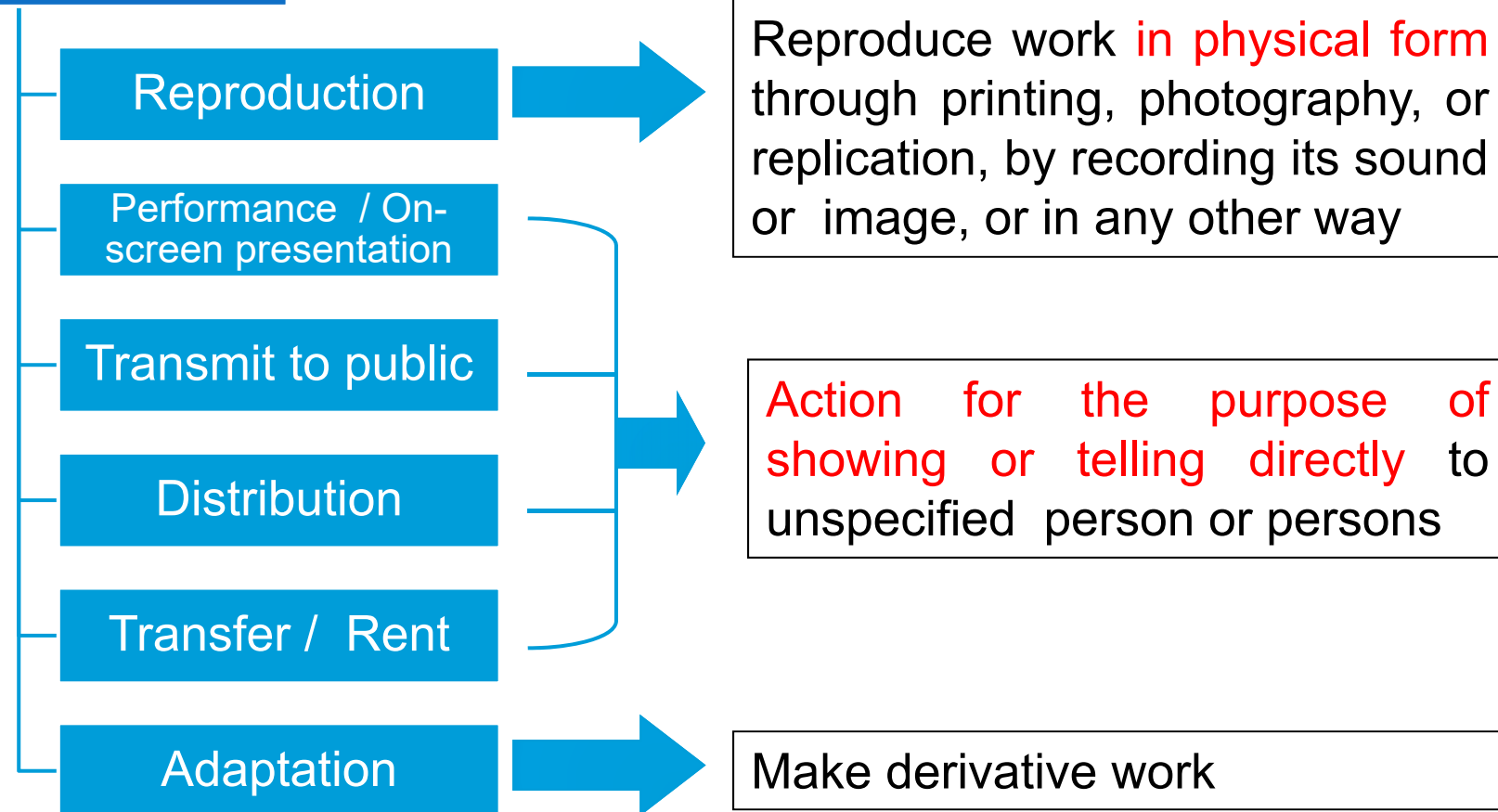
Content or title cannot be altered in
any way contrary to author's
intention.

**Moral Rights cannot be transferred to
another person.**



Copyright (Divisible rights)

Copyright

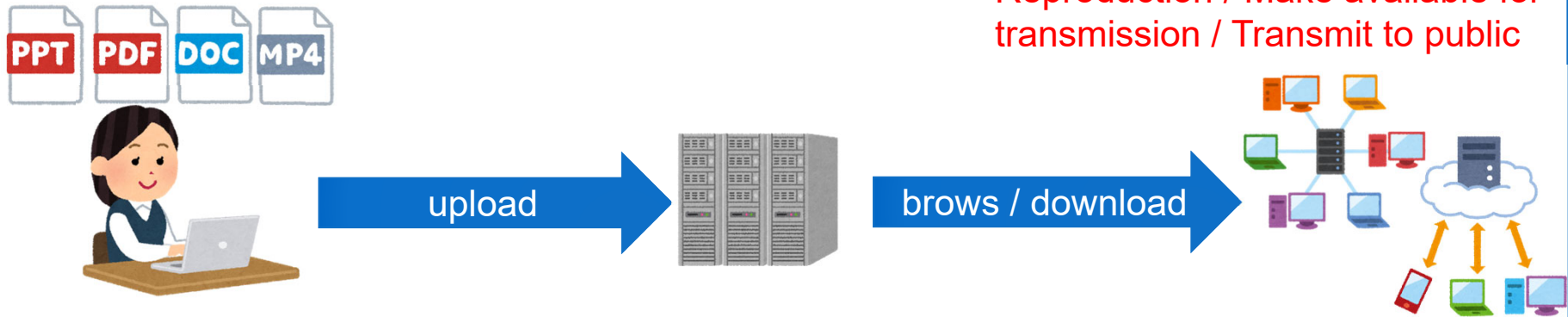


Divisible rights are rights to transfer or grant permission. Roughly divided into three categories, multiple rights can be used simultaneously across categories.



Utilization of works and related rights

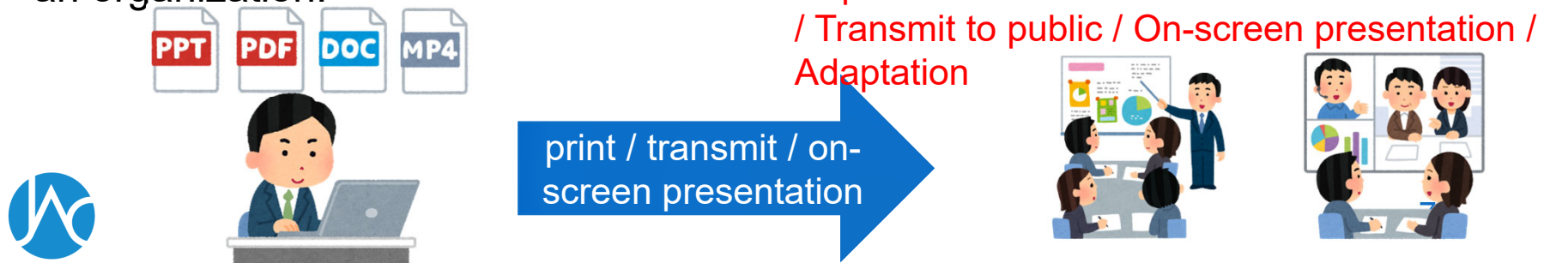
Share on and download from a server etc.



Distribute and use printed and scanned works and materials

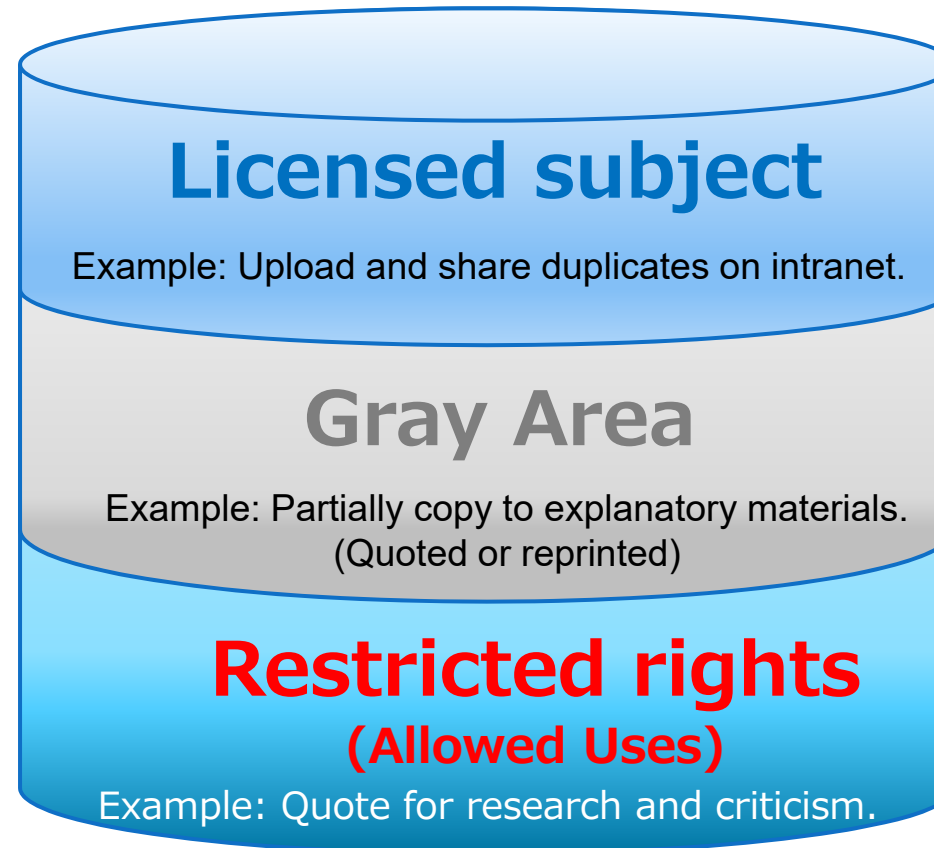


Present the materials created by downloading and reprinting inside and outside an organization.



The structure of Copyright Act

Three layers of Copyright



When dealing with copyrights, there are always gray areas. However, Japan's list of restrictions is limited, and they are stated explicitly in contrast to the US, for example.



Representative restrictions

Title	Statute	Examples
Reproduction for private use	30(1)	Visual recording, reproduce, copy at convenience store
Exploiting work in the course of consideration	30(3)	Exploiting work in the course of consideration
Reproduction, etc. in libraries, etc.	31(1)	Copy service, copy for preserving library materials
Quotation	32(1)	Reproduce sentence or picture for critique, introduction etc.
Reproduce in the course of classes	35(1)	Reproduce for teaching materials at a school
Reproduce in Braille	37(1,2)	Create or send a Braille book and Braille date
Reproduction, etc. for persons with visual impairments, etc.	37(3)	Create or webcast recorded book and large print book
Stage performances, etc. for non-commercial	38(1)	Non-commercial musical performance, sing, speech, stage performances
Renting for non-commercial	38(4)	Renting for non-commercial
Patent, Pharmaceutical Affairs	42(2)	Reproduce for Patent, Pharmaceutical Affairs
Exploitation by means of translation, adaptation, etc.	43	Add translation and adaptation have been added to list of restricted rights
Transfer of reproductions	47(10)	Transfer within the purpose of regulation of rights restrictions

Restrictions that frequently apply to education and study



2. Revisions of Copyright Act related to education



Purpose and outline of revision

【Purpose】

Meet needs arising from the advancement of **digital network technology**, review actions that need licensing by copyright holders, and **facilitate use of works** related to the utilization of archives in information related industry(1), **education**(2), persons with disabilities(3), and museum etc.(4).

【Outline】

1. Flexible restrictions corresponding to digital and network progress
→ Related articles: 30(4), 47(4), 47(5) etc.
2. **Restrictions corresponding to computerization of education**
→ Related articles: 35 and others, School Education Act (digital textbooks)
3. Restrictions to enhance access for persons with disabilities
→ Related article: 37
4. Changes in restrictions related to promoting the use of archives
→ Related articles: 31, 47, 67 etc.

【Promulgation date】 1. Jan. 2019

Promulgation date of revision 2 above shall be specified by Cabinet Order and not later than 3 years from 25 May 2018.

Article 35, revised 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 or transmit it to the public (and also to make them available for transmission, if they are to be transmitted to the public via automatic public transmission) 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 the reproduction, the transmission and the communication.

(2) A person who establish an educational institution that exploits a work pursuant to the provisions of the preceding paragraph must inform the author of this and pay the copyright owner a reasonable amount of compensation.

(3) The provisions of the preceding paragraph do not apply if in the course of classes at an educational institution referred to in paragraph (1), 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), when it will transmit these to the public for any persons who are taking that class simultaneously at a place other than that where the class is being held.

Contents of revision

Develop rules and regulations suitable to high-tech education



Distribute digitalized works and teaching materials to student's tablets.

【Problem】

Under current law, educators who wish to provide e-learning, open courseware and distributed digital teaching materials must obtain permission from right holders. Because administering rights can be cumbersome, there were calls for a review of the copyright system.

【Revision】

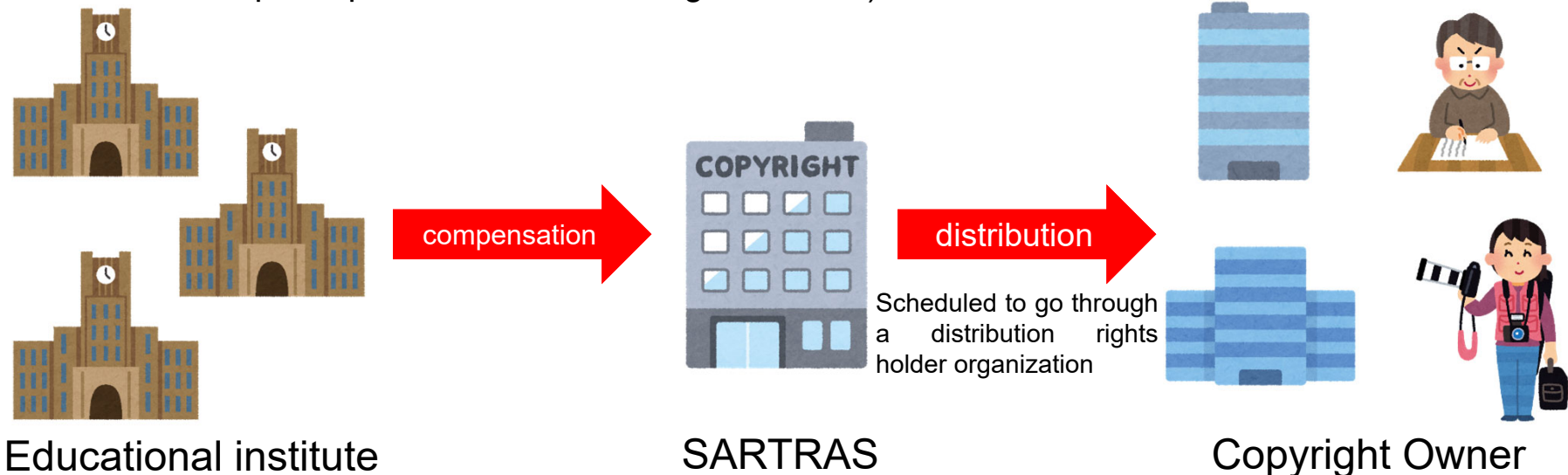
For teaching at educational institutions, the use of works by public transmission shall be widely subject to restricted rights. However, while continuing to support actions under current law relating to unauthorized and free use, royalties related to new uses under the revised law will be paid through a clearing center.



Contents of revision

Establishment of royalty clearing center

A payment window for compensation, Society for the Administration of Remuneration for Public Transmission for School Lessons (SARTRAS), was established on January 21, 2019, and was designated by the Agency for Cultural Affairs on February 15, 2019. The system itself is expected to start in fiscal 2020 or 2021. (In other words, the use of copyrighted material corresponding to the revision requires permission from the right holders.)



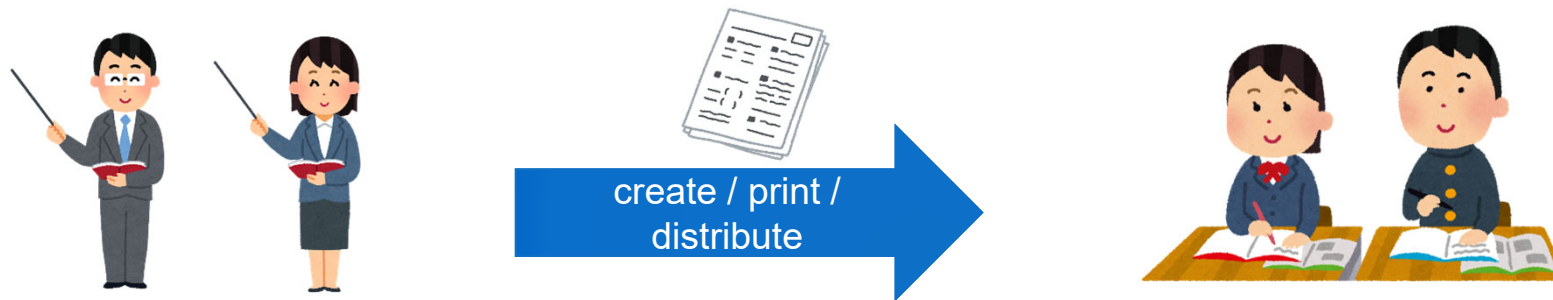
The amount of compensation and detailed usage (what and how far it will be possible) will be **agreed upon between the “user group” and the “right holder group”** corresponding to this case. At the moment, an exchange of views is being made on the development of guidelines at the "Stakeholders' Forum on Educational Use of Works."



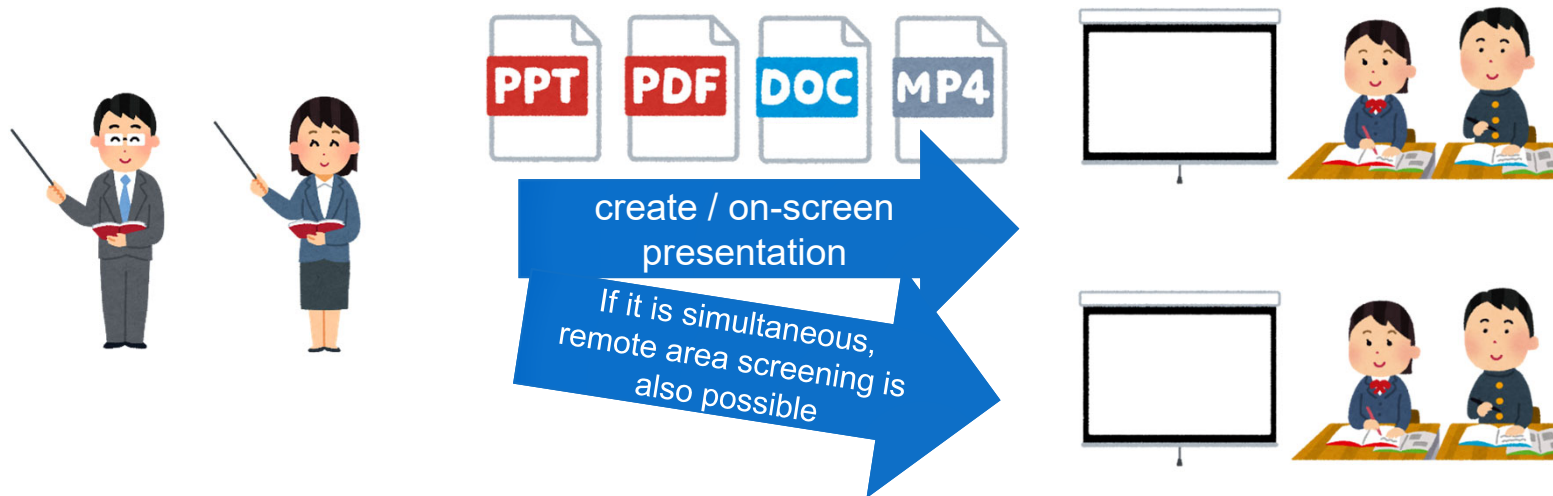
Utilization without license or charge under conventional act

Reproduction, etc. in schools and other educational institutions (Article 35(1), (3))

1. Copy, print out and distribute to teaching materials used in face-to-face classes.



2. Digitize teaching materials created by duplicating copyrighted works and displaying them.

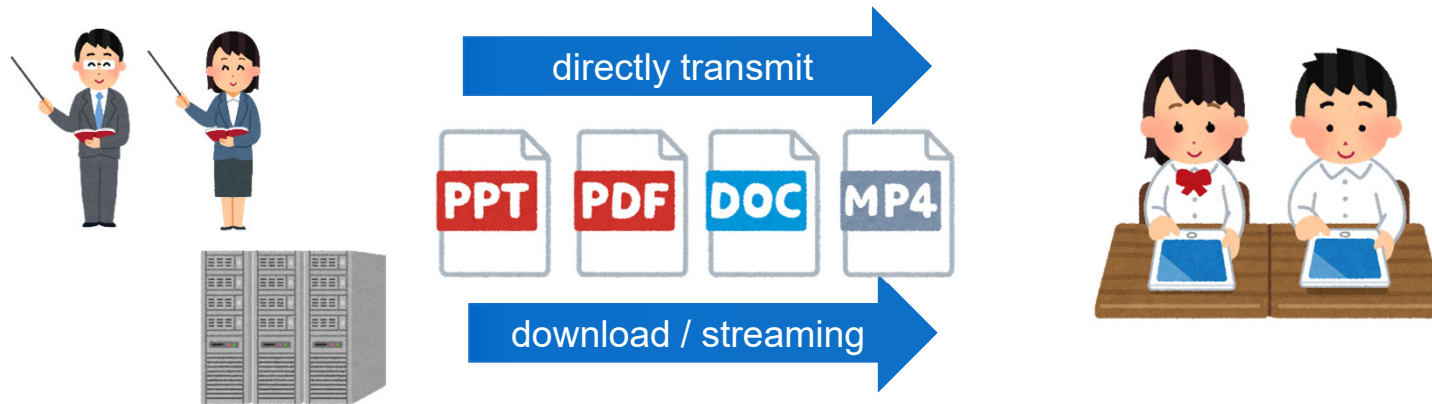


The two methods described above are available under the conventional rights restrictions.

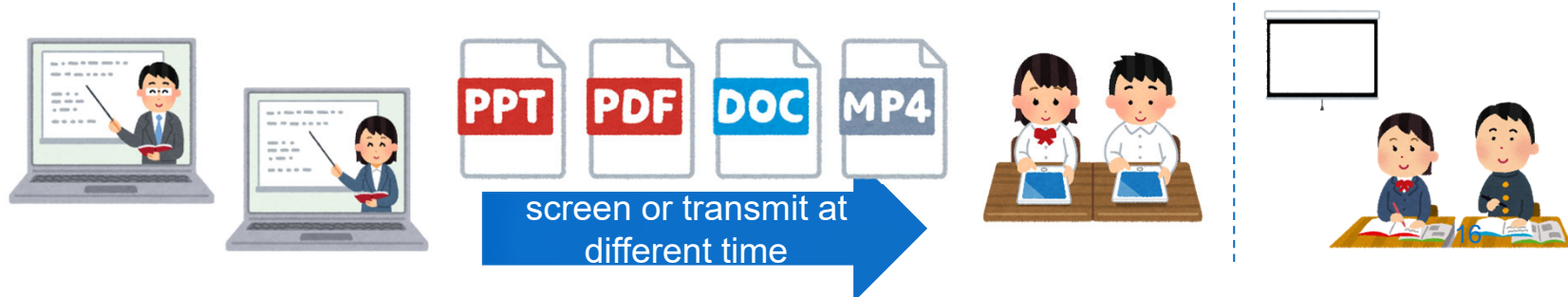
Utilization without license or charge under revised act

Reproduction, etc. in schools and other educational institutions (Article 35(1), (3))

3. Send teaching materials created by duplicating copyrighted materials to students' tablets. (Including sending for students' preparation and review)



4. On-screen presentation and transmit on e-learning or on-demand class

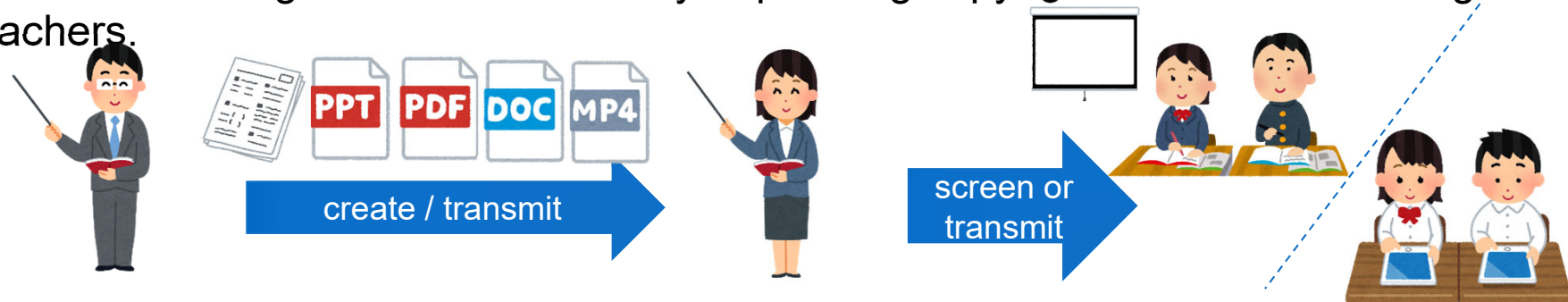


The two methods described above are available with charge and without permission after the effectuation of revised Copyright Act.

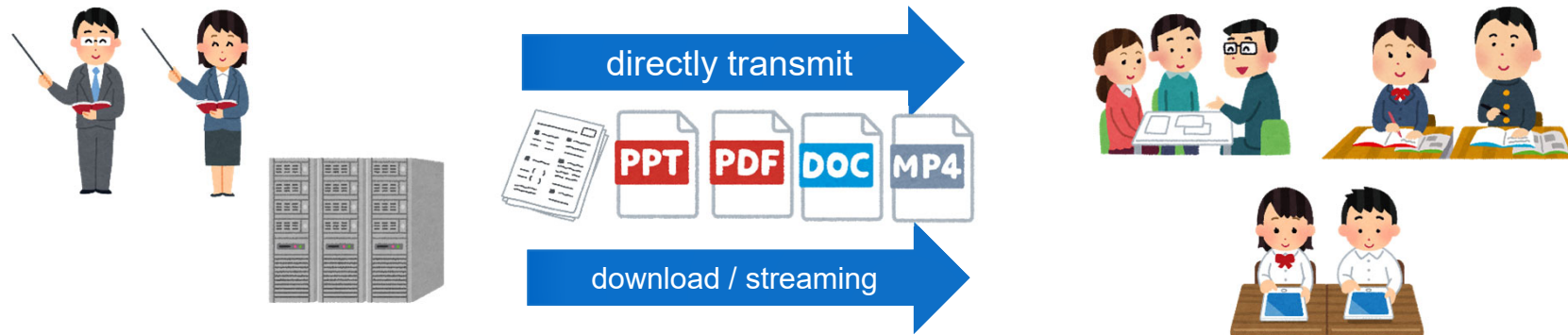


Utilization with permission and charge under conventional and revised act

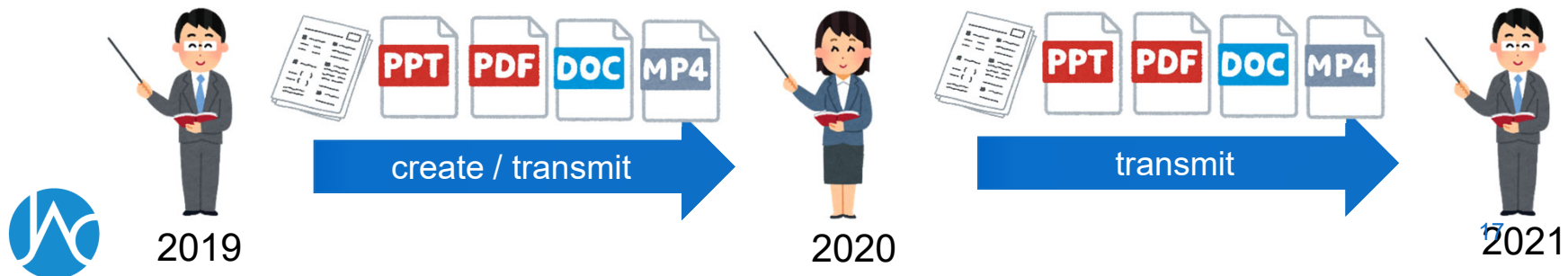
5. Share teaching materials created by duplicating copyrighted materials among teachers.



6. Send to students and parents for other purposes than education



7. Reuse after the next fiscal year



Utilization and terms of use



Utilization of works	terms of use	with a learning management system
1. Copy, print out and distribute teaching materials used in face-to-face classes.	without charge / permission	
2. Digitize teaching materials created by duplicating copyrighted works and displaying them on screen.	without charge / permission	
3. Send teaching materials created by duplicating copyrighted materials to students' tablets. (Including sending for students' preparation and review)	with permission	○
	with charge / without permission under the revised act	
4. On-screen presentation and transmit on e-learning or on-demand class	with permission	○
	with charge / without permission under the revised act	
5. Share teaching materials created by duplicating copyrighted materials among teachers	with permission	△
6. Send to students and parents for other purposes than education	with permission	△
7. Reuse after the next fiscal year	with permission	△
8. Open the public course on the web	with permission	



3. Criterion of items in article 35 of revised Copyright Act

* The contents of this section refer to the "Copyright Law Article 35 Guidelines on Reproduction of Works in Schools and Other Educational Institutions" published by the Copyright Law Article 35 Guidelines Council in 2004. Please note that there may be changes depending on the results of the examination in the "Stakeholders' Forum on Educational Use of Works."



Article 35, revised copyright act

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

Article 35

(1) ②③A person in charge of teaching or a person taking classes at ①a school or other educational institution (except one founded for commercial purposes) may ⑥reproduce a work that has been ⑦made public or transmit it to the public (and also to make them available for transmission, if they are to be transmitted to the public via automatic public transmission) if and to the ⑤extent that it is found to be necessary for the ④purpose of use in the course of classes; provided, however that this does not apply if ⑧the 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 the reproduction, the transmission and the communication.

(2) ⑨A person who establish an educational institution that exploits a work pursuant to the provisions of the preceding paragraph must inform the author of this and pay the copyright owner a reasonable amount of compensation.

Article 35, revised copyright act

* One example

Use for other purposes other than class (study / publicity)

Without permission

38

Screening for public without charge and non-profit

32

Quote for the purpose of study and criticism

31

Reproduce a part of work at a library

30~
47

Other usage that corresponds to the rights restrictions

Need permission

- Sharing of duplicates at faculty meeting
- Sharing articles for research purposes in joint research sites and laboratories
- Presentation using work of others within scope of citation
- Use in open lectures
- Public lectures transmitted by video
- Reproduction for publicity and distribution inside and outside university

Use for class purpose

Without permission

35
(1)

Print, copy and distribute teaching materials in the class for about 50 students.

35
(3)

Simultaneous remote screening of class materials. (Public transmission)
Project materials for the class on a screen in face-to-face class.

Need permission

35
(1)

Transmit digitalized class materials (Public transmission)

35
(3)

Transmit class materials and screen on-demand or online class (Public transmission)

- Copy textbooks and reference books sold for teaching materials.
- Share teaching materials with other teachers and other institutions.

without charge and permission under conventional act

available with charge and without permission after the effectuation of revised Copyright Act

Article 35, revised copyright act

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① Schools and other educational institutions

An educational institution engaged in organized and continuous educational activities, not for profit.

- Kindergartens, elementary schools, junior high schools, high schools, secondary education schools, universities, junior colleges, graduate schools, technical college, special needs education, special training colleges, universities established in affiliation with a government agency, which the Ministry of Education, Culture, Sports, Science and Technology (MEXT) defines as educational institutions.
- In social education, it has an annual education plan and give graduation qualifications
 - × Preparatory school, school, culture school, schoolchild childcare, company, group etc.
 - × If the external party is simply using the institution's facilities.

Article 35, revised copyright act

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② Person who takes charge of education

Those who actually conducts a class.

- Teacher, professor, lecturer etc. who takes charge of class.
- The staff of the relevant educational institution that duplicates and transmits based on the instruction of the person in charge of the class. Special support education supporters, ICT supporters, foreign language teaching assistants who work by contract with local governments and schools.
- × Teacher who doesn't takes charge of class directly.

③ Person who actually takes a class

Those who actually takes a class.

- A person who is under the guidance of a person who takes charge of class and who is registered for courses (Student). (Including other students who receive classes through inter-university exchange based on university establishment standards etc.)
- × Other students who have not registered for the course, teachers from other schools, visitors such as parents.

Article 35, revised copyright act

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④ Use in the course of classes

"Class" refers to what is defined by the standards for establishing a university, etc., and refers to its use in the process.

- ☐ Class activities, general learning, school events, seminars, experiments, practical training, practical skills, partial activities that require attendance and credits. Also includes career guidance and exchange study abroad programs.
- ☐ Copy and save in preparation for preparation of class materials.
- ☐ Distribute class materials for preparation and review.
- × Voluntary activities such as circle, club, society

Available after the promulgation of revised Copyright Act

- ☐ Send class materials for preparation and review of the class.

⑤ Extent considered necessary

Necessary parts to be subject to class

- ☐ Minimum part, amount, number of copies required for class (Described in ⑨)

Article 35, revised copyright act

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⑥ Reproduction

Tangible reproduction of the work. Quotations are also duplicates.

- Printing, photography, copying, recording, recording, handwriting, etc., regardless of the copying method. (According to Article 47(6), translation, arrangement, transformation, adaptation can also be used.)
- Aggregation on personal computers, servers, tablets, smartphones, etc.

⑦ Transmission to the public

Transmission facilities and reception facilities are installed on the same site of the university, so when transmitting on the same site, it does not correspond to public transmission.

The case of transmitting to an unspecified or specified large number of persons including any and all broadcast, wired broadcast, automatic public transmission (automatic transmission upon request), and other public transmission (e-mail, fax etc.).

- At the same time, the classes at the main venue will be screened at the remote site simultaneously and the class materials will be sent to the students.
- × Send by website accessible to everyone.

Available after the effectuation of revised Copyright Act

- Send class materials by e-mail or fax to specified number of students.
- Show videos of video posting sites such as Youtube in class.
- Send class materials in an environment with access restrictions such as password authentication.

Article 35, revised copyright act

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⑧ Unreasonably prejudice the interests of the copyright owner

The type of work, use, number of copies / transmissions (number of people), etc. are taken into consideration.

- All works can be used regardless of whether they are domestic or foreign.
- × If the material is sold as a teaching material or if the work is sold as one license per person, it is likely to be considered to be unreasonably prejudice.
- × If there are a large number of students (the number of students in one class plus the number of students in charge of the course is about 50)
- × Public transmission that can be viewed by anyone other than the student.
(vid.⑦)

⑨ A person who establishes an educational institution

A person who establishes and owns an educational institution. In other words, it means that the teacher does not pay for each person but pays collectively as an organization.

Notes on this section

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