

Use of Copyrighted Works and Copyright in University Learning Resources

Consortium for Learning Resources (CLR)



— Contents —

Introduction	1
1. What is "copyrighted work"?	3
2. What is "copyright"?	4
3. Use of copyrighted work	4
4. How to obtain authorization to use another person's copyrighted work	5
5. Use of copyrighted work in educational materials	6
The creation and use process of educational materials	6
① Creation	7
② Use - A. Video Display	10
② Use - B. Distribution	10
② Use - C. Printing	11
② Use - D. Sharing	11
6. Use in a university or other higher education institutions	12
7. Use of purchased DVDs or internet videos in class	13
8. Distributing educational material that includes copyrighted work outside class	14
9. Indicating a source	15
10. Translating a copyrighted work and using it as an educational material	16
11. Modifying and using copyrighted figures or tables	17
12. Use of a foreign copyrighted work as an educational material in Japan	17
Reference	18

The education methods and educational materials used in Universities are becoming diversified. While the traditional method of lecturing using a blackboard and textbooks or printed handouts is still going strong, at the same time, a new style where teachers create their own digital educational materials and display these on screen in class is gaining popularity. What's more, with the spread of Information Communication Technology(ICT); the internet, mobile terminals etc., teachers can now distribute their materials to students via Learning Management Systems(LMS). Students can use interactive technology to learn from detailed graphs, illustrations and videos. They can learn cutting edge technologies that have not yet been published in textbooks.

As a teaching method, digital educational materials can be used not only for the aforementioned lecture style, but also to set students the goal of discovering the subject and solving problems for themselves. Having students form teams, find, share and review information together via LMS, results in deep collaborative and active learning. What's more, increasingly classes are being held where students are expected to read up on the topic material in advance, this type of 'flipped classroom' active learning is rapidly gaining popularity.

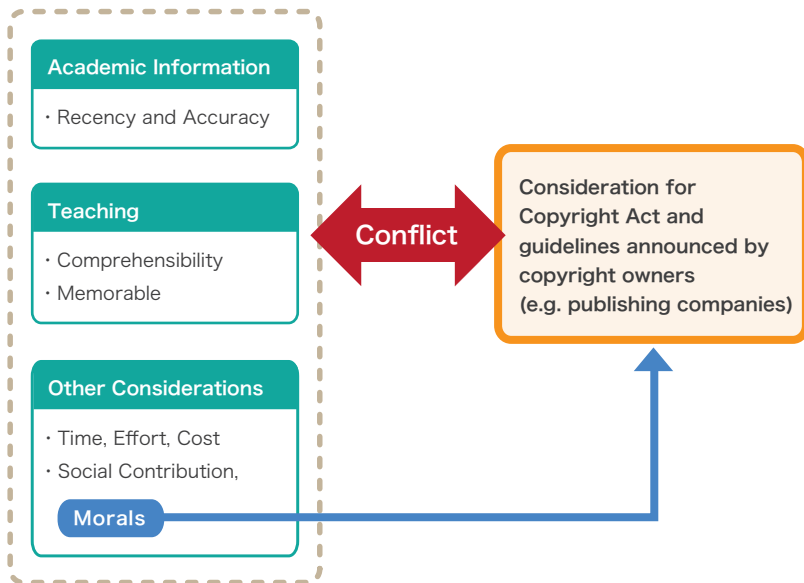
With the use of ICT it has become far easier to make digital educational materials for these progressive classes. However, in the case where another person's copyrighted work is used in educational material created or used by a teacher or students, the user can be concerned or worried under the following circumstances. (1) when distributing paper handouts in class (2) a viewpoint of being useful for student learning, or using online with the aim of increasing effectiveness (3) Description of present copyright laws and the copyright owner's published guidelines (See the next page.)

One example of attempting to solve this problem and promote active ICT educational material use was started at Kyushu University in June 2010, when a course about how to properly include another persons copyrighted work in educational materials was held. A textbook for these seminars, containing guidelines for copyright laws, proprietors rights and frequently asked questions, "Q&A on the Creation and Use of Digital/Online Educational Materials containing Copyrighted Work" was published in March 2011. The responsibility for the seminars was transferred to the Innovation Center for Educational Resource (ICER established April 2011), and the questions raised by participants at the next 3 years of seminars were added to the "Q&A on the Creation and Use of Digital/Online Educational Materials containing Copyrighted Work in University Education" published in March 2014.

Also in 2012, a University learning resources use model study group was started. In order to understand the current usage of Academic and specialist publishing companies copyrighted works (eg illustrations in journals/books etc) in higher education institutions, they interviewed about 100 teachers involved in creating literature, science, engineering and medicine educational materials. They considered the current situation and use of educational materials at that type of University. To promote the production of digital learning resources and sharing of resources, with the goal of creating an environment in education facilities for the best use of copyrighted material and producing concrete rules for use, the "Consortium for Learning Resources"(CLR) was established in May 2014.

One of the consortiums proposals to move toward an environment where copyrighted materials can be used freely in educational materials, was to support the education of the creators of the learning materials by publishing a set of guidelines to reflect the results of their previous findings. In this set of guidelines, sections 1 to 4 cover copyrighted works, copyright and the rules for using copyrighted work. Section 5, is the results of the aforementioned interview survey showing a clear picture of the University educational material creation and use situation, as well as situations where the restrictions of copyright law may not apply, giving concrete examples. Then in Sections 6 to 12, copyright laws related to the creation and use of educational material are listed.

Overcoming dilemmas when creating digital/online educational resources



1. 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, ideas that are not expressed by sentences, that are commonplace, that are not creative, etc. are excluded from 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

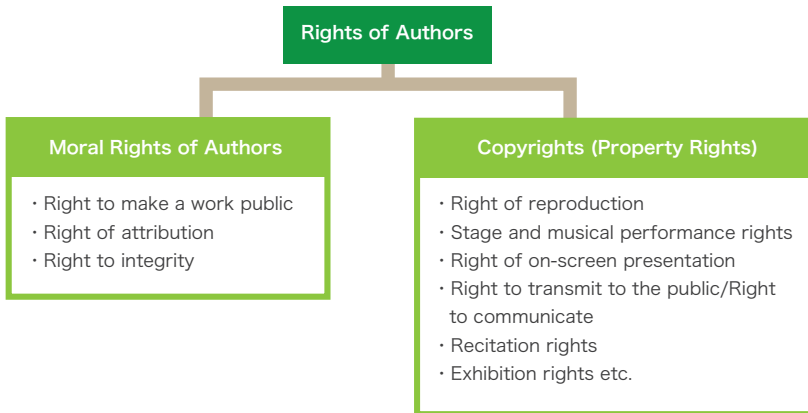
Article 10 (1) The following gives an illustrative example of what is meant, on the whole, by the term "works" as it is used in this Act:

- (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 an 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>>

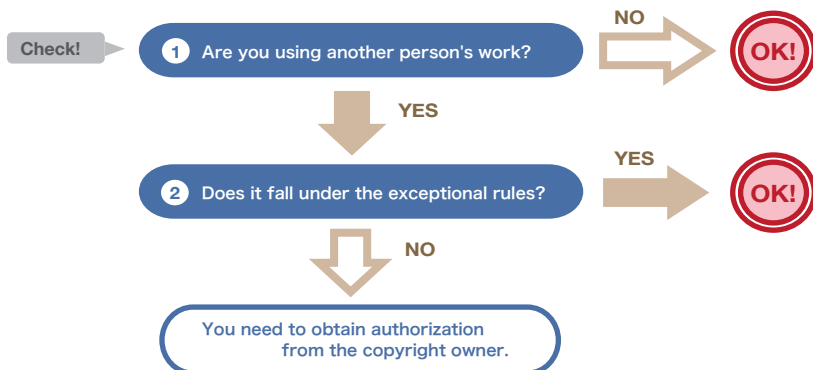
2. What is "copyright"?

When you create a work 'Moral Rights of Authors and Copyright' (Property Rights) is granted automatically, and it is protected under the Copyright Act. There is no need to apply or register.



3. Use of copyrighted work

When using another person's copyrighted work as part of educational materials, if your use is not covered by the exceptional rules(See Sections 6-10) which allow use without authorization, then you must obtain authorization, to use the copyrighted work. Also, if a 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 the exceptional rules, you must obtain authorization from the transferee.



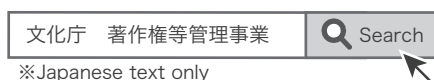
4. How to obtain authorization to use another person's copyrighted work

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.

Example Copyright Permission Request Application Forms are available from Higher Education Organization's websites.



There are some works whose copyright has been entrusted to Copyright Management Service companies registered with the Agency for Cultural Affairs. Information about Copyright Management Service companies is available on the Agency for Cultural Affairs website.



Also, in the event that a university library has entered into a "comprehensive licensing agreement" with a copyright management service company or academic society, then a teacher at that university does not need to obtain permission from that copyright management service company or academic society to use their copyrighted works.

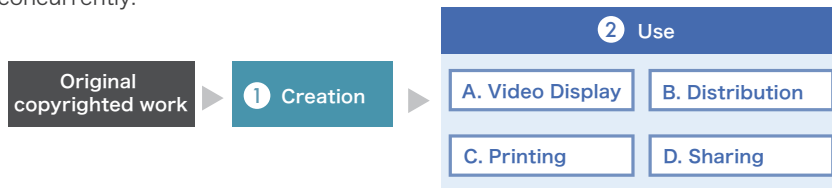
It is CLR's intention to get a comprehensive licensing agreement with an organization that manages copyrights, the "Japanese Academic Association for Copyright Clearance" (JAACC), so CLR affiliated organization teachers will be able to use JAACC copyrighted work without obtaining permission.

5. Use of copyrighted work in educational materials

The situation of creating and using educational materials in actual education, and the method that practical users wish.

The creation and use process of educational materials

We explain the two processes, creation and use of educational materials which use original copyrighted work, separately. However, in reality, there are cases when from "A. Video Display" onwards the order is reversed or activities happen concurrently.



Summary of each process

① Creation

The user of the educational material⁽¹⁾ creates the educational material⁽²⁾ using original copyrighted work.

② Use

A. Video Display

Video recorded on digital media⁽³⁾ is simultaneously screened to students taking the class⁽⁴⁾ in classroom or offsite by the user of the educational material.

B. Distribution

The user of the educational material, distributes the educational material to students on either paper or digital media.

C. Printing

Students use a machine to reproduce⁽⁵⁾ on paper, either the whole or a part of the distributed educational material.

D. Sharing

Sharing of educational materials between CLR affiliated higher education organizations.

(1) Refers to faculty, staff or students at higher education institutions which are members of CLR.

(2) Refers to educational materials created with the purpose of effective education and learning, regardless of whether paper media or digital media.

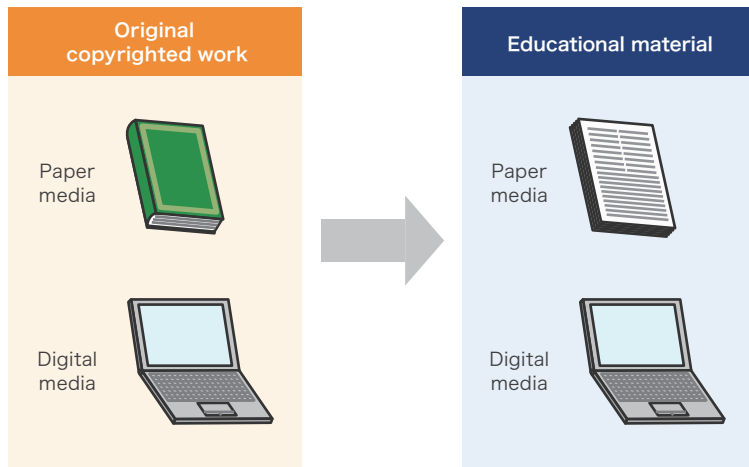
(3) Text, spreadsheet, presentation, image, movie and other types of electronic file.

(4) Refers to faculty giving students lectures, experiments, workshops, seminars, or student self-study, regardless of whether the students are learning onsite, off-site or simultaneously. (This also applies to distance learning and e-learning.)

(5) ①Using a machine to reproduce paper media original copyrighted work on to other paper media. ②Using a machine to reproduce digital media original copyrighted work on to other digital media.

① Creation

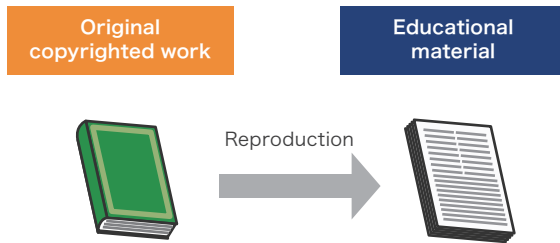
The user of the educational material uses an original copyrighted work to create an educational material. Regardless of whether the original copyrighted work is paper or digital media. This also applies to the created educational material (It can be paper or digital).



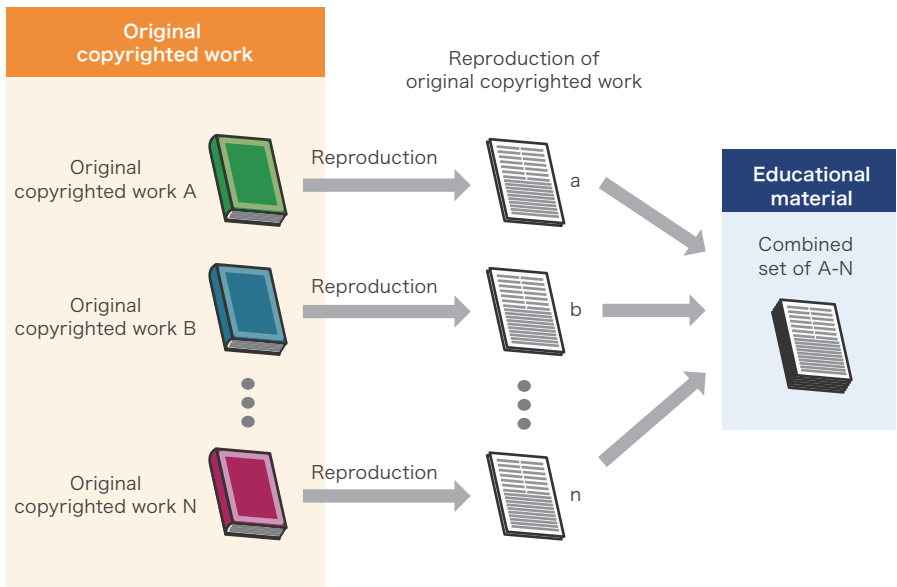
We will separate and explain two categories as listed below.

- (I) Reproducing one part (eg. chapter unit or multiple pages) of original copyrighted work and making into an educational material. Moreover, reproducing parts of many different copyrighted works to combine for use in one educational material pack. (Common name: Course Pack)
- (II) Inserting a graph, photo, composition etc. published in an original copyrighted work into a slide etc., for use as an educational material.

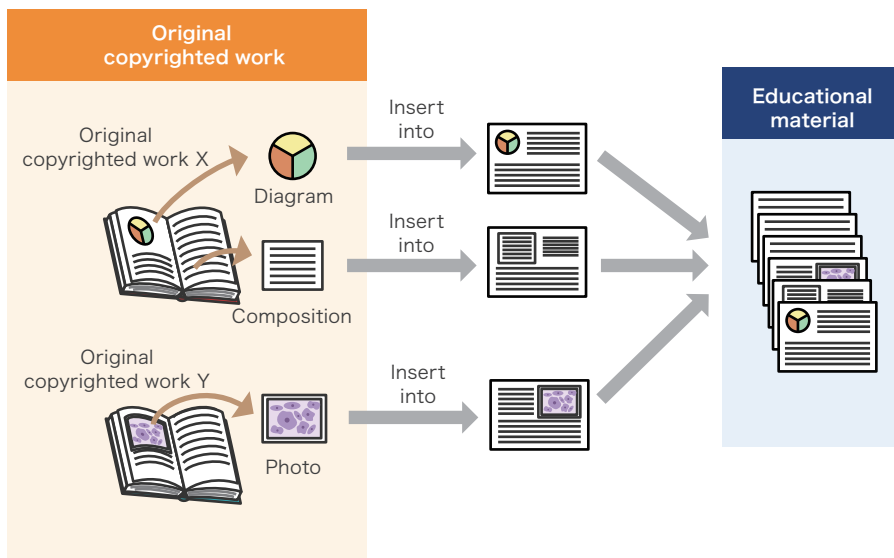
(I) Reproducing chapter unit or multiple pages of an original copyrighted



Moreover, reproducing multiple, different original copyrighted materials and combining them into a set for use as one educational material.
(Common name: Course Pack)



(II) Inserting a diagram, photo, composition etc. published in an original copyrighted work into a slide etc., for use as one educational material.

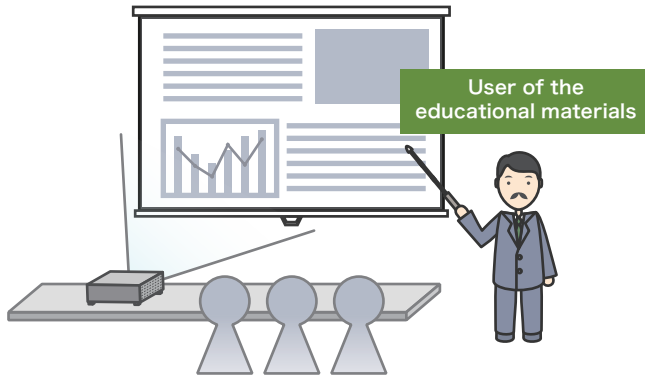


Three ways of insertion are listed below.

- (A) The unaltered original copyrighted work.
- (B) An altered version of the original copyrighted work.
Examples of alterations:
(Multiple, combined alterations are also possible.)
- Adding explanatory notes and additional lines.
 - Adding color to highlight areas.
 - Removing unneeded areas.
 - Enlarging, shrinking, altering the height and width.
 - Replacing vocabulary with different words of the same meaning.
 - Summarizing a composition or replacing with a diagram.
 - Without altering the meaning, re-create the contents.
- (C) Translate the original copyrighted work into a different language.

② Use - A. Video Display

The user of the educational materials screens the video recorded on digital media simultaneously to students taking the class in class or offsite.

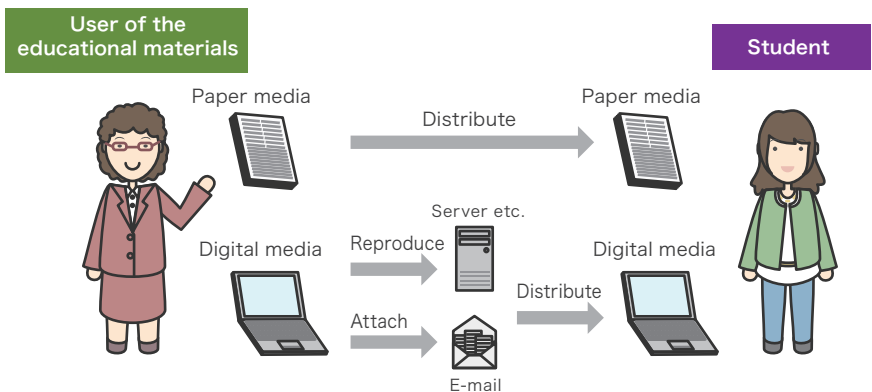


■ Digital media reproduced for an educational material is shown in

② Use - B. Distribution

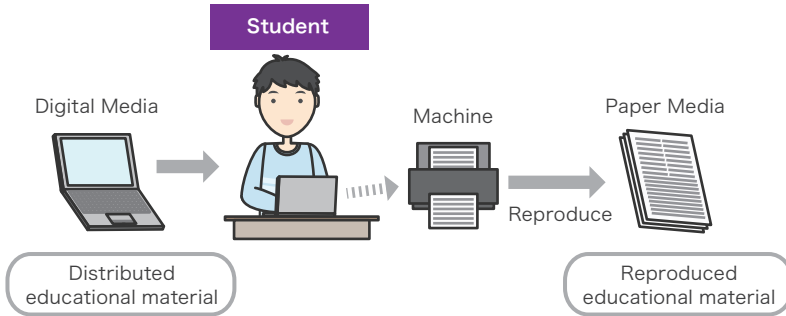
The user of the educational materials distributes paper or digital media(※) educational materials to students for their study preparation, review or for reference during class.

※ Using an E-learning system, e-mail (attached files), social networking system etc. to reproduce and distribute. (Servers for campus use and also external commercial cloud services can be used.)



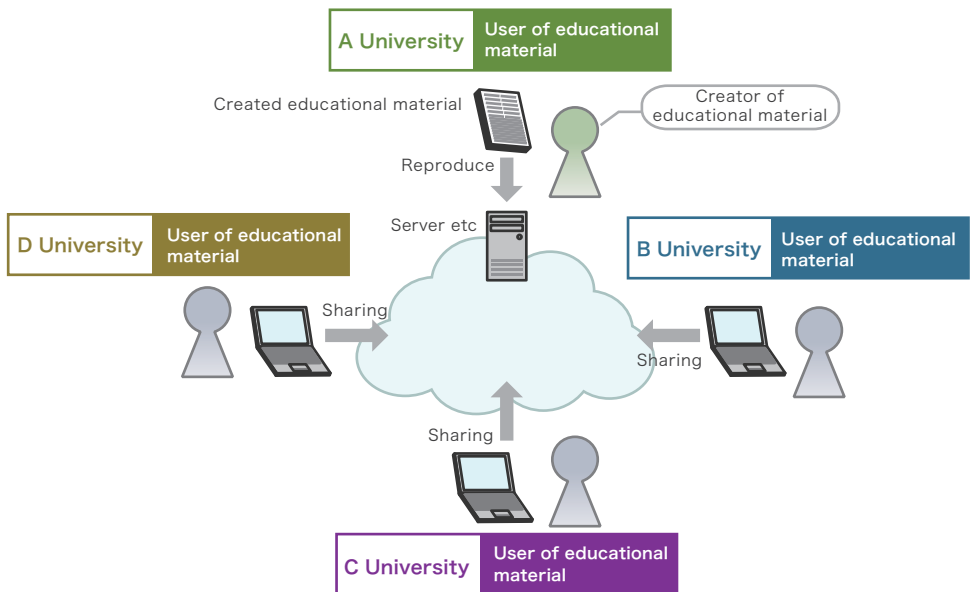
② Use - C. Printing

Students, use a machine to reproduce the whole or a part of the distributed digital media educational material onto paper media.



② Use - D. Sharing

The user of the educational materials, recreates the materials on a server etc., and shares them with other users of educational materials at a CLR affiliated institution.



6. Use in a university or other higher education institutions

When using another person's copyrighted work without authorization in a university face to face class, one of the exception rules of Copyright Act Article 35 (Reproduction, etc. in schools and other educational institutions) must apply. The requirements are listed below.

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.

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>>

7. Use of purchased DVDs or internet videos in class

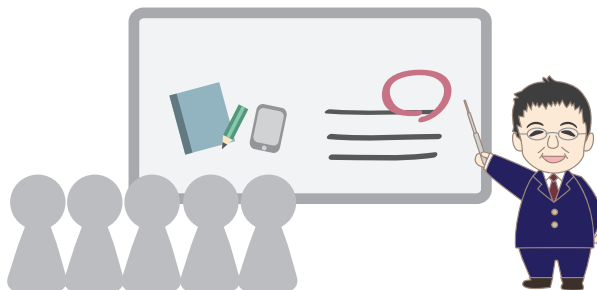
Published copyrighted works can be shown in a university class or academic lecture.

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>>



8. Distributing educational material that includes copyrighted work outside class

When distributing educational material containing copyrighted works in class Copyright Act Article 35(Reproduction, etc. in schools and other educational institutions) applies. However, for distributing copyrighted material outside of lesson this article does not apply (Part 2 of that article). At that time Copyright Act Article 32 (Quotation) needs to be applied. The requirements are listed below.

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.
E.g. Surrounded by quotation marks.
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>>

9. Indicating a source

When indicating a source, to identify the copyrighted work there is a specified minimum amount of information you must list.

▼ Examples of indicating a source

1. Journal Article

<u>Motofumi Yoshida</u>	<u>Cancer Research</u>	<u>54(17)</u>	<u>pp.4691-4697</u>	<u>1994</u>
Author	Journal Title	Volume	Page numbers	Year of Issue

2. Book

<u>Motofumi Yoshida</u>	<u>"Medical Education"</u>	<u>Yomoto Publications</u>	<u>Ver. 2</u>	<u>p120</u>	<u>2014</u>
Author	Title	Publisher	Version	Page No.	Year of Issue

3. Website

<u>http://clr.jp/about/index.html</u>	<u>2015/12/15</u>
URL	Access Date

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 and 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.

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

1 0. Translating a copyrighted work and using it as an educational material

Copyright Act Article 35 (Reproduction, etc. in schools and other educational institutions) and Article 32 (Quotation) where they apply, it is possible to translate without permission (Copyright Act Article 43 part1, part2).

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>>

11. Modifying and using copyrighted figures or tables

When making educational materials, to make it easy for students to understand and for the purpose of education, it is often essential to modify and use a figure or table. Therefore, altering copyrighted work when making educational materials is covered not only by Copyright Act 35 for use in classes, but also (if for educational purposes and within minimum and necessary range) for use outside the class in Copyright Act Article 20, Paragraph 2, Item 4 is applicable.

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>>

12. Use of a foreign copyrighted work as an educational material in Japan

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. In other words, if copyrighted works are used in Japan as educational material then Japan's Copyright Act rules apply. If Japan's copyrighted works are used abroad, then the foreign country's copyright rules will apply.

Reference 1

There is a labelling system where authors can show in advance they allow limited, defined use of their copyrighted work. If your use falls within those marked conditions, then use is permitted without obtaining permission from the author.

▼ Creative Commons license



Attribution, BY



Noncommercial, NC

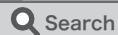


Share Alike, SA



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

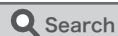


障害者OK
Handicapped OK



学校教育OK
Education OK

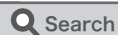
For details, please refer to the website of the Agency for Cultural Affairs.



※Japanese text only

Reference 2

The guidelines issued by each organization and publisher are introduced on the CLR website.



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