

# **Operational Guideline for Article 35 of the Amended Copyright Act**

(Fiscal Year 2021 Edition)

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Stakeholder Forum concerning the Educational Use of Works

This material is intended to make public the portion for which common recognition has been obtained, including the items that require further examination at the present time, concerning definitions of terms used for operation of the Article 35 of the Amended Copyright Act during exchange of opinions and discussions in a forum in which education stakeholders, experts and right holders participate. Details of this material is subjected to periodical review.

For the conditions for exploitation of works in the process of a class as in the Article 35, items for which common recognition has been obtained will be sequentially made public. Please check the year and month of publication and refer to the latest version.

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## ■ Article 35 of the Amended Copyright Act (Amended in 2018, Enforced on April 28, 2020)

Article 35 of the amended Copyright Act permits “a person in charge of teaching” and “a person taking classes” at “a school or other educational institution” to reproduce a work without authorization and at no charge, to publicly transmit a work without authorization and at no charge or for a compensation (“public transmission for educational purposes”), and to publicly communicate a work without authorization and at no charge. However, this does not apply if the action would unreasonably prejudice the interests of the copyright owner.

### <Provisions>

- (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** or **publicly transmit** (and also make available for transmission in the case of automatic public transmission; hereinafter the same applies in this Article) a work that has been made public, or publicly communicate a work that has been made public and is **publicly transmitted**, through a receiver, to the extent that is found to be necessary, if the purpose of doing so is use in the course of **those classes**; provided, however, **that this does not apply if the action would unreasonably prejudice the interests of the copyright owner** in the light of the nature or purpose of the work, the number of copies that would be made, or the circumstances of its reproduction, public transmission or communication.
- (2) If a public transmission is made pursuant to the provisions of the preceding paragraph, the person establishing the educational institution in the preceding paragraph shall pay a reasonable amount of compensation to the copyright owner.
- (3) The provisions of the preceding paragraph do not apply if, in the course of the classes at an educational institution referred to in paragraph (1), the originals or copies of a work that has been made public are made available or presented to persons who directly attend a class and thus exploited, or if such 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 for any persons who are taking that class simultaneously at a place other than that where the class is being held.

\* As stipulated by the Copyright Act, the compensation system for public transmission for educational purposes applies mutatis mutandis to neighboring rights.

\* When right limiting provisions such as “quotation” apply, they may be used without authorization. In addition to this Article, private sound and visual recordings via digital format (Article 30, paragraph 2), printing in school textbooks, digital school textbooks, or large-print school textbooks for profit-making purposes (Article 33, Article 33-2, Article 33-3), reproduction/public transmission to tests for profit (Article 36), and renting of videos in audiovisual education centers, etc. (Article 38, paragraph 5) require payment of a compensation.

## 1. Definition of terms

### ① "reproduction"

Means the physical replication of a or all of a work through handwriting, keyboard input, printing, photography, copying, sound or visual recording, or in any other way (Article 2, paragraph 1, item xv of the Copyright Act; the same applies not only to works but also to the exploitation of performances, records, broadcasts and cablecasts)

Applicable examples	<ul style="list-style-type: none"> <li>• Writing of a passage of a literary work on a blackboard</li> <li>• Writing of a passage of a literary work in a notebook</li> <li>• Reproduction of a painting on drawing paper</li> <li>• Imitation of a sculpture using paper clay</li> <li>• Copying of a printed work onto paper by using a copy machine</li> <li>• Storage onto recording media of a PDF file prepared by converting data of a printed work scanned using a copy machine</li> <li>• Storage onto a PC or a smartphone of a file into which a work is typed using a keyboard, etc.</li> <li>• Storage onto a USB memory of a file of a work stored on a PC, etc.</li> <li>• Data-based storage of a file of a work onto a server (including backup)</li> <li>• Recording of a television program onto a hard disc</li> <li>• Photographing, by using a camera, a smartphone, etc. the video data projected on a screen, etc., by a projector.</li> </ul>
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### ② "public transmission"

Means transmitting to unspecified people or specified number of people (general public\*) via broadcast, cablecast or Internet transmission (making available for transmission via the Internet after storage onto a server, etc., including "making available for transmission") or any other method (Article 2, paragraph 1 item 7-2 and Article 2, paragraph 5 of the Copyright Act; in the aspect of the neighboring rights, broadcasting/cablecasting or making available for transmission a performance, making a record available for transmission, re-broadcasting or re-cablecasting a broadcast or a cablecast, or making a cablecast or a broadcast available for transmission corresponds to this action).

However, as in a school broadcast, the transmission within a school using a broadcast facility or a server (excluding those accessible from outside the premise) installed in the same site (premise) as the school does not constitute public transmission.

Applicable examples	<ul style="list-style-type: none"> <li>• Transmission of a work stored on a server installed outside a school in response to a request by a student, etc.</li> <li>• E-mail transmission of a work to a large number of students, etc. (general public)</li> <li>• Posting of a work on the home page of a school</li> <li>• TV broadcasts</li> <li>• Radio broadcasts</li> </ul>
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\* In general, transmission between a teacher, etc. and a student, etc. in a class is considered to correspond to public transmission.

**③ "school or other educational institution"**

Means a non-profit educational institution engaged in organized and continuous educational activities. An institution established based on the School Education Act or other supporting laws (including ordinances and rules set forth by local governments) or an equivalent institution.

<p>Applicable examples (supporting laws are within parentheses)</p>	<ul style="list-style-type: none"> <li>• Kindergartens, elementary schools, junior high schools, compulsory education schools, high schools, secondary education schools, schools for special needs education, technical colleges, miscellaneous category schools, specialized training colleges, universities, etc. (School Education Act)</li> <li>• Educational institutions similar to universities such as the National Defense Academy, National Tax College, and agricultural colleges of local governments (related laws such as agency settlement laws and orders for organization)</li> <li>• Educational institutions related to job training, etc. (Act for the Promotion of Human Resources Development, etc.)</li> <li>• Nurseries, certified childcare centers, after school child care centers (Child Welfare Act, Act on Advancement of Comprehensive Service Related to Education, Child Care, etc. of Preschool Children)</li> <li>• Community centers, museums, art museums, libraries, youth centers, lifelong learning centers, and other similar social education facilities (Social Education Act, Museum Act, Library Act, etc.)</li> <li>• Educational centers, Personnel in Service Training Centers (Act on the Organization and Operation of Local Educational Administration, etc.)</li> <li>• Schools managed by an education management company (Act on Special Districts for Structural Reform; these schools are educational institutions established by a for-profit company, but are equivalent to educational institutions by a special provision.)</li> </ul>
<p>Non-applicable examples</p>	<ul style="list-style-type: none"> <li>• Educational institutions managed by for-profit companies or individuals</li> <li>• Preparatory schools and cram schools not authorized as specialized training colleges or miscellaneous category schools</li> <li>• Cultural centers</li> <li>• Training facilities of businesses or organizations</li> </ul>

#### ④ "classes"

Means educational activities implemented by a person in charge of teaching for a person taking classes under the management and at the responsibility of a school or other educational institution.

Applicable examples	<ul style="list-style-type: none"> <li>• Lectures, practical training, exercises, seminars, etc. (irrespective of their designations)</li> <li>• Student-led activities (class activities, homeroom activities, club activities, student council/student-body activities, school events, or other activities), club activities, extracurricular supplementary classes, etc. in primary and secondary education</li> <li>• Educational activities made by educational centers or school personnel in service training centers for teachers</li> <li>• License renewal course for teachers</li> <li>• Interviewing,<sup>1</sup> correspondence classes,<sup>2</sup> media classes,<sup>3</sup> etc. in correspondence education</li> <li>• Extension courses hosted by a school or other educational institution (those conducted as its own business; those of which the scale of business, etc. will be of a considerable scale in the light of income and expenditure budget, etc. shall be separately examined.)</li> <li>• Course certification program<sup>4</sup></li> <li>• Courses or lecture presentations, etc. hosted by social education institutions (those conducted as its own business)</li> </ul>
Non-applicable examples	<ul style="list-style-type: none"> <li>• Campus tours and mock classes at an open campus for applicants for admission, etc.</li> <li>• School personnel conference</li> <li>• Seminars or provision of information for school personnel implemented as FD<sup>5</sup> or SD<sup>6</sup> at a university</li> <li>• Extracurricular activities in higher education (such as circle activities)</li> <li>• Voluntary volunteer activities (without credit approval)</li> <li>• Parents' association</li> <li>• Lecture presentations hosted by a residents' association, courses for parents and children hosted by the PTA at a school or other educational institution</li> </ul>

\* Preparation or review by a student, etc. is defined as a "course of classes."

\* The following actions ①-③ are defined as actions in the course of a class:

① Reproduction of a transmitted work by a student, etc.

② Reproduction by a teacher, etc. in the preparatory stage for creation of class materials or post-lesson review

③ Reproduction private records by a teacher, etc. or a student, etc.

\* A technical college is a higher education institution but its curriculum that is similar to that of secondary education is governed by the corresponding portions of this Operational Guideline.

<sup>1</sup> A class similar to a commuter course of a university.

<sup>2</sup> A class where a student learns with a textbook, etc. (including Internet distribution) and receives editing instructions and takes exams.

<sup>3</sup> A class where a teacher and a student communicate interactively for learning purposes via the Internet. This lesson is offered in one of the two types: a real-time "simultaneous interactive type"; and a "non-simultaneous interactive type" where contents are placed on a server.

<sup>4</sup> An educational program for members of society other than students. A person who completes this program is granted a course certificate that is based on the School Education Act.

<sup>5</sup> Faculty Development. Organizational efforts for teachers to improve and upgrade the content and method of classes.

<sup>6</sup> Staff Development. Organizational efforts for quality improvement including operation management and educational and research support.

### ⑤ "a person in charge of teaching"

Means a person who actually teaches a lesson (hereinafter referred to as a "teacher, etc.")

Applicable examples	• An instructor, a professor, a lecturer, etc. (irrespective of their designation, having a teacher's license, or being employed full-time/part-time)
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\* Reproduction or public transmission by an education supporter or assistant such as a school official in a form where the school has control, such as by using a school facility, as instructed by a teacher, etc., is an action of a teacher, etc.

### ⑥ "a person taking classes at a school"

Means a person who receives educational support or is under the guidance of a teacher, etc. (hereinafter referred to as a "student, etc.")

Applicable examples	• A person who actually learns, irrespective of their designation or age (a child, a pupil, a student, a credited auditor, a participant, etc.)
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\* Reproduction or public transmission by an education supporter or assistant such as a school official in a form where the school has control, such as by using a school facility, in response to a request by a student, etc., is defined as an action of a student, etc.

### ⑦ "the extent that is found to be necessary"

Whether it is necessary for the class" is primarily determined by a person in charge of teaching. If a conflict should have occurred, a person in charge of teaching will bear the accountability. (A person in charge of teaching should bear the accountability for reproduction, etc. by a pupil, a schoolchild or a student, as long as the target material is used in the class.) In this case, necessity of reproduction of the material needs to be objectively explained in terms of the relation with the content of and the procedure for the class, rather than based exclusively on the subjective view of a person in charge of teaching. For example, when introducing a reference literature that is worth reading beforehand as helpful information on the side of the participants but is not used in the class, it is difficult to explain the necessity of reproduction or public transmission of the entire text although it is sufficient to indicate the title, author's name, publisher's name and the like. In the case of a university, reproduction or public transmission of a work published in a book that the teacher has instructed to the students to purchase as a textbook or a reference book for the class for each student's learning practice will be excluded from the "the extent that is found to be necessary" in principle.

The extent that is found to be necessary" differs depending on the content of or actual procedure for the class, etc. Assume that a teacher who teaches a class reproduces or publicly transmits a work in a class subject and another teacher reproduces or publicly transmits a similar type of work by a similar amount and method in another class subject. Depending on the actual proceeding of a class, it is theoretically possible that one is within the extent that is found to be necessary and the other not. Thus, it is necessary to determine whether authorization is required or not, not by the appearance alone, but in accordance with the actual proceeding of an individual class.

Even when the action is within "the extent that is found to be necessary", in case it meets the condition ⑨ "if the action would unreasonably prejudice the interests of the copyright owner" mentioned later, the copyright is not restricted and authorization of the copyright owner must be obtained.

### ⑧ "publicly communicate"

Means to publicly communicate, through a receiver, of a published work that is publicly transmitted.

Applicable examples	<ul style="list-style-type: none"><li>● Receiving, during a class, a video posted on the Internet that is related to the class content and letting students, etc. to view the video on a display installed in a classroom, etc.</li></ul>
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### ⑨ "if the action would unreasonably prejudice the interests of the copyright owner"

Article 35 of the amended Copyright Act specifies the requirements for exploitation of works, etc. without authorization of the copyright owner, etc. Even in such a case, when the interests of the copyright owner, etc. are unreasonably prejudiced, reproduction or public transmission is not permitted without authorization even when a compensation is paid. This is because sufficient consideration must be given so as not to actually reduce the sales of a marketed material or hinder the possible future sales channel of a work, etc. as a result of reproduction or public transmission in a schools or other educational institutions. In other words, even when all of the requirements of "reproduction or public transmission in an educational institution", "reproduction or public transmission by a teacher or a participant to the course of a class" "exploitation of a work in the class", "reproduction or public transmission within the extent that is found to be necessary for the class", if the action would unreasonably prejudice the interests of the copyright owner, etc., this provision is not applied and it is necessary to obtain the authorization of the copyright owner, etc.

The following describes the basic understanding and examples of actions that would unreasonably prejudice the interests of the copyright owner, etc., separately for the primary and secondary education and the higher education, by keyword related to whether the interests of the copyright owner, etc. would be unreasonably prejudiced (type of work, use of work, number of copies, quality and manner of reproduction, public transmission and communication).

In the following description, the wording "likely (unlikely) to unreasonably prejudice" is used because this Operational Guideline does not assure that examples given herein will or will not prejudice the copyright. In the presence of a difference in the view of persons concerned, there is no other choice but to determine whether the action would unreasonably prejudice the interests of the copyright owner, etc., for an individual case, based on whether the user can objectively explain that the action is within the extent that is found to be necessary in the light of the purpose of the class, or whether the copyright owner, etc. can objectively explain that his/her interests have been unreasonably prejudiced. The examples given herein are only representative and not restrictive. For the cases not given herein, applicability of this requirement must be individually determined based on "basic understanding" and representative examples. While the amended Copyright Act does not intend to discourage education officials from exploiting works through "basic understanding", you should not jump to the conclusion that "basic understanding" is intended to be beneficial for learners. As mentioned under ⑦, the rights of the copyright owner, etc. are limited to the extent that is found to be necessary in the light of the goals and purposes of the educational institution. It is, however, necessary to consider how the action of exploitation, even when it is within the extent, could influence the circulation of a work, etc. in the society. This section presents an organized "basic understanding" in order to reflect this aspect. Your understanding of such structure and principle will considerably resolve possible perplexity concerning exploitation of works that accompanies the active ICT education.

Note that the foregoing is an idea related to the provisions of the Article 35. In educational activities, there may be cases where exploitation of a work is permitted without the authorization of the copyright owner, etc., based on other provisions concerning quotation, etc.

## ⑨-1 Primary and secondary education

### Basic understanding

#### ■Type of a work■

- It may be inappropriate to apply this provision depending on the type of a work, for example, "a program work (application software)". Purchasing a single piece of learning software available on the market or a single license of the same software and copying the same onto plural PCs in a school for later use or providing the same to the pupils or schoolchildren by publicly transmitting the same to them is considered likely to unreasonably prejudice the interests of the copyright owner, etc. in the light of the fact that the type is a program work.
- When a work is reproduced or publicly transmitted without the authorization of the copyright owner, etc. based on this provision, the amount that may be reproduced or publicly transmitted is specified as "to the extent that is found to be necessary in a class". Considering that such exploitation as will hinder the circulation on the market could unreasonably prejudice the interests of the copyright owner etc., whether the entirety or only a portion of a work can be exploited may depend on the type of work in question. While it is not easy to comprehensively and restrictively describe which type of work can be exploited in its entirety or not, the following examples may be helpful as a guideline.

In the case of a literary material of short sentence(s), etc., pictures and photographs, exploitation of the entirety is essential and partial reproduction or public transmission may prejudice the right to reserve integrity. Reproduction or public transmission of the entirety of such type of work may not unreasonably prejudice the interests of the copyright owner etc. Note that the wording "reproduction or public transmission" in this section refers to a case where a work made available for a class is individually exploited. A case where such a work is exploited as a portion of an image in a live video of a class scenery or a commentary, or as a background (except for an action that exclusively provides a work itself, etc.) is considered unlikely to unreasonably prejudice the interests of the copyright owner, etc. irrespective of the type of the work, even when the entirety of the work is reproduced or publicly transmitted.
- Although not being a distinction in the view of "type of work" in a strict sense, reproduction of the entirety of a work for educational purposes may unreasonably prejudice the interests of the copyright owner, etc. or not, depending on the situation where the work is provided with relation to its type or the environment where the work is obtained. The following explains an understanding related to such a view.
  - When more than one work is included in a single content, the amount that will unreasonably prejudice the interests of the copyright owner, etc. may differ with the mutual relation between the content and the work. For example, reproduction of a movie or a program recorded from a broadcast is generally likely to unreasonably prejudice the interests of the copyright owner, so that reproduction of only a necessary portion of the material will be reproduced. When a music or literary work, etc. is included as a subject matter in that necessary portion, if exploitation of that portion is within the range necessary for the class, reproduction of the entirety of the work, etc. as a subject matter is considered unlikely to unreasonably prejudice the interests of the copyright owner, etc.
  - An important point of view that determines whether or not the interests of the copyright owner, etc. will be unreasonably prejudiced is: whether the action of reproduction or public transmission may reduce the sales of a marketed material or obstruct potential sales channel of

the work in the future. Accordingly, a key point is whether or not the user can individually obtain (purchase) the work or whether he/she can individually or comprehensively make a request for the use authorization to the copyright owner, etc. When it is reasonably difficult to obtain a work and obtain the use authorization of the work via reasonable means, the entirety of the work may be considered reproducible based on this provision, so that individual determination is necessary.

<Examples of high possibility of not unreasonably prejudicing the interests of the copyright owner, etc. despite reproduction or public transmission of the entirety of a material (assuming the action is within the extent that is found necessary for a class)>

- Exploitation of a work in a textbook that is adopted
  - \* "Individual works (sentence works, photographs and illustrations)" as well as works by the publisher are included.
  - \* The same applies to exploitation within the contract of a digital textbook for learners that is used as a substitute for the adopted textbook.
- Literary works of short sentence(s) such as Haiku, Tanka and poems
- Literary works such as an article published in a newspaper
- Photographs, pictures (including illustrations and prints) , sculptures and other works of art, and maps

■Use of a work■

- Depending on what purpose the work was created for and how it was supplied on the market, the interests of the copyright owner, etc. may be unreasonably prejudiced.

Assume there is a workbook or a drill book sold for the purpose of being purchased and exploited by all the pupils and schoolchildren. When a teacher reproduces such a work or publicly transmits the copied work for the pupils and schoolchildren to solve in the course of a class irrespective of whether they have purchased the original work, such an action will obstruct the original circulation of the work.

Note that, when a schoolchild or a student has left a drill book carelessly, copying a portion of the drill book and hand a copy thereof to him/her will be permitted.

Assume a work in a textbook that is not adopted (non-adopted textbook). Unlike a textbook that is adopted (adopted textbook), performing reproduction or public transmission of such a work is essentially considered possible similarly to a work in an ordinary publication, within the extent that is found necessary for a class.

For example, performing reproduction or public transmission of many works in a non-adopted textbook requires the authorization of the copyright owner.

■Number of copies and number of recipients of public transmission■

- When the number of copies or number of recipients of public transmission exceeds a total of the number of teachers, etc. who teaches a class and the students, etc. of the class, in the first place, reproduction or public transmission exceeds the "extent that is found to be necessary for a class" and is not authorized; additionally, such an action is considered likely to unreasonably prejudice the interests of the copyright owner, etc. Distributing the same work as that distributed in a class to the visitors to a class observation or a research class is considered "to the extent that is found necessary" (see ⑦ "the extent that is found to be necessary").

■Manner of reproduction, public transmission and communication■

- An exemplary case of unreasonably prejudicing the interests of the copyright owner, etc. in the light of the “manner of reproduction” would be, even if reproduction of the entirety is authorized, reproduction in a manner of binding in the marketable manner and reproduction.  
Whether digital or analog, when the copied material can be individually put to other uses (beyond the use of a teaching material), such an action is considered likely to unreasonably prejudice the interests of the copyright owner, etc.
- An exemplary case of unreasonably prejudicing the interests of the copyright owner, etc. in the light of the “manner of public transmission” would be, public transmission using an open network environment that anyone can access (a manner that allows any unspecified person as well as teachers, pupils and schoolchildren that belong to a particular school to receive the content of the public transmission). (In the first place, such a case does not satisfy the requirement of "the extent that is found to be necessary). In order to perform public transmission so as not to prejudice the interests of the copyright owner, etc., there are such choices as: assigning an ID and a password to each of the schoolchildren and pupils and performing public transmission to the limited range of schoolchildren and pupils alone by using a class support cloud service; and making public the private URL of the target content to the pupils and schoolchildren as students. In any way, whether use in the course of a class is substantially controlled is an important aspect.
- An exemplary case of unreasonably prejudicing the interests of the copyright owner, etc. in the light of the “manner of communication” would be, in consideration that this provision is a restrictive provision related to use in the course of a class, communication in a manner of releasing to those except the students of a class as well. Note that, when parents need to assist their children with operation of a device in an online class, the parents are considered to support the class, which means that the interests of the copyright owner will not be unreasonably prejudiced. (See ⑥ "a person taking classes at a school".

<Examples of high possibility of unreasonably prejudicing the interests of the copyright owner and exploitation is not allowed within the range of compensation>

- The same teacher, etc. exploits a different portion of the same work for each session of a class, for example, reproduces Chapter 1 and distributes copies of Chapter 1 of a book in the first session and Chapter 2 of the same book in the second session; as a result, the exploitation of different portions of the same book or publication covers a large portion of the same work or publication thereby reducing the sales of the marketed material.
- Performing reproduction or public transmission of a work, in a manner where the reproduction or public transmission will substitute for purchase of the work, that a teacher, etc. or a pupil or a schoolchildren exploits by usually purchasing, entering a provision contract or being lent for the class purposes.
  - Examples of works
    - <Subject guidance> Guidance books for teachers, reference books, collection of materials, workbooks, drill books, test papers, sheet music used as a teaching material in a class, side readers, educational video software
    - It may be permissible to additionally reproducing a material for the purpose of making a commentary on questions, assuming that all students have purchased the material.
    - <Special activities, etc.> Screenplay for drama, short stories for a reading party, sheet music used for club activities
- Providing a work such as a fine art and a photograph of which exploitation in its entirety is

permitted under "Examples of high possibility of not unreasonably prejudicing the interests of the copyright owner, etc.", in a quality that will influence the sales of marketed commodity

- Binding a copy of a work and distributing the resulting copies so as to assure marketability or long-term storage
- Systematically stocking a work as materials onto a server (compiling a database)

## ⑨-2 Higher education

### Basic understanding

#### ■Type of a work■

- Application of this provision is not appropriate depending on the type of work. For example, reproducing application software available on the market and providing the copied software to the students or publicly transmitting the same in order to give a computer programming class is considered likely to unreasonably prejudice the interests of the copyright owner in the light of the type of a program work. Printing a source code on paper or publicly transmitting the printout will not hinder the circulation of the application software on the market.

- When a work is reproduced or publicly transmitted without the authorization of the copyright owner, etc. based on this provision, the amount that may be reproduced or publicly transmitted is specified as "to the extent that is found to be necessary in a class". Considering that such exploitation as will hinder the circulation in the market could unreasonably prejudice the interests of the copyright owner, etc., whether the entirety or only a portion of a work can be exploited may depend on the type of work in question. While it is not easy to comprehensively and restrictively describe which type of work can be exploited in its entirety or not, the following examples may be helpful as a guideline.

First, in the case of a literary work of short sentences, etc., there is no choice other than to exploit the entirety of a single work depending on the expression form. In the case of exploitation of pictures or photographs used mainly for appreciation, some people may be in the opinion that partial reproduction or public transmission prejudices the right to preserve integrity. Performing reproduction or public transmission of the entirety of a work of such a type may be considered unlikely to unreasonably prejudice the interests of the copyright owner, etc.

In the case of an academic journal article work, it may be necessary to read through the entire text rather than to exploit a portion thereof. For example, if the academic journal article is not available on the market, performing reproduction or public transmission of the entirety of the single academic journal article is considered unlikely to be unreasonably prejudicing the interests of the copyright owner, etc.

Note that the wording "reproduction of public transmission" in this section refers to a case where a work made available for a class is individually exploited. A case where such a work is exploited as a portion of an image in a live video or a recorded video of a class scenery or a commentary, or as a background (an action that is not exclusively providing a work itself, etc.) is considered unlikely to unreasonably prejudice the interests of the copyright owner, etc., irrespective of the type of the work, even when the entirety of the work is reproduced or publicly transmitted.

- Although not being a distinction in the view of "type of work" in a strict sense, performing reproduction of the entirety of a work for the purpose of a class may unreasonably prejudice the interests of the copyright owner, etc. or not depending on the situation where the work is provided with relation to its type or the environment where the work is obtained. The following explains a

basic understanding related to such a view.

- When more than one work is included in a single content, the amount that will unreasonably prejudice the interests of the copyright owner, etc. may differ with the mutual relation between the content and the work. For example, reproduction of a movie or a program recorded from a broadcast is generally likely to unreasonably prejudice the interests of the copyright owner, etc., so that reproduction of only a necessary portion of the material will be reproduced. When a music or a literary work, etc. is included as a material in that necessary portion, if exploitation of that portion is within the range necessary for the class, reproduction of the entirety of the work, etc. as a material is considered unlikely to unreasonably prejudice the interests of the copyright owner, etc.
- When using, in a class, an academic journal article work, etc. published as a subject matter in a highly professional collection of papers, etc. that is circulated as a compilation, performing reproduction of the entirety of the academic journal article, etc. as a subject matter may be considered unlikely to unreasonably prejudice the interests of the copyright owner, etc. if exploitation is made for the sake of the target audience that is not intended by the original compilation.

Note that the range of the target audience intended by a compilation differs between compilations and is difficult to clearly categorize since academic fields are recently becoming interdisciplinary. In the case of a professional publication having a small circulation due to its high level of expertise, performing reproduction of the entirety of an academic journal article, etc. published therein needs utmost consideration.

In the case of an academic journal article, etc. published in a periodical, considering fulfillment of the demand of the intended target audience, performing reproduction of the entirety of an academic journal article, etc. as a subject matter is considered likely to unreasonably prejudice the interests of the copyright owner, etc., unless a considerable period of time has elapsed since its publication. (Note that the period necessary for fulfilling the needs of the intended audience of the compilation (something like a best-by date) is not uniform across its fields or contents; it is thus inappropriate to simply consider “Once the next issue is published, it is not necessary to obtain the authorization for reproduction of an individual academic journal article published in the back issues” as in the copy service offered in the library practices. Back issues of some of the professional journals, etc. are circulated so as to be available even after the latest issue is published. It is difficult for teachers or students to determine whether the demand of the target audience intended by the publisher still exists based only on the fact that the target issue is still available at the bookstore. In conclusion, there is no choice other than to individually determine whether circulation on the market may be influenced when the teacher responsible for the class has performed reproduction and provided the copied material to the students, while considering the ease of availability on the side of the students as well.)

Based on the above, as far as reproduction of the entirety of an academic journal article, etc. is concerned, for the time being, it is considered appropriate to determine the range within which the interests of the copyright owner, etc. are not unreasonably prejudiced by using the standards: ① The academic journal article is not circulated on the market; ② Other academic journal articles published in a compilation such as a collection of papers are irrelevant to the class; and ③ In the case of an academic journal article published in a periodical, a considerable period of time has elapsed since its publication.

- In order not to unreasonably prejudice the interests of the copyright owner, etc., awareness related to the copyright must be raised in educational institutions in the first place; another key

is whether or not education officials can obtain the work via a general means. When it can be easily obtained, reproduction of the entirety of the work will be likely to unreasonably prejudice the interests of the copyright owner, etc. When the work is difficult to obtain, its possibility will be low. In this case, whether the work (publication) is out of print used to be an easy guideline of the criteria for difficulty in obtainment; as electronic books have been in widespread use, works or publications are getting unlikely to go out of print and may be available by way of subscription services, electronic library services and a variety of other services. Widening of such choices is desirable for development of educational activities using the ICT and enhancement of learning of students. If an environment is produced where students can obtain the entirety of an academic journal article easily and at a lower cost as a result of development of a new provision method of contents, the standard for making available the exploitation of the entire text might be considered restrictively in the practice of performing exploitation of an academic journal article based on this provision; at the moment, however, individual determination is the sole choice.

(Examples of high possibility of not unreasonably prejudicing the interests of the copyright owner, etc. despite reproduction or public transmission of the entirety of a work)

- Literary works of short sentences such as Haiku, Tanka and poems
- Literary works such as an article published in a newspaper
- Literary works such as an article published in a periodical such as a magazine for which a considerable period of time has elapsed since its publication
- Regardless of the above, for an academic journal article work published in professional books or a collection of papers, assuming that the entire text is necessary in the light of a class, a case where purchase by individual student is not always reasonable in consideration of the amount of the academic journal article, etc. occupied in the entire publication, status of the circulation of the publication, whether the students as users is the target audience intended at the time of initial publication, whether a considerable period of time has elapsed since its publication, and whether the publication is easy to obtain
- Works of fine arts such as photographs, pictures (including illustrations and art prints), and sculptures mainly used for appreciation, as well as works of maps or drawings, charts, models and the like having an academic nature
- Works provided based on, for example, a marked indication of intention of the copyright owner that prior individual authorization procedures are unnecessary (including an intention specifying conditions), or provided in an environment where such a handling is made into a rule

■ Use of a work ■

- Depending on what purpose the work was created for and how it was supplied on the market, the interests of the copyright owner, etc. may be unreasonably prejudiced.  
For example, when the content of a class in a department of a university is related to a qualifying examination, performing reproduction or public transmission of a workbook sold mainly for those who are going to take the qualifying examination, as practice problems for the students to solve, in the course of a class, will hinder the intended circulation of the work.
- When a student reproduces a figure such as a graph carried in the textbook he/she has at hand before taking a class for the purpose of projecting and explaining the same on a screen in the course of a class, this action is only an intermediate reproducing action for projecting individual works carried

in textbook on the screen and the action, although being reproduction of a textbook, is not considered likely to unreasonably prejudice the interests of the copyright owner, etc., as opposed to reproduction of a textbook with an aim to provide its copy to students that must be, properly speaking, considered likely to unreasonably prejudice the interests of the copyright owner, etc. even in the course of a class.

■Number of copies and number of recipients of public transmission■

- When the number of copies or number of recipients of public transmission exceeds a total number of persons in charge of teaching, etc. and students, etc. of a class, in the first place, reproduction or public transmission exceeds the “extent that is found to be necessary” and is not authorized; additionally, such an action is considered likely to unreasonably prejudice the interests of the copyright owner, etc. Method of guidance varies with the nature of a class and the course enrollment figure fluctuates with seasons, so that it is difficult to indicate the standard for the number of teachers or students by using a numerical value. Generally speaking, determination depends on whether the number of teachers or students exceeds the unit of the class size, irrespective of a small scale or a large scale.
- When a portion of a recorded broadcast program is played for viewing in a class, generally speaking, projecting the video onto a large-sized display from the teacher’s main projector, or projecting the video onto the monitor of the PC of each student will be a sufficient procedure. Thus, unless a special learning method of causing student to manipulate something with the recorded work is employed, preparing copied materials as many as the number of the students and providing the same to the students is considered likely to unreasonably prejudice the interests of the copyright owner, etc.

■Manner of reproduction, public transmission and communication■

- An exemplary case of unreasonably prejudicing the interests of the copyright owner, etc. in the light of the “manner of reproduction” would be, even if reproduction of the entirety is authorized, reproduction in a manner of binding so as to assure marketability or long-term storage. Whether digital or analog, when the copied material can be individually put to other uses (beyond the use of a teaching material) is considered likely to unreasonably prejudice the interests of the copyright owner, etc.
- An exemplary case of unreasonably prejudicing the interests of the copyright owner, etc. in the light of the “manner of public transmission” would be, public transmission in a manner that allows anyone as well as students to receive the transmitted material in an open network environment, rather than managing the class taking status of the students by using the LMS. While a typical management method is use of an ID and a password for access, whether use in the course of a class is substantially controlled is an important aspect.
- An exemplary case of unreasonably prejudicing the interests of the copyright owner, etc. in the light of the “manner of communication” would be, in consideration that this provision is a restrictive provision related to use in the course of a class, communication in a manner of releasing to those except the students of a class as well.
- Note that posting a hyperlink from a text string or an image in a teaching material prepared by a teacher (such as a material prepared using presentation software) for transition to, for example, the home page of a specific institution is neither reproduction nor public transmission of a work. Accordingly, when a video is viewed in a class, an attempt to save the video file or make a copy of the video and distribute the same to the students must be based on the determination of “whether

the action is within the extent that is found to be necessary” and “whether the action would unreasonably unreasonably prejudice the interests of the copyright owner, etc.”. Simple action of posting a link requires no authorization and no compensation.

**<Examples of high possibility of unreasonably prejudicing the interests of the copyright owner>**

- Performing reproduction of application software such as document preparation software, spreadsheet software, PDF editing software, for use in a class
- Reproducing all literatures that are considered beneficial to students as a reference although not handled in a class and providing the copied material
- Performing reproduction or public transmission toward a number of people that obviously exceeds a total number of persons in charge of teaching, etc. and students, etc. of a class
- Exploits a different portion of the same work for each session of a class, and as a result, the exploitation amount in the class is no longer a small portion.
- Performing reproduction or public transmission of a work published in a material such as: a textbook, normally purchased by a teacher, etc. or a student, etc., entering a provision contract or being lent for the class purposes; or a material such as an exercise book (including one a teacher, etc. has instructed a student, etc. to purchase) in which each of the students directly writes an answer for exercise purposes, in a manner where the reproduction or public transmission will substitute for purchase of the material in which such a work is published (Note that additionally performing reproduction for the purpose of making a commentary on the questions assuming that all students have purchased the material may be permitted.)
- Providing a work such as a fine art and a photograph of which exploitation in its entirety is permitted within the range found to be necessary, by reproducing or binding a copied work in a quality that will influence the sales of marketed commodity
- Systematically stocking a work onto a server (compiling a database) for the purpose of creating a collection of subject matters while exploitation for a class is uncertain.
- Publicly transmitting a teaching material that uses a work in a manner like MOOCs (Massive Open Online Courses that anyone can access)

(Conflicts of opinions in a professional WG (Working Group) for higher education, outstanding topics)

- There is an opinion "It is self-evident from the time of legislation that reproduction, etc. in an educational institution will influence the sales of the work. It is not appropriate to jump to a conclusion that such an action is unreasonable because the sales will be reduced. Another approach is necessary to determine whether reproduction by an educational institution will "unreasonably" prejudice the interests of the copyright owner even in the presence of a future circulation model that enhances the added values of contents and considers a cost of right processing (an easy-to-use license environment)". As opposed to this opinion, there is an understanding "Such criteria will change the current business model in an anticipation of a future market so that a collision with the existing market must be considered unreasonable. Right of the copyright owner must be esteemed also for the sake of an incentive (investment) to shift to a new business spectrum".
- Course pack  
(Definitions must be reviewed and problems examined.)

- There are topics that are not necessarily the problems of interpretation of Article 35, such as problems concerning reproduction of a material (published work) owned by an unintended person beyond the original use of the work and exploitation of the copied material in the process of a class. How such topics should be reflected on the Operational Guideline (how they should be presented as advisory information used by the staff on the educational site).
- How to present typical examples

⑨-3 Miscellaneous

- ① Exploitation of a work obtained based on a contract that stipulates prohibition of exploitation via reproduction or public transmission irrespective of the educational exploitation or not, the contract being entered with a provider of one of the services including: a work rental service, a digital service (a digital teaching material, database, worksheet or photo service, etc.), a content distribution contract, paid broadcasting, and paid music distribution.
- ② Reproduction of public transmission of a copy- or access-limited work.  
Example) Movie works, etc. available on Blu-ray Discs/DVDs

The above two topics are under examination by the professional working group established in this forum.

- \* Examples in this Operational Guideline are not exhaustive. Typical examples at schools, etc. will be added in line with the review of the Operational Guideline.

## 2. Typical examples of exploitation in schools

### Examples of exploitation in a class

Teachers, etc. in educational facilities can reproduce works of others and distribute the copied materials to the student in a class without obtaining the authorization of the copyright owner at no charge "to the extent that is bound to be necessary". They can transmit the teaching material created using works of others to terminals of the students or use it in an on-demand type remote class. In this case, it is not necessary to obtain the authorization of the copyright owner but the establisher of the school, etc., must pay a compensation to the copyright owner.

Note that, in any case, it is necessary to obtain the authorization of the copyright owner when the action will "unreasonably prejudice the interests of the copyright owner in the light of the type and use of the work as well as the number of the copies and the manner of the reproduction, public transmission or communication".

\* Names of subjects, and themes or scenes of a class are reference examples. In any case, when "Quotation" (Article 32 of the Copyright Act, paragraph 1) is applicable, exploitation is at no charge. In the presence of any customary practice, "Indication of source" such as the name of the copyright owner is necessary.

### Primary and secondary education

A) Examples where works are considered exploitable without authorization and at no charge

#### ■Reproduction■

##### <Class in a classroom>

1. A teacher writes on the blackboard the entirety of an essay published in a textbook\*1 in a class.
2. A teacher writes on the blackboard a small portion of an essay published in a book in a class.
3. A teacher prepares a presentation material for a class including a copy of the photograph and article published in a newspaper.
4. The teacher asks a clerical assistant to print out the material prepared in step 3.
5. The teacher prints out the material prepared in step 3 in order to distribute the same to the pupils and the parents at a class visit.
6. A teacher records a TV news program and views its portion in a class.

##### <Classes out of a classroom>

7. A teacher copies a portion of a travel guidebook at a lodging facility in order to distribute the copied material to the pupils and schoolchildren during a school excursion.

### <Teacher training>

8. The supervisor prints out a training material including a copy of a photograph and an article published in a newspaper and distributes the printout in a training session hosted by the education center.

\*1 A textbook refers to one adopted by an exploiting area or school (or a subject or a course) and owned by all the pupils and schoolchildren. A textbook that is not adopted is treated as an ordinary book, etc.

### ■Public transmission■

#### <Real-time remote joint class>

1. A teacher synchronously broadcasts (transmits) a small portion of an essay that he/she wrote on the blackboard in an Internet-based remote joint class for two schools and displays its content on a large screen.
2. The teacher transmits a material to be distributed in step 1 in a class.
3. A teacher synchronously transmits the scene of a face-to-face class to the home of each pupil on the Internet.
4. A teacher performs a real-time remote exchange class in a net meeting system with a local school at the destination of school excursion while using newspaper articles and photographs as well as videos of TV programs, etc.

B) Examples where exploitation does not require authorization but a compensation must be paid
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### ■Public transmission■

#### <Public transmission (in-classroom learning)>

1. A teacher records a skit (short play) published in a textbook\*<sup>1</sup> in real voice and uploads the recorded material to a cloud server (hereinafter the same) to which only the pupils and schoolchildren can access.
2. A teacher extracts drawings or sentences from a publication such as a textbook, compiles them into presentation software, and transmits the software to the tablet PC of each pupil via a cloud server in a face-to-face class.
3. A teacher compiles plural newspaper articles introducing the efforts in various areas nationwide into presentation software, and uploads to a cloud server.
4. A teacher uploads on a cloud server a teaching material that uses a work such as a textbook or a newspaper article exploited in a class for the purpose of learning.

#### <On-demand type public transmission (out-of-classroom learning)\*<sup>2</sup>>

5. A teacher uploads a work, a picture, a photograph, etc. in a textbook to a cloud server as a material for preparation (prior learning) of flip teaching.
6. A teacher uploads to a cloud server a necessary portion of the explanation about the culture facilities to be visited in a school excursion in order to allow reference from a tablet PC.
7. A teacher records a class video using a textbook and distributes the recorded video by using a system where only the pupils and schoolchildren of the class can access and view the content.

**<Real-time studio type public transmission (out-of-classroom learning)\*3>**

8. A teacher performs storytelling of a picture book usually done face-to face, as a home-based online class, between a teacher and the children at a kindergarten or a nursery during the period of a temporary closure.
9. A teacher in a site where pupils or schoolchildren are absent performs an online class using photographs, sentences in a textbook, etc., and newspaper articles and web pages, etc., with the pupils or schoolchildren at homes, etc., by using a new meeting system.
10. A teacher plays, on his/her PC, a TV program recorded on a DVD within the range necessary for a class, and streams the TV program to the tablet PC of each pupil.
11. A teacher streams the entirety of a piece of music by using the Internet in order to teach dancing to the music to the children at homes.

\*2 The on-demand type is a method of providing a learning resource in response to the order (request) of a learner.

\*3 The real-time studio type is an online class distributing a learning resource such as a video or voice, etc. in real time from a location there are no pupils or schoolchildren before a teacher to the homes, etc. of the pupils or schoolchildren.

**C) Examples where authorization of a copyright owner is considered necessary**

**(Exceeding the extent that is found to necessary, prejudicing the interests of the copyright owner, etc.)**

**■Reproduction■**

1. A teacher chooses several tens of photographs from a photo album of Japanese festivals, makes color copies of them on paper and binds the resulting sheets to make a teaching material that can be used in a social studies class for multiple years.
2. A teacher copies questions to be delivered to the pupils from an arithmetic drill book owned by the school or the teacher, instead of guiding the pupils to purchase the drill book.
3. A teacher copies on paper a portion of a novel to be distributed to the schoolchildren in each session of a class; accordingly, a large portion of the novel is copied at the end of the term.
4. A teacher saves the entirety of a video or music onto a PC in excess of the range necessary for a class.

**■Public transmission■**

1. A teacher scans a large number of works from the same art book, uploads them in an electronic file to a cloud server, and the schoolchildren download the file in a fine art class to their individually deployed tablet PCs.
2. A school or a teacher scans a Kanji drill book owned by the school or the teacher and e-mails the copied material to the pupils, instead of guiding the pupils to purchase the drill book.
3. A teacher uploads a large number of novels including those not directly related to a class.
4. A teacher scans a portion of a publication and e-mails, in an electronic file, the resulting material to the schoolchildren as a teaching material for preparation for each session of a class more than once; as a result, the teacher transmits a large portion of the publication.

5. A teacher uploads a picture book storytelling video to a cloud server so that the children, pupils or students can view the video anytime at their homes.
6. A teacher records TV programs concerning a variety of fields on an ongoing basis so that the recorded videos can be used freely in a class, and uploads them to a cloud server to compile them into a library.
7. A teacher causes the entirety of a video or music beyond the range necessary for a class so that the teachers, pupils or students of the school can download and view the content anytime.
8. A teacher scans all pages or the greater portion of a paper textbook, prepares a PDF version digital textbook, and distributes the same to the pupils or schoolchildren.
9. A teacher uploads, to the home page of the school, etc., a class video including a commentary of a textbook, without setting a password, for anyone as well as the pupils or schoolchildren to view the updated video.

Typical examples of exploitation except in the higher education, social education facilities and classes are scheduled to be added herein.

## Reference material

### 1 Action of exploitation in the process of a class and its handling in the Compensation System for Public Transmission for Educational Purposes (Article 35 of the Copyright Act) (created by the Agency for Cultural Affairs)

Action of exploitation in the process of a class and its handling in the Compensation System for Public Transmission for Educational Purposes (Article 35 of the Copyright Act) <sup>*1</sup>								
		Face-to-face class		Studio type class	On-demand class	Remote joint class, etc.		
						Synchronous live joint class	Synchronous live remote class	
Transmitting side <sup>*2</sup>	Teacher	/	Present	Present	Present	Present	Present	
	School children			Absent	Absent	Present	Present	
Receiving side	Teacher			Absent	Absent	Absent (There may be a teacher present at the receiving side.)	Present	Absent
	School children		Present	Present	Present	Present	Present	Present
Manners of exploitation of works		Reproduction	Public communication	Public transmission	Public transmission	Public transmission	Public transmission	Public transmission
Timing of teaching and class taking		Synchronous	Synchronous	Synchronous (or Asynchronous) <small>Asynchronous: E-mail transmission for preparation and review</small>	Synchronous (or Asynchronous) <small>Asynchronous: E-mail transmission for preparation and review</small>	Asynchronous	Synchronous <sup>*3</sup>	Synchronous <sup>*3</sup>
Handling in the Compensation System for Public Transmission for Educational Purposes (Article 35 of the Copyright Act)	Authorization unnecessary or not	Authorization unnecessary (Article 35, paragraph 1)	Authorization unnecessary (Article 35, paragraph 1)	Authorization unnecessary (Article 35, paragraph 1)	Authorization unnecessary (Article 35, paragraph 1)	Authorization unnecessary (Article 35, paragraph 1)	Authorization unnecessary (Article 35, paragraph 1)	Authorization unnecessary (Article 35, paragraph 1)
	Compensation necessary or not	Free of charge (Article 35, paragraph 1)	Free of charge (Article 35, paragraph 1)	Compensation (Article 35, paragraph 2)	Compensation (Article 35, paragraph 2)	Compensation (Article 35, paragraph 2)	Free of charge (Article 35, paragraph 3)	Free of charge (Article 35, paragraph 3)

\*1: Limited to a case that will not "unreasonably prejudice the interests of the copyright owner".

\*2: "A person in charge of teaching" or "a person taking classes" can perform public transmission, etc. (Example: public transmission from a schoolchildren to a teacher is permissible).

\*3: When transmitting a teaching material, etc. for preparation or review in a remote joint class, etc., public transmission is permissible without obtaining authorization by paying a compensation.

## 2 Examples of limitations on rights under the Copyright Act

The Copyright Act also specifies cases where copyrights are not infringed (the rights of the copyright owners are restricted), such as reproduction for private use purposes. Even in such cases, the respective provisions specify requirements for application, and there are instances where cases are not approved if the interest of the copyright owner is unreasonably prejudiced, or cases where the payment of compensation is required even if a work can be exploited.

<p>Reproduction for Private Use (Article 30)</p>	<ul style="list-style-type: none"> <li>● Applicable to a case of personal use or use within a home or to the extent it is closed similar to a home.</li> <li>● In general, use for business purposes is deemed not included in private exploitation.</li> </ul>
<p>Reproduction in Libraries and Similar Facilities; Related Matters (Article 31)</p>	<ul style="list-style-type: none"> <li>● Applicable to reproduction services, etc. provided by public libraries, as well as libraries, etc. of universities, technical colleges under the School Education Act, and institutions defined by Cabinet Order on educational institutions under special laws.</li> <li>● Libraries of elementary, junior high and high schools are not included in "libraries, etc." that are authorized to make reproductions.</li> </ul>
<p>Quotation (Article 32)</p>	<ul style="list-style-type: none"> <li>● Applicable to cases where another person's work is exploited in the preparation of an academic journal article or a report, etc. of a teacher, etc. or a student, etc. (Article 32, paragraph 1)</li> <li>● Requirements such as clear distinction and master-servant relationship are necessary (Parody Case &lt;March 28, 1980 Supreme Court judgment&gt;). Recently, there have been judgments that are based on the thought of making a determination on whether the quotation corresponds to the requirements of "fair practice" and the "extent justified by the purpose of quotation" by comprehensively considering various circumstances (Painting Certificate of Authenticity Case &lt;October 31, 2010 Intellectual Property High Court judgment&gt;).</li> <li>● Provisions on quotations may be applicable depending on the preparation of the teaching material and the lesson procedures, as well as the preparation of an academic journal article, report, etc.</li> <li>● Applicable when public relations materials, survey statistics, reports, etc. in the name of public institutions for public notification purposes are reprinted in a publication as explanatory materials (Article 32, paragraph 2)</li> </ul>
<p>Printing of Works in Teaching Materials as a Substitute for Textbooks (Article 33-2)</p>	<ul style="list-style-type: none"> <li>● A work published in a textbook may be published in a digital textbook to the extent that is approved to be necessary for school education</li> <li>● Publication requires a notice to the publisher of the textbook and a payment of compensation to the copyright owner.</li> </ul>
<p>Reproduction as Examination Questions; Related Matter (Article 36)</p>	<ul style="list-style-type: none"> <li>● Applicable to a case where entrance examination questions and regular examination questions are prepared and exploited (Article 36, paragraph 1)</li> <li>● Applicable to tests using paper media as well as tests using the Internet (public transmission)</li> </ul>

<p>Reproduction, etc. for persons with visual impairments, etc. (Article 37)</p>	<ul style="list-style-type: none"> <li>● It is permissible to turn a published work into Braille data and transmit the Braille data.</li> <li>● It is permissible to reproduce a work that has been made public in a system except Braille necessary for persons with visual impairments, etc. (such as recorded books, large-print books and DAISY books) to exploit and publicly transmit the copied material (there is a certain requirement concerning the subject).</li> </ul> <p>(* ) The persons with hearing impairments, etc. are separately stipulated in Article 37-2.</p>
<p>Stage Performances for Non-Commercial Purposes (Article 38)</p>	<ul style="list-style-type: none"> <li>● May be exploited when conditions, such as that no charge is collected from the audience or spectators and the performers are not paid remunerations for a concert at a school festival, etc., are satisfied</li> <li>● Public transmission is not included</li> </ul>
<p>Exploitation of an Artistic work on Public Display (Article 46)</p>	<ul style="list-style-type: none"> <li>● An artistic work such as a sculpture that is permanently installed in an outdoor location may be exploited in a pamphlet, etc.</li> <li>● Making a reproduction of a work such as a sculpture requires obtaining separate authorization</li> </ul>
<p>Transfer of Copies Made Pursuant to Restrictions on the Right of Reproduction (Article 47-7)</p>	<ul style="list-style-type: none"> <li>● A reproduction made without authorization pursuant to the provisions restricting rights of the reproduction right set forth in Article 35, etc. of the Copyright Act may be provided to the general public without obtaining the authorization of the copyright owner</li> </ul>
<p>Use of a Copy Other than for Its Intended Purpose (Article 49)</p>	<ul style="list-style-type: none"> <li>● Distributing or presenting to the general public a reproduction prepared pursuant to the provisions restricting rights for a purpose other than that permitted in the respective provisions requires obtaining separate authorization</li> </ul>

### 3 Related laws, supporting laws, etc.

#### (1) Non-profit educational institutions

##### ○ School Education Act

Article 1 In this Act, a school refers to a kindergarten, an elementary school, a junior-high school, a compulsory education school, a high school, a secondary education school, a school for special needs education, a university, or a technical college.

Article 124 An educational institution other than those listed in Article 1 that provides organized education corresponding to the following items for the purpose of fostering abilities necessary for a profession or actual life, or advancing cultural education (excluding those specifically set forth in other laws when conducting such education and those exclusively for foreigners living in Japan) is defined as a specialized training college.

Article 134 Anything other than those listed in Article 1 that provides education similar to school education (excluding those specifically set forth in other laws when conducting such education or those engaging in education of a specialized training college set forth in Article 124) is defined as a miscellaneous category school.

#### <Educational centers, libraries, museums, public halls, etc.>

##### ○ Act on the Organization and Operation of Local Educational Administration

Article 30 A local government can, as stipulated by a law, establish schools, libraries, museums, public halls and other educational institutions, and establish, by an ordinance, facilities related to the studies of expert and technical matters concerning education or the training, health or welfare of educational personnel, and other necessary educational institutions.

#### <Training at an education center>

##### ○ Law for Special Regulations Concerning Civil Servants in the Field of Education

Article 21 Civil servants in the field of education shall consistently devote themselves to studies and training to execute their duties.

2 An appointer of civil servants in the field of education shall formulate plans related to facilities necessary for training civil servants in the field of education, the means to encourage training and other plans concerning training, and make efforts to implement them.

Article 22 Civil servants in the field of education shall be given opportunities to undergo training.

<Schools established by education management companies>

○ Act on Special Districts for Structural Reform

Article 12-11 For application of the laws listed in the first column of the following table concerning an education management company, the words and phrases provided in the third column of the same table among the provisions provided in the second column of the same table shall be those provided in the fourth column of the same table, respectively.

Copyright Act (Act No. 48 of 1970)	Article 35, paragraph 1	excluding, however, those institutions established	excluding, however, those institutions established, including schools established by an education management company (as set forth in Article 12, paragraph 2 of the Act on Special Districts for Structural Reform (Act No. 189 of 2002; the same applies in Article 38, paragraph 1).
	Article 38, paragraph 1	or viewing audience	or viewing audience
		without charging a fee	without charging a fee or if exploited for activities to conduct the education or studies without charging a fee to the listening or viewing audience in a school established by an education management company

(2) “Classes” in primary and secondary education

▽ Common to elementary, junior high, and high schools: Student-led activities

**Order for Enforcement of School Education Act, curriculum guidelines for elementary, junior high, and high schools**

Class activities, club activities, student council/student-body activities, school events, etc.

▽ Elementary schools (first-half of a course of study at a compulsory education school)

**Order for Enforcement of School Education Act (Articles 50, 51, 52, etc.)**

Japanese language, social studies, arithmetic, science, living environment studies, music, arts and crafts, home economics, physical education, ethics, foreign language, foreign language activities, period for integrated studies, student-led activities, independent activities (school for special needs education), religion (alternative to ethics), etc.

▽ Junior High schools (second-half of a course of study at a compulsory education school, first-half of a course of study at a secondary education school)

**Order for Enforcement of School Education Act (Articles 72, 73, 79)**

Japanese language, social studies, mathematics, science, music, foreign language, art, health and physical education, technology and home economics, ethics, period for integrated studies, student-led activities, independent activities (school for special needs education), religion (alternative to ethics), etc.

▽ **High schools (second-half course of secondary education school)**

**Order for Enforcement of School Education Act (Article 84, etc.)**

Ordinary subjects: Japanese language, geography and history, civics, mathematics, science, foreign language, health and physical education, art, home economics, information, school designated subjects and courses

○ Specialized subjects: Agriculture, industry, commerce, fisheries, home economics, nursing, information, welfare, foreign language, inquiry-based study of science and mathematics, physical education, music, art, school designated subjects and courses

○ Activities other than subjects: Period for inquiry-based cross-disciplinary study, student-led activities, independent activities, religion (alternative to ethics)

○ **Curriculum guidelines, Student-led activities (about 35 hours a year)**

<Elementary schools>

Class activities, student council activities, club activities, school events

<Junior-high schools>

Class activities, student-body activities, school events

<High schools>

Home room activities, student-body activities, school events

◆ **Extracurricular activities**

<Club activities in junior-high and high schools>

○ **Curriculum guidelines for junior-high schools, Chapter 1 General Provisions (Notice of 2017)**

Section 5 Notes on school management

1 Improvement of curriculum and school evaluation, coordination with extracurricular activities, etc.

(C) Care shall be taken to keep extracurricular school educational activities in association with the curriculum. In particular, club activities conducted through independent and voluntary participation of students contribute to the development of qualities and abilities aimed for by school education, including familiarization with sports, culture, science, etc., increased motivation to study and fostering a sense of responsibility and a sense of solidarity, and care shall be taken to maintain association with the curriculum. When doing so, management practices including cooperation of the local residents and coordination with social education institutions and various organizations related to social education shall be devised to build a sustainable management system.

○ **Order for Enforcement of School Education Act**

Article 78-2 An instructor of club activities shall be engaged in technical guidance regarding educational activities related to sports, culture, science, etc. in a junior high school (excluding those conducted as part of a junior high school curriculum).

○ **Comprehensive guidelines for principles of athletic club activities (Sports Agency: March 2018)**

○ **Comprehensive guidelines for principles of cultural club activities (Agency for Cultural Affairs: March 2018)**

<Miscellaneous>

◆ **Open (research) class**

○ **Notice of 2017, Elementary school curriculum guidelines, Chapter 1 General Provisions, Section 3 Implementation of curriculum and evaluation of learning**

1 Improvement of classes for the realization of independent, interactive and profound learning

(1) To improve classes for the realization of independent, interactive and profound learning by schoolchildren, by looking through the content, such as units and subject matters, and time so that the matters indicated in (1) through (3) of Chapter 1, Section 3 can be realized without bias.

◆ **Class review meeting**

○ **Notice of 2017, Elementary school curriculum guidelines, Chapter 1 General Provisions, Section 3 Implementation of curriculum and evaluation of learning**

1 Improvement of classes for the realization of independent, interactive and profound learning

(1) To improve classes for the realization of independent, interactive and profound learning by schoolchildren, by looking through the content, such as units and subject matters, and time so that the matters indicated in (1) through (3) of Chapter 1, Section 3 can be realized without bias.

◆ **Open school (class visit) for local residents and parents**

○ **School Education Act**

Article 43 An elementary school shall actively provide information about the educational activities of the elementary school and school management status, to deepen the understanding for the elementary school by the parents, local residents and other stakeholders and contribute to advancing the coordination and cooperation with such parties.

○ **Ordinance for Enforcement of School Education Act**

Article 67 An elementary school shall make efforts to perform evaluation by the parents of the schoolchildren of the elementary school and other stakeholders of the elementary school (excluding its staff) that is based on the results of evaluation according to the provisions of paragraph 1 of the preceding Article, and publicly disclose the results thereof.

\* These provisions apply mutatis mutandis to kindergartens (Article 28), junior high schools (Article 49), high schools (Article 62), secondary education schools (Article 70), school for special needs educations (Article 82), specialized training colleges (Article 133) and miscellaneous category schools (Article 134, paragraph 2), respectively.

**(3) “Classes” in higher education**

○ **School Education Act**

Article 83 A university shall aim to widely confer knowledge as the center of academic learning, deeply teach and study specialized libera arts, and develop intellectual, moral and applied abilities.

○ **Standards for Establishment of Universities**

Article 19 A university shall establish the class subjects necessary to achieve the educational purpose of the university, respective faculties, departments, courses, etc., and shall organize the curricula systematically.

Article 31

2 A university may grant credits to a person other than one of its students who takes a special course set forth in Article 105 of the School Education Act (hereinafter referred to as a "special course student" in this Article), as specified by the university.

○ **School Education Act**

Article 105 A university may organize a special course for a person other than a student of the university and issue a certificate to certify the fact of completion to a person who has completed the course, as specified by the Minister of Education, Culture, Sports, Science and Technology.

Note: The course certification program is a "special course."

○ **Ministry of Education Notice No. 68 of 1991** (studies for which a university may grant credits according to the provisions of Article 29, paragraph 1 of the Standards for Establishment of Universities) = Partially amended in August 2019

1 Studies in a major course of a university or in a special course organized by the university pursuant to the provisions of Article 105 of the School Education Act (Act No. 26 of 1947).

...

6 Studies in a course or an extension course given by a university, a junior college, etc., based on the accreditation by the Minister of Education, Culture, Sports, Science and Technology pursuant to the provisions in Note 3, Item 6 of the Appended Table of the School Teacher’s License Act (Act No. 147 of 1949) that is found to have a level equivalent to a university education at a university.

7 Studies in a course for social education supervisors given by a university, a junior college, etc., under the commission by the Minister of Education, Culture, Sports, Science and Technology, pursuant to the provisions of Article 9-5 of the Social Education Act (Act No. 207 of 1949) that is found to have a level equivalent to a university education at a university.

8 Studies in a course for librarians and assistant librarians given by a university, a junior college, etc., under the commission by the Minister of Education, Culture, Sports, Science and Technology, pursuant to the provisions of Article 6 the Library Act (Act No. 118 of 1950) that is found to have a level equivalent to a university education at a university.

9 Studies in a course for teacher librarians given by a university, a junior college, etc., under the commission by the Minister of Education, Culture, Sports, Science and Technology, pursuant to the provisions of Article 5, paragraph 3 of the School Library Act (Act No. 185 of 1953) that is found to have a level equivalent to a university education at a university.

**<Grounds for FD>**

○ **Standards for Establishment of Universities**

Article 25-3 A university shall implement organized training and research for the purpose of improving the contents and methods of the classes of the university.

**<Grounds for SD>**

○ **Standards for Establishment of Universities**

Article 42-3 A university shall provide opportunities for training to its staff to acquire necessary knowledge and skills and to enhance their abilities and qualities (excluding those corresponding to the training set forth in Article 25-3) and take other necessary measures for the purpose of the proper and effective management of its education and research activities, etc.

**<Grounds for extension courses given by a university>**

○ **School Education Act**

Article 107 A university may establish a facility for extension courses.

2 Matters necessary for extension courses will be determined by the Minister of Education, Culture, Sports, Science and Technology.

○ **National University Corporation Act**

Article 22 A national university corporation will perform the following operations:

4 Establishing extension courses and providing other opportunities for learning to persons other than its students.

**<Specialized training college>**

○ **School Education Act**

Article 125 A specialized training college shall provide an advanced course, a specialized course or a general course of study.

2 The advanced course of study of a specialized training college shall provide the education in the preceding Article according to physical and mental development, upon the foundation of an education in a junior high school to a graduate of a junior high school or an equivalent school or a compulsory education school, a person who has completed the first half course of a secondary education school, or a person found to have at least an equivalent academic ability to that of the graduates or persons mentioned above as determined by the Minister of Education, Culture, Sports, Science and Technology.

3 The specialized course of a specialized training college shall provide the education in the preceding Article, upon the foundation of an education in a high school to a graduate of a high school or an equivalent school or a secondary education school, or a person found to have an equivalent academic ability to that of those graduates or persons mentioned above as determined by the Minister of Education, Culture, Sports, Science and Technology.

4 The general course of a specialized training college shall provide the education set forth in the preceding Article other than the education of an upper secondary course or a specialized course.

○ **Specialized Training College Establishment Standards**

- Article 8 The advanced course of study of a specialized training college shall establish class subjects suitable for education in a specialized training college according to physical and mental development upon the foundation of an education in a junior high school.
- 2 The specialized course of study of a specialized training college shall establish class subjects that are deep and suitable for education in a specialized training college to a professional extent upon the foundation of an education in a high school.
  - 3 For the establishment of the class subjects of the specialized course of study set forth in the preceding paragraph, proper considerations shall be given so as to foster a well-rounded character.
  - 4 The general course of study of a specialized training college shall establish lesson subjects suitable for education in a specialized training college according to their purpose.

○ **Ministry of Education Notice No. 184 of 1999** (studies that may be deemed as a learning of class subjects by a specialized training college set forth in the provisions of Article 10, paragraphs 1 and 3 of the Specialized Training College Establishment Standards)

- 1 Studies separately set forth in Article 11, paragraph 1 of the Ministerial Order shall be those listed below:  
(Omission)
- 3 Studies in an extension course or any other study opportunities provided as ancillary business by a university, a junior college, a technical college or a specialized training college, studies in a course established in a community hall or any other social education institution, or other studies similar thereto.  
(Omission)

**(4) “Classes” in social education institutions**

<“Classes” in a public hall>

○ **Social Education Act**

Article 20 The purpose of a community hall is to engage in various educational, academic or cultural businesses conforming to actual life, and thereby provide personal enrichment, improve health and purify sentiments, and contribute to the promotion of social welfare.

Article 22 A community hall generally engages in the businesses to the left in order to achieve the purpose in Article 20; provided, however, that this does not apply to those prohibited by this act or any other law or regulation:

- 1 Establishing regular courses.
- 2 Holding panel discussions, training sessions, lectures, practice sessions, exhibitions, etc.
- 3 Providing books, records, models, materials, etc. and promoting their exploitation.
- 4 Holding assemblies related to physical education, recreation, etc.
- 5 Promoting contacts with various organizations, institutions, etc.

**<“Classes” in a library>**

**○ Library Act**

Article 3 In order to provide library services, a library shall endeavor to generally accomplish the following matters by taking into account conforming to the local situations and the hopes of the general public, supporting school education and contributing to the improvement of education in the family.

(Omission)

6 Organizing reading circles, study groups, viewing groups, screenings and exhibits of data and materials, etc., and encouraging the holding of these events.

8 Providing opportunities for educational activities by utilizing the achievements of learning obtained through the use of learning opportunities in social education and other educational activities, and encouraging the provision thereof.

(Omission)

**<“Classes” in a museum>**

**○ Museum Act**

Article 3 In order to achieve the purpose set forth in the first paragraph of the preceding Article, a museum will generally perform the following business:

7 Organizing lectures, training sessions, screenings, study groups, etc. related to museum materials, and supporting the holding of these events.

9 Providing opportunities for educational activities by utilizing the achievements of learning obtained through the use of learning opportunities in social education and other educational activities, and encouraging the provision thereof.

## **Reference materials concerning the Compensation System for Public Transmission for Educational Purposes**

### **About SARTRAS License**

The SARTRAS applied for registration as a copyright management entrepreneur based on the Act on Copyright, etc. Management Service in order to maintain a license environment where the Association will become a one-stop contact toward attainment of the direction indicated by the Report by Subdivision on Copyright of the Council for Cultural Affairs (fiscal 2017), and was registered on September 7, 2020. We will hereafter make preparations for negotiations with copyright management organizations, etc. concerning specific entrustment with regard to the examined license details and maintain the license system.

The license offered by the SARTRAS acting as a contact (hereinafter referred to as the "SARTRAS license") aims to supplement the compensation system and allow educators to provide a sufficient basic exploitation environment in a general exploitation situation. In other words, the compensation system and the SARTRAS together aim to provide an exploitation environment for works, etc. that is worry-free for the users in developing the active ICT education.

Individual authorization may be required in various manners of education. We will cooperate with the copyright management organizations in establishing such a license system.

Now, specific works as a target for authorization of the SARTRAS license under examination are mentioned below. Concerning exploitation of these works, it is under examination to give authorization to actions of exploitation including public transmission (or enabling transmission) of a work, etc., communicating using a receiver, reproducing or transferring the work (hereinafter referred to as "actions of exploitation including reproduction and public transmission") on a one-stop basis.

Further, examinations are scheduled so as to include exploitations in a permissible range into the SARTRAS license in order to "maintain an environment where exploitation of works is 'seamlessly' available at the boundary of right limitation to satisfy the needs for exploitation of works in an actual educational scene" as mentioned in the Report.

#### Works as a target for authorization

A work, etc. that the Association was entrusted on management, concerning exploitation by an educational institution, etc., by an organization of copyright holders or neighboring rights holders, or a copyright management entrepreneur

#### Range of exploitation as a target for authorization

Among the actions of exploitation of works, etc. related to education offered within the range of exploitation and works as stipulated in each of the following sections in an educational institution (hereinafter referred to as "exploitation for educational purposes"), actions of exploitation including public transmission (or enabling transmission) of a work, etc., communicating using a receiver, reproducing or transferring the work as stipulated in each of the following items (hereinafter referred to as "exploitation including reproduction and public transmission, etc.")

- ① Exploitation as a target for authorization concerning the primary and secondary educations
- (A) Actions of exploitation including reproduction and public transmission of a teaching material by a teacher ("a person in charge of teaching" as stipulated in Article 35 of the Copyright Act, paragraph 1) between teachers that belong to one single educational institution or between plural educational institutions established by one single establisher, for the purpose of exploiting the material in the course of a class. For actions of exploitation including reproduction and public transmission between plural educational institutions established by one single establisher, exploitation is limited to between teachers of educational institutions of the same kind, for example, a teaching material for elementary schools between teachers of elementary schools and a teaching material for junior-high schools between teachers of junior-high schools. Note that this does not apply to the actions listed below.
    - a) Actions of exploitation including reproduction and public transmission of the teaching material, etc. where the number of copies of the teaching material, etc. or the number of recipients of the public transmission exceeds the number of teachers that use the teaching material, etc. in the course of a class
    - b) Actions of exploitation including reproduction and public transmission of a teaching material prepared by the establisher, etc.
  - (B) Actions of exploitation including reproduction and public transmission of a teaching material by a teacher so that a person taking classes ("a person taking classes" as stipulated in Article 35 of the Copyright Act, paragraph 1; hereinafter referred to as "a student, etc.") can continuously exploit the teaching material in use in the course of the class after completion of the class as well. This does not apply to actions of exploitation including reproduction and public transmission where the number of copies of the teaching material, etc. or the number of recipients of the public transmission exceeds the number of the students of the class. The period in which continuous exploitation is permissible is one in which the student, etc., is in the educational institution and within the effective date of exploitation authorization contract related to actions of exploitation including reproduction and public transmission (hereinafter referred to as the "exploitation authorization contract") between the entrustee and the establisher.
  - (C) Actions of exploitation including reproduction and public transmission of a material by the staff of a school for educational purposes to exploit the material as a material for the parents of the students in the school such as a parent-teacher meeting. This does not apply to actions of exploitation including reproduction and public transmission of the teaching material, etc. where the number of copies of the material, etc. or the number of recipients of the public transmission exceeds the number of parents qualified to participate in the parent-teacher meeting. The material subjected to the actions of exploitation including reproduction and public transmission is limited to a portion to be actually examined or referenced during a conference such as the parent-teacher meeting.
  - (D) Actions of exploitation including reproduction and public transmission of a material to be used in a conference held in respective organizations such as a school staff conference by the staff of an educational institution for educational purposes. This does not apply to actions of exploitation including reproduction and public transmission where the number of copies of the material or the number of recipients of the public transmission exceeds the number of persons qualified to participate in the school staff conference. The material subjected to the actions of exploitation including reproduction and public transmission is limited to a portion to be actually examined or referenced during a conference such as the school staff conference.

- (E) Actions of exploitation including reproduction and public transmission, by the staff of a school, of a material to be used for educational purposes in a school staff training (excluding one admitting as participants those related except the staff of an educational institution). This does not apply to actions of exploitation including reproduction and public transmission where the number of copies of the material or the number of recipients of the public transmission exceeds the number of persons and instructors qualified to participate in the school staff training. The material subjected to the actions of exploitation including reproduction and public transmission is limited to a portion to be actually examined or referenced during the school staff training.
- ② Exploitation as a target for authorization related to higher education
- (A) Actions of exploitation including reproduction and public transmission of a teaching material by a teacher so that a student, etc. can continuously exploit the teaching material in use in the course of the class after completion of the class as well. This does not apply to actions of exploitation including reproduction and public transmission where the number of copies of the teaching material, etc. or the number of recipients of the public transmission exceeds the number of the students of the class. The period in which continuous exploitation is permissible is one in which the student, etc., is in the educational institution and within the effective date of exploitation authorization contract.
- (B) Actions of exploitation including reproduction and public transmission of a material to be used in a conference held in respective organizations such as a school staff conference by the staff of a school of an educational institution for educational purposes. This does not apply to actions of exploitation including reproduction and public transmission where the number of copies of the material or the number of recipients of the public transmission exceeds the number of persons qualified to participate in the school staff conference. The material subjected to the actions of exploitation including reproduction and public transmission is limited to a portion to be actually examined or referenced during a conference such as the school staff conference.
- (C) Actions of exploitation including reproduction and public transmission, by the staff of a school, of a material to be used for educational purposes in a school staff training (including a seminar or provision of information held as an FD or an SD targeted for teachers in an educational institution and other staff; excluding one admitting as participants those related except the staff of an educational institution). This does not apply to actions of exploitation including reproduction and public transmission where the number of copies of the material or the number of recipients of the public transmission exceeds the number of persons and instructors qualified to participate in the school staff training. The material subjected to the actions of exploitation including reproduction and public transmission is limited to a portion to be actually examined or referenced during a conference of the school staff training.

The range of exploitation in items ① and ② is limited to internal exploitation in an educational institution, etc. The actions of exploitation exclude: exploitation of a work, etc. sold exclusively to an educational institution or the establisher of the educational institution and a drill book or a workbook, etc. purchased by each student, etc.; exploitation of a portion as a substitute for purchase of a work available on the market; exploitation by systematically stocking a work as a material onto a server (compiling a database); and exploitation prohibited by a service contract such as prohibition of public transmission.

- \* For actions of exploitation that require authorization other than the above, a copyright management entrepreneur that manages the copyright of the work to be exploited will individually act as a contact.

(Supplement)

The SARTRAS have been considering to specify the license entrustment repertoire and to focus on the following items in steps to expand the repertoire and related steps.

- a) Establishment of a portal site for easy access to the databases of a right management entrustment organization, etc. (within the SARTRAS WEB) so that an educational institution can easily confirm whether the action is within the repertoire as a target for the SARTRAS license
- b) Provision of information about authorization exceeding the permissible range of authorization based on the SARTRAS license, in conjunction with a)
- c) Support for establishment of the Federation of Humanities Associations (tentative name) and entrustment of right management
- d) Appeal for entrustment to an organization except one composed of SARTRAS employees
- e) Repertoire expansion measures individually taken by an organization re-entrusting the SARTRAS with management such as one composed of SARTRAS employees (including promotion of entrustment limited to the license of the association)
- f) ADR<sup>7</sup> Examination of establishment or an institution
- g) Establishment of consulting service

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<sup>7</sup> Abbreviation of Alternative Dispute Resolution. A dispute resolution method in a broad sense except legal procedure