

# **Institutional Repository & Copyright Q&A**

Revised Edition  
(English Version)

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# Prologue

The revised edition of “Institutional Repository & Copyright” written by Professor Setsuo KUROSAWA, has been published. We are pleased that this guide has proven to be an invaluable book for promoting the registration in and the utilization of institutional repositories.

The first edition was published six years ago. Meanwhile, practical use of institutional repositories has been rapidly increasing, and such use has become an essential part of the education and research. Moreover, it is regarded as important because it has been specified in the state policy—the 4th Science and Technology Basic Plan of Japan—which was approved by the Cabinet on August 19, 2011, in order to promote an open access to and the preservation of the education and research outcome by the digitization.

In this situation, it is necessary to understand the relationship between the Institutional Repository and copyright protection, which is explained clearly in this book. In the revised edition, convenience is enhanced by responding to the new needs of institutional repositories and the revised contribution rules for academic journals. We hope this guide will be put to good practical use and will promote the use of and an access to institutional repositories.

Hiroshima University Library Director

Kazuto TOMINAGA

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# Chapter 1

## Copyright in Papers

If you plan to make your paper available in the Institutional Repository in electronic form, the copyright of the contents of your research results should be considered. In this chapter, we will explain some basic concepts about copyright in papers for authors.

### Q1-1

Is it necessary to obtain permission from the author if I want to include published figures, tables, or photos in my papers?

### A1-1

First, as illustrated as works, figures, tables, or photos are protected under the Copyright Act. However, a figure that can be made by anyone is hardly considered as a “work” (e.g., a diagram made by horizontal and vertical axis and a polygonal line graph based on data). A photograph, in which thoughts or sentiments of the photographer (author) are expressed in a creative way, is considered

as a “work”. For example, it is an established theory that no matter how much a masterpiece’s photograph looks real, no property right is vested in the photographer.

Generally, a work with copyright should be used with the consent of the copyright proprietor. However, works in which the copyrights are terminated can be used freely. In the case of photographic works, the term of protection was shorter than other works, such as literary, artistic and diagram works. For example, copyrights of photographic works published 50 years ago shall terminate even if the photographer is still alive. Therefore, it is important to check the copyright of a work before using it.

Moreover, diagrams or photographs which are within the copyright protection period can be included without permission by using “quotation” marks, which will be described in A1-3.

Furthermore, the reproduction of diagrams or photographs from public relations materials made by governments or public organizations (e.g., white paper) is allowed (see Article 32(2), Copyright Act).

## Q1-2

Is it necessary to obtain permission if I use modified figures, tables, or photos in my papers?

## A1-2

Rights of reproduction and adaptation are included in the property right. Any work may not be used without the author's permission. The way to reproduce a work authored by other was answered in A1-1. The use of modified figures, tables, and photos (adaptation) may cause new legal problems. While a reproduction is allowed by quoting, even without author's permission, an adaptation is not permitted. Since the author reserves the right to modify his or her works, referred to as the "right to maintain the integrity" (one of the "Moral Rights of Authors"), it is necessary to get the permission of the author if you want to use modified figures, tables or photos.

On the other hand, there is no problem if the work is generated by revising and adding or deleting other's figures or tables so as to form the original one, even if subtle differences are hard to distinguish.

## Q1-3

Is it necessary to obtain an author's permission when citing from his or her paper? What citation would be regarded as an infringement of copyright?

## A1-3

According to Article 32 (1) of the Copyright Act, it is permissible to quote from and thereby exploit a work already made public, provided that such quotation is compatible with fair practice, and to the extent justified by the purpose of the quotation.

Using a precedent case as an example, first, you have to write your own work (e.g., a paper), which is the main part, with works of others inserted as affiliated parts. Therefore, it is difficult to say that it is a quotation if you use several pages from works of others.

Second, it is necessary to distinguish your paper from others' works clearly. As a quotation, there should be square brackets to distinguish your paper from others'. Using the example of Q1-1, the use of others' tables and photos would be expressly noted and distinguished. As both your own tables and photos as well as cited works are used, you have to indicate the sources of others' works expressly for the readers.

Third, the sources of the quotation should be indicated clearly, such

as where the tables and photos come from. Indicating the sources clearly is a legal obligation.

With the above three requirements in combination, you can use a paper without permission of the author.

On the contrary, if the use of a paper is beyond the above parameters, and is treated as an infringement, please examine which requirement has not been met.

If you use another author's paper as the main part and your own paper is an affiliated part, it is reprinting instead of quoting. In other words, it is an infringement. Further, if you have cited other papers in your paper, and you only compare those papers without adding your own opinion, it is clearly regarded as reprinting.

Next, if you do not distinguish your paper clearly from the papers of others, which leads the readers to believe that the author of the quoted paper is yourself, it is regarded as a plagiarizing. That is, it is a form of copyright infringement. Recently, fabricating data has been a focus of the discussion, and some researchers are accused of an infringement as failing to meet the standards of their education competence.

Therefore, if the sources of the quotation are not indicated clearly, even if there is no copyright infringement, there is a possibility of penalty.

The next example with \* is a method of using another author's paper in accordance with press guidelines. If the quoting is

beyond the allowable range, some written permission is required. Obviously, written permission is required if the material quoted is out of range. That could help to avoid unnecessary trouble later.

\* —————

If the intended use is for scholarly comment, for noncommercial research, or for educational purposes, an institution or an academic may, without seeking permission from Elsevier, use: (partly omitted)  
If the intended use or the material quoted differs from the categories or the range described above, Elsevier's prior written permission must be obtained.

[Ways to Use Journal Articles Published by Elsevier: A Practical Guide, 2011, 4th Edition]

URL: <http://japan.elsevier.com/news/lc/lcp0404jpn.pdf>  
(accessed 2013-01-09)

## Q1-4

As the author of a paper, may I use my paper freely in other works?

## A1-4

Generally, the author of a paper automatically owns the copyright of the paper without the requirement to follow any formal procedure. If others want to use the paper, they must obtain permission relating to both the right of copying (property right) and the right to use a summary of the paper (moral right of the author). While the moral rights of the author are not transferable, as only the author can have ownership over moral rights, property rights are transferable. When the paper is published in an academic journal, the copyright of the paper may be transferred to this academic journal. That is, the author's property right may be transferred to the academic journal in advance due to its internal rules.

Normally, the author can copy his or her paper freely in his or her other papers. However, when the author transfers the copyright of a paper to an academic journal, he or she must obtain the consent of the academic journal to use the paper or parts of it. Even if an academic journal owns the copyright of the paper, such journal has no objection in principle if the source of the paper used is indicated

in the author's paper. This was true according to a survey: 34 of 174 journals in the Science and Technology Academic Journal so stipulate where the author copied, translated, or adapted all or a part of his or her own paper. Sixteen academic journals stipulate that "the consent of the academic journal is necessary." There is no additional regulation on the use of the author's previous papers. On the other hand, according to 7 of the 87 journals in the Social Science Academic Journal, the author is free to use his or her paper. This is contradictory to the position taken by 12 journals, which require that "the consent of the academic journal is necessary."

Whether the author has the right to use his or her own paper freely in his or her other papers is difficult to determine conclusively, because the practical application of the rules by academic journals is not known. For more details, reference should be made to contribution rules of the particular academic journal in which your paper was published, or the License Agreement under which your paper was contributed.

Typically, if the phrase "All rights reserved by the Society" appears, the copyright in the paper is transferred to the academic journal. Therefore, obtaining the consent of the journal is a reasonable step prior to copying, translating, or adapting the paper. However, academic journals normally are not concerned with if a paper is used by its author. In the end, it depends on the practical handling by the academic journal.

Several examples of the approach of academic journals are as follows:

#### **Institute of Electronics, Information and Communication Engineers**

An author is not required to apply for the permission of the IEICE to use his/her own work after publication, if the copyright notice appears and the source is indicated, provided that purposes are not commercial and do not unfairly infringe on the IEICE's interests. If the work is to be used for commercial purposes, the author must, in principle, obtain prior permission from the IEICE, using the application form for the permission to use IEICE works.

URL: [http://www.ieice.org/jpn/about/kitei/files/chosaku\\_hyou3.pdf](http://www.ieice.org/jpn/about/kitei/files/chosaku_hyou3.pdf)

(accessed 2013-01-09)

(English: <http://www.ieice.org/eng/about/copyright>)

#### **The Institute of Electrical Engineers of Japan**

“Application for License of quotation or reproduction” should be submitted to The Institute of Electrical Engineers of Japan.

URL: <http://www2.iee.or.jp/ver2/honbu/14-magazine/data033.html>

(accessed 2013-01-09)

#### **American Association for Cancer Research**

Authors of papers published in AACR journals are permitted to use their papers or parts of them without requesting permission from the AACR. Parts of their papers, including figures and tables can be reproduced in books, reviews, or subsequent papers they write or edit.

URL: <http://cancerres.aacrjournals.org/site/misc/ifora.xhtml#reuseauthors>

(accessed 2013-01-09)

### The American Society for Cell Biology

All publications can be reproduced by authors or coauthors as long as they notice the copyright of ASCB appropriately and link to the original MBoC publications.

URL: [http://www.mbcpapers.org/html/MBC\\_Copyright.pdf](http://www.mbcpapers.org/html/MBC_Copyright.pdf)  
(accessed 2013-01-09)

### The company of biologists; Development

Authors are permitted to reproduce their papers or parts of them in their publications (including dissertations) they write.

URL: [http://dev.biologists.org/site/misc/rights\\_permissions.xhtml](http://dev.biologists.org/site/misc/rights_permissions.xhtml)  
(accessed 2013-01-09)

## Q1-5

Is permission needed if one wants to reprint his or her paper as the first chapter of his or her dissertation, if its copyright has been assigned to a press or an academic journal?

## A1-5

As was the case in A1-4, it depends on the rules made by the presses and the academic journals. If the copyright has not been obtained by the presses or the academic journals, the copyright is still owned by the author. Therefore, it is permissible to reprint his or her paper as the first chapter in his or her dissertation.

The following are some examples of the approach taken by several academic journals:

### American Association for the Advancement of Science

The author retains the right to reprint his or her work in print form for inclusion in a thesis or dissertation that he or she writes.

URL: <http://www.sciencemag.org/feature/contribinfo/prep/license.pdf>  
(accessed 2013-01-09)

## American Physical Society

The author has the right to use all or a portion of his or her paper in a thesis or dissertation without obtaining permission from APS.

URL: <http://forms.aps.org/author/copyfaq.html>

(accessed 2013-01-09)

## Elsevier

The author can, without asking permission, do the following after publication of his or her paper in an Elsevier-published journal (extract):

- To include the paper in full or in part in a thesis or dissertation.

URL: <http://japan.elsevier.com/news/lc/lcp0404jpn.pdf>

(accessed 2013-01-09)

## Taylor and Francis

The author has the right to include his or her paper in a thesis or dissertation that is not to be published commercially, provided that the sources of the prior publication in the journal is made explicit.

URL: <http://www.tandf.co.uk/journals/copyright.asp>

(accessed 2013-01-09)

## Q1-6

If copyright in several papers has been assigned to an academic journal, is it necessary to obtain permission when writing a dissertation by using rewritten versions of these papers?

## A1-6

As written in A1-4, if copyright in the paper is owned by an academic journal and an author reprints the same content, permission requirements are determined by the academic journal itself. Even if no rule is expressly stipulated by the journal itself, the issue may be resolved by the practice of the journal.

If, however, you rewrite your several papers in such a form as to create a new doctoral paper, it is not necessary to obtain the permission from the academic journal.



# Chapter 2

## Copyright Matters related to Repository

In this section, we will explain copyright matters when making scholarly papers available in the institutional repository.

### Q2-1

Do copyrights in the papers transfer to the library when depositing them in the repository?

### A2-1

No. The author continues to own whole copyright in his or her paper. Registration only grants the library a permission (to exercise the public transmission and the reproduction rights) to deposit the paper in the repository. No legal rights are transferred (or assigned) to the library.

Because the copyright in the work is still owned by the author (researcher), it is also possible to register his or her work in other repositories.

## Q2-2

Can I make my paper available in the repository, if its copyright has already been transferred to a publisher?

## A2-2

If the copyright has already been transferred to a publisher, the situation is regarded as same as “All rights belong to the association,” discussed in A1-4. In such situations, the publisher’s permission is required, and if the author retains the right to make his or her paper available in repository, the agreement of the author is enough to register his or her paper in the repository. The copyright agreement between the author and the publisher determines the issue. In order to illustrate, we will provide some examples in which the publisher or association grants permission to make papers available in a repository, or the author retains the legal right to do so himself or herself.

### The Japan Society of Mechanical Engineers

Only if depositing papers or presentation materials in digital archives, or making papers available on the internet in the author’s institution (university, company, research institution, etc.), a license application is exempt.

URL: <http://www.jsme.or.jp/publish/yoko/kyodaku.pdf>  
(accessed 2013-01-09)

## The Ecological Society of Japan

The Ecological Society of Japan allows the repost, if there is a request from university libraries that are working on an institutional repository.

URL: <http://www.esj.ne.jp/esj/Info/Repository/member.html>

(accessed 2013-01-09)

## Elsevier

By the judgment of the author, his or her papers are allowed to deposit on author's personal or institutional website for academic purpose.

URL: <http://japan.elsevier.com/news/lc/lcp0404jpn.pdf>

(accessed 2013-01-09)

## Cambridge University Press

The author may post the Version of Record of his or her paper (in PDF or HTML form) in Institutional Repositories of the institution in which the author worked at the time the paper was first published, after one year from the first publication of the paper in the Journal on Cambridge Journals Online

URL: <http://journals.cambridge.org/action/stream?pageId=4088&level=2&sessionId=F2C463F1C8D3CF3E4EF55B3265F4DD8F.journals#4408>

(accessed 2013-01-09)

## Q2-3

Must all co-authors agree to the making of their paper available in the repository?

## A2-3

The exercise of copyright in a work created by joint authors requires the consent of all the joint owners. Individual owners should not refuse to provide such consent unless they have legitimate reasons for doing so. If copyrights are individually owned or have been transferred to a publisher or association, gaining permission is required.

In addition, “a work of joint authorship” means the work written by plural authors, which cannot be divided individually. On the contrary, if Chapter 1 is written by A and Chapter 2 is written by B, it can be divided by chapters. Then, if A would like to deposit Chapter 1 in the repository, it can be deposited individually, regardless of the views of the other co-authors.

## Q2-4

May papers that have not gained permission from the publisher and cannot be made available be preserved on a campus server? The purpose is to preserve the papers, and not to make them available. Moreover, when the application of making a copy from the file comes on ILL, can it be used?

## A2-4

It depends on whether copyright is completely transferred to the publisher or not. When copyright is completely transferred to the publisher, the preservation, that is the reproduction, on a campus server is a violation of copyright owned by the publisher. Otherwise, you can retain the right to make copies, without making them available off-campus.

In addition, according to the survey introduced above (in A1-4), society rules may also determine whether papers can be deposited on personal or institutional websites.

About ILL, a published work, according to Article 31 of the copyright Act, can be preserved. On the other hand, it is difficult to be preserved if a work has not been published.

## Q2-5

Can I make chapters of my book on sale available in the repository?

## A2-5

In the case of a book, there may be an agreement to establish the right of publication. While the publication of one whole book may create problems, making chapters of your book available does not amount to the publication, so there would be no problem.

## Q2-6

Are the contents of research reports on the Grant-in-Aid for Scientific Research (KAKENHI) or doctoral dissertations made available in the repository regarded as published works? In addition, is the contribution of those contents to a journal regarded as a duplicate contribution?

## A2-6

According to the Copyright Act, “Making a work public” means that numbers of copies of a work are distributed (or published), or are made available to the public by the public transmission specifically on the internet. Conversely, when printing several copies only and submitting them to a library or an officer of a library, it is not regarded as “Making a work public,” even if they are available to users. As such, I have some doubt that the contribution rules of “Styles Guides of Japanese Sociological Review” (Note1) of the Japan Sociological Society would apply so that the reports on the Grant-in-Aid for Scientific Research and doctoral theses, submitted to the graduate schools, would be “equivalent to papers made public”. In general, there is no doubt that depositing them in a repository and making them available means “making works public”.

In addition, the contribution rules of Atomic Energy Society of Japan provides that papers made public that have passed an examination by an academic society or an examining authority, and are available by usual way (including on the internet) cannot be used for a duplicate contribution. Moreover, as long as the publisher university concludes papers to be original papers, even if there is no organizational examination, proceeding is equivalent to an academic publication, and contributing them becomes a duplicate contribution (Note 2).

Note 1: “Styles Guides of Japanese Sociological Review” (second edition)

Papers made public include not only journal articles (including planned publications, contributing papers), books or theses published in books (including planned publications), but also reports on the Grant-in-Aid for Scientific Research, the master theses, the doctoral theses and other academic reports. It is because “making a work public” is a broader concept than “publication.” It indicates that a work is evaluated as a research result or is available by third parties in some way.

URL: <http://www.gakkai.ne.jp/jss/bulletin/guide.php>  
(accessed 2013-01-09)

Note 2: “Notes about the copyrights and the duplicate contribution in the case of Paper Contribution”

URL: [http://www.aesj.or.jp/publication/080725notice\\_copyright\\_etc.html](http://www.aesj.or.jp/publication/080725notice_copyright_etc.html)  
(accessed 2013-01-09)

## Q2-7

I want to provide an open access to my papers that have already been published in academic journals, rather than draft papers that have not been submitted for publication. Can I make available my paper that is scanned from a published journal?

## A2-7

Several decades ago, the right in published editions, called the edition right, was discussed by the Copyright Council of the Agency for Cultural Affairs. Even now, publishers argue that such right should be recognized as neighboring rights. However, at present, that view has not been accepted. Therefore, if the copyright holder consents, you may scan your papers from the journals and make them available in the repository.

However, even if the edition right is not stipulated in the Copyright Act, unless the reproduction of a published paper is authorized by a contract made between the publisher and the author, the author will be admitted only to make his or her draft papers available.

In fact, according to a survey in the UK (\*), focusing on overseas situations, more than 60% of publishers grant the self-archiving, including the registration in institutional repositories of papers. However, about half of those publishers do not seem to recognize

the scanning of a published version. There is no choice but to deposit the author's final version.

In addition, if a publisher makes a published version available on the internet, it would be kind to make a link to the published version.

Repository institutions or researchers want to deposit the published version, because it is a final draft of the paper, but at present there is no agreement between the author and the publisher to allow that. I think that depositing the published version can contribute to the development of science and culture.

\* —————

#### RoMEO Statistics

URL: <http://www.sherpa.ac.uk/romeo/statistics.php?la=en&fidnum=|&mode=simple> (accessed 2013-01-09)

#### Publishers Allowing use of their PDFs in Repositories

URL: <http://www.sherpa.ac.uk/romeo/PDFandIR.php?la=en&version=> (accessed 2013-01-09)

## Q2-8

Are abstracts attached to content metadata protected by copyright? Moreover, when making metadata, can I use keywords that are posted in the secondary information databases such as the Web of Science?

## A2-8

The 4<sup>th</sup> Subcommittee (on the reprographic reproduction) of the Copyright Council has made a report about copyright in abstracts, as follows:

Abstracts may be regarded as derivative works, depending on the contents and the creativity of secondary works made based on original works. Classifications of abstracts that have been made in the information industry and the library community can provide a suggestion. That is, there are two types of abstracts: merely giving an indication of the presence of the document is referred to as an indicative abstract that requires texts for grasping the contents. In contrast, providing a generalization of the contents is referred to as an informative abstract. From the view point of the Copyright Act, indicative abstracts are not derivative works, but informative abstracts are such works (September 1976, p. 39).

In a recent precedent case, a few lines written on a bulletin

board showing the personality of the author were recognized as copyrighted material, as were slogans. Abstracts are not all the same due to different authors. If an author has the personality of his or her own shown in his or her abstracts, those abstracts may be regarded as works.

With respect to keywords, because many people may work out the same thing, they cannot be said to be works. Attaching them to metadata is not a problem.

## Q2-9

I have used in my paper images of rare books owned by individuals or other organizations. Do I need to obtain permission in order to make them available in the repository?

## A2-9

Ownership of things such as rare books themselves requires that permission be obtained, but the images reproduced thereof do not. However, if you have got an agreement to put the image on your paper, it is usually imagined that the owner agrees that your paper will be published on the bulletin or magazine. Despite that, even if depositing in the repository and posting on the internet is not anticipated by the owner, obtaining an agreement to post there would be the best course of action.

## Q2-10

I want to deposit a bulletin published by a group in the university. What must I do regarding the copyright issues?

## A2-10

As mentioned earlier, in general, the authors (researchers) who wrote the works own the copyright. In the survey by an academic journal (A1-4), copyright of 97% societies in science and technology circle belongs to the Society. On the other hand, the number of societies of humanities and social sciences, except psychology and sociology, is low at 26%. This means that the Society owns copyright by the contribution rules. Therefore, general principles that copyright is owned by the author seems to be normal and recognized by the humanities and social sciences circle. Societies can make such arrangements freely by the consent of members to avoid a confusion.

In the case of bulletins, upon obtaining the approval of the members of such as the faculty and the Society on campus, it is possible to stipulate that all copyrights are transferred to the editorial board. In addition, it is possible to transfer only the right of depositing in the institutional repository to the editorial board, while the author owns the copyright.

How about the following cases?

Case 1: Copyright belongs to the authors.

Copyright of papers published in the Bulletin belongs to the authors. However, the editorial board of the Bulletin can digitize these papers and makes them available.

Case 2: Copyright belongs to the editorial board.

Copyright of papers published in the Bulletin belongs to the editorial board. However, the authors can use these papers by themselves.

In the above cases, bulletins at present and in future will be subject to the rules that the members themselves are going to decide. However, there is a problem of researchers in the past who have not participated in determining the rules. Libraries and editorial boards of bulletins would like to deposit all past papers of bulletins in repository as much as possible.

In principle, the authors, who are the researchers in the past or the successors in title, have the ownership of copyright, so that papers cannot be deposited without agreements of those people retroactively. Much hard work would be involved in obtaining agreements for each paper of the Bulletin.

A university announces, “we will make bulletins published up to today available in electronic format by posting them in public, unless an agreement to post is denied where applicable. If you do not agree with the public positing of electronic versions, please

contact us. Silence will be treated as a permission to reproduce them in this manner.” Even with this announcement, it is hard to say that the permission of the copyright holder has been obtained.

Past papers, that the authors do not want to expose, are deposited unknowingly in the repository as a result. There is a possibility that claims of copyright infringement may be made. The editorial board must make a decision, after an effort to find the owners of the rights is made, regarding whether they are prepared to deal with any claims that may be made, or whether they do not deposit those papers at all.

In the Copyright Act, there is a procedure that may be used to obtain a ruling in the case of the unknown owner of copyright. However, such a complicated procedure takes time and effort, and in such a limited range as in the university, you may be refused to submit an application, and be told to look for the copyright holder patiently.

## Q2-11

When registering an institutional publication, do I need to obtain permission from the printer?

## A2-11

As I wrote in A2-7, because the edition right is not approved, such as the layout of the pages does not create a right. However, if the cover of a brochure or a publication is designed by a printer, obtaining permission from the printer for reproduction will be necessary.

## Q2-12

In general, the copyright of a doctoral dissertation initially belongs to the author. If it was written with the supervisor's instruction, can it still be made public with an agreement of the author only?

## A2-12

The author means the person who expressed his or her original thoughts or sentiments in the work. When some parts of a doctoral dissertation are actually written by a supervisor, the dissertation becomes a co-authored work with joint ownership and you will need permission of the co-author to make public the work. If the dissertation is written by the authors themselves, with the instruction of the supervisor only, it is not a co-authored thesis. Because the author understands the instructions of supervisor and writes an original dissertation, the author owns the copyright and only the author's permission is enough. There is a judicial precedent on this issue, which arose at the time of the Tokyo Olympics. In this case, a publisher made a plan, collected the data, and gave an order to make a map, named the "Highway of Tokyo will change". In addition, the publisher gave instructions regarding the type of map, colors, and design. Other weekly magazine published a similar map and

faces a lawsuit. The judgment held that the author of the original map was not the publisher but the artist, and that the magazine had obtained the prior permission of the artist to make the replication and the publication, so there was no problem. (December 26, 1964, the Tokyo District Court, the case of “Highway Panoramic Map”).

## Q2-13

Will the library take any responsibility if there is a copyright infringement and a complaint regarding the contents of a dissertation made available in the repository?

## A2-13

The author is fully responsible for the contents of his or her dissertation. If there is a copyright infringement because of the contents of a work placed in the repository, the library may be contacted and be involved in correspondence. However, because the author does have the ultimate responsibility for any infringement, the library may only work as a mediator between the author and the person who made the complaint.

## Q2-14

In connection with Q1-1, do I need to obtain permission from the author whose figures, tables, photos or music are used in papers that are made available in repository?

## A2-14

As stated in A1-1, when putting figures, tables or photos of others in a text (e.g. thesis), you may use them after obtaining permission, or use them as a quotation without permission.

In this question, depositing that thesis in the repository is a new factor. There is no problem in limiting the reproduction right by way of a quotation, but when making a work available in the repository, the public transmission occurs as a new event. Therefore, obtaining permission may be necessary.

When a quotation is allowed by the Copyright Act, a public transmission is also allowed. Article 32 of the Copyright Act—which contains the quotation provisions—states: “it shall be permissible to quote from a work”. This provides the same meaning.

In addition, if using the work by way of obtaining license of others, not by quoting from the work, posting on the internet is not permitted. Permission for reproduction and posting must be obtained again.

## Q2-15

In relation to Q2-6, after depositing my paper in the repository, I want to contribute it to an academic journal. Can I withdraw it from the repository and contribute it to a journal, without being regarded as a duplicate contribution?

## A2-15

It depends on how it is provided under the rules of the Society. In general, posting a paper on multiple journals is prohibited.

It depends on how the society views the posting, but I feel it is slightly different to contribute a paper to a journal than to post it in the repository. When it is regarded as different, then you can contribute your paper to the journal. On the other hand, if a society, based on what is written in its regulations, requires withdrawing the deposit from the repository, a contribution will be possible.

However, despite withdrawing your paper from the repository, the fact is that the paper has been made public. Therefore, it may be difficult to contribute the same paper to the society which does not allow a duplicate contribution.

## Q2-16

When making dance videos or images of art works (e.g. photos, paintings, sculptures) available in the repository, to what matters should we pay attention?

## A2-16

I think the handling of copyright issues will be different between the dance videos and the art works. For the art works, I think the situation is the same as quoting or gaining permission for use, so that the art works can be posted with the authorization of replication and public transmission as necessary.

For dance videos, the rights of the performers as well as the photographer should be considered. If the music is recorded together with the dance, the copyright of the music should also be dealt with.

The performer has the exclusive rights to make sound or visual recordings and to make the public transmission of his or her performance. Managing rights is required again to make those recordings available in the repository.

There is no problem when the photographer himself or herself made the recordings but, if videos made by other people are deposited in the repository, a permission from the video producer

may be required. Music is also treated similarly. Rights management is needed to post music on the internet.

## Q2-17

To what matters should we pay attention when making the sound data of a musical score performed on a piano available in the repository?

## A2-17

If musical works of sheet music are in the copyright protection period, they cannot be made available without authorization of the copyright holder. Because the authors cannot manage their copyright by themselves, they usually seek the assistance for the administration of their copyright from management organizations, such as the Japanese Society for Rights of Authors/Composers. Normally, the term of protection of copyright is 50 years after the death of the authors. However, in cases of “wartime prolongation (about 10 years),” the period of copyright is extended to a total of 60 years. This extension applies to the Allied nationals, such as those of the United States, Britain and France, who engaged in war with Japan.

In the case of Japanese composers, copyrights are extinguished 50 years after the death of the authors, after which period their works can be used freely.

When copyrights are extinguished, others may perform based on the score or make sound recordings available in the repository.

## Q2-18

When making old papers available in the repository, what attention must we pay to the privacy of schoolchildren or patients?

## A2-18

The privacy rights of patients and schoolchildren are the “rights to be legally protected so that the private life should not be made public without permission.” In a recent judgment, it is also referred to as: “the right to control information of himself or herself.”

Past judgments have held that the privacy rights cover (1) the facts in the private life or things that could be received like the facts in the private life; (2) things that, upon the basis of the sensitivity of people, they would not want to make public in their private position; (3) things that are not known by the public; and (4) things that, because of being known, make people uncomfortable and anxious.

It is assumed that when you write a paper, you pay attention to what to write and make public. Here, however, when making your paper available in the repository, it may be necessary to consider your paper again, using such criterion. In cases of uncertainty, we suggest that you consult with the repository staff.

## PROFILE

### **Setsuo KUROSAWA**

1965: Entered the Ministry of Education, Science and Culture (now the Ministry of Education, Culture, Sports, Science and Technology)

1971–1983: Examination Chief of the Copyright Division of the Agency for Cultural Affairs

1983–1995: Manager of the Library Services Section of Tokyo Gakugei University, Tokyo Institute of Technology University, Hitotsubashi University

1995: Director of the General Affairs Division of Hiroshima University Library

1997: Professor at Kyushu Institute of Design University

2003: Professor in the Faculty of Design at Kyushu University (retired in 2005)

2005: Research Fellow at the Library Research & Development Office of Kyushu University

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Institutional Repository & Copyright Q&A Revised Edition (English Version) is the translated version of “機関リポジトリと著作権 Q&A 改訂版”. While we hope that this translation is accurate, if there is any difference in meaning between these two versions, the original Japanese version takes precedence.

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