

April 23, 2020

To all staff

Guidelines for Implementing Online Classes using a Variety of Media (2nd Report)

Chuo University

On April 10, the university issued a report entitled ‘Guidelines for Implementing Online Classes using a Variety of Media’ (hereinafter referred to as ‘Guidelines’), which set out various guidelines, points of attention, and the university’s institutional positioning for the smooth implementation of classes incorporating various forms of media. It also included information on ‘Legal Points Regarding Contents When Conducting Online Classes’ based on the yet-to-be-enforced 2018 Copyright Act Amendment.

Based on the latest situation of the COVID-19 outbreak, the Ministry of Education, Culture, Sports, Science and Technology has announced its views regarding matters related to the ‘Positioning of Instructors for Distance Learning’ (in connection with Article 32, Paragraph 5 of the University Establishment Standards). We would like to inform you of those views and make certain corresponding requests.

In addition, we have drawn up a report on ‘Legal Points Regarding Contents When Conducting Online Classes’ corresponding to the enforcement of the 2018 Copyright Act Amendment from April 28, 2020.

1. Institutional positioning with regard to distance learning (in connection with Article 32, Paragraph 5 of the University Establishment Standards)

If the spread of new coronavirus infections does not improve for a long period of time, the number of individual face-to-face classes will be extremely small. As the Guidelines pointed out, in this case the course will be treated as a ‘distance course’ for the whole term. Under the current system, a ‘distance course’ can count toward the credits required for graduation only up to a total not exceeding 60 credits, an exception that is specified in the school rules. On this matter, we consulted with the Ministry of Education, Culture, Sports, Science and Technology and have been waiting for their official view.

In this regard, the Ministry of Education, Culture, Sports, Science and Technology's Department of Higher Education, University Promotion Division issued a document as of April 21 entitled [‘Concerning the Issuing of a Q&A on the Handling of Academic Schedules and Utilization of Distance Learning \(as of April 21\)’](#). Within this, the outline of the ‘institutional positioning of distance learning’ (in connection with Article 32, Paragraph 5 of the University

Establishment Standards) was made public as follows:

‘Due to the spread of the new coronavirus infection, if it is judged to be difficult to conduct face-to-face all or part of a course that was planned to be a face-to-face course, as a special measure for classes that are recognized by the university as having an educational value equivalent to a face-to-face class, the lesson method prescribed in Article 25, Paragraph 1 of the University Establishment Standards may be handled flexibly. It is possible to conduct distance classes and academic research at home that is equivalent to what would be carried out during conventional classes (hereinafter referred to as ‘classes other than face-to-face classes’). In such a case, the distance classes recognized as classes other than face-to-face classes under this special measure are not included in the distance classes defined in Paragraph 2 of the same Article, and do not have to be included in the upper limit of 60 credits set in Article 32, Paragraph 5 of the University Establishment Standards.

Note that, even for classes other than face-to-face classes, when evaluating grades it is necessary, on the basis of the progress and results of the classes, that the course objectives of the relevant course subject be sufficiently achieved. In addition, the course must be recognized as having the educational value equivalent to a face-to-face course. From this point of view, it is necessary to pay attention to the following conditions (1) to (3):

- (1) The course must be implemented under the guidance plan (syllabus, etc.) for each lesson by the instructor in charge of the course.
- (2) The instructor in charge of the course can, by managing attendance online and confirming assignments that have been submitted, fully grasp how the class has proceeded.
- (3) As a university, there must be an awareness of the status of individual classes, for example which classes are being conducted as distance classes.

In this document, as a special measure, ‘all or part’ of the courses planned to be face-to-face courses can be conducted as ‘classes other than face-to-face classes’, and can, therefore, be included towards the credits required for general graduation requirements. However, in this special measure, for distance classes to be recognized as ‘classes other than face-to-face classes’ (a new concept), even if they do not conform to the advanced media class defined within the so-called ‘Media Class Notification’ established by the Ministry of Education, Culture, Sports, Science and Technology, it is necessary to meet certain requirements. Please, therefore, pay attention to the points below.

By adopting four types of lessons referred to as ‘online lessons’, the university is planning for classes after the special measures period and preparing for a variety of possible situations in the future. We will endeavor to revise the academic rules and other conditions so that credits and graduation can be certified by strict grade evaluation based on online classes.

Instructors should pay particular attention to points (1) and (2) out of the three points (1) to (3) above when conducting classes. The university may inquire about the status of your courses, so

please keep a record of the progress of the classes.

2. 'Legal points regarding contents when conducting online classes' based on the enforcement of the 2018 Copyright Act Amendment from April 28, 2020

Regarding the 'legal points regarding contents when conducting online lessons' given in the Guidelines, the following document sets out the guidelines corresponding to the enforcement of the 2018 Copyright Act Amendment. Please refer to it when creating online materials for your classes.

April 23, 2020

**Legal Points Regarding Contents When Conducting Online Classes
(In Compliance with the 2018 Copyright Act Amendment Enforced from April 28, 2020)**

Chuo University

When conducting an online lesson, you will create the content yourself or use content created by another person. This document is a summary of the legal points to be noted in using the work of others.

Please note that the government has brought forward the enforcement of the 2018 Copyright Act Amendment (including revisions to facilitate online classes) from 2021 to April 28, 2020. The information in this document corresponds to this, so please refer to it for online lessons from that day.

1. Points common to all online lessons

1.1 Copyright

(1) Current copyright law recognizes the copyright and moral rights of the author of a work. No special procedures are required for this to occur, and if you create a copyrighted work, these rights will automatically arise. Correspondingly, under normal circumstances, the author and copyright holder are the same. However, copyright is transferable, and if it is transferred, the two are separate.

Note that copyright applies not only to works in a fixed form such as books and CDs but also those that are not in a fixed form, such as lectures and live music. Lectures by instructors are also considered in this way. Similarly, if a student gives a presentation in class, the presentation will be the copyrighted work of the student, independent of the lectures given by the teacher.

(2) A copyright is a bundle of rights mainly related to the use of a copyrighted work, and it is used for reproduction, performance / playing, screening, public transmission, dictation, exhibition, distribution, transfer, lending, translation / adaptation, etc., or to the granting of rights to do so. Through these rights, copyright holders can benefit financially.

In order to use the copyrighted works of others whose rights are recognized, it is a general rule that the permission of the copyright holder must be obtained. Only in the case of exceptions under the copyright law can copyrighted works be used without the permission of the copyright holder.

(3) The moral rights of the author are those that are linked to the personal interests of the author, such as the right to publish (the right to publish an unpublished work), the right to display the name, and the right to retain the identity of the work (the right for the work not to be modified).

Even if the copyright is transferred, the author continues to maintain these rights. The moral rights of the author are non-transferable.

When quoting, rewriting a part of the author's expression without permission would be considered a violation of these rights.

(4) There are several kinds of exceptions that allow the use of copyrighted works of others without the individual permission of the copyright holder when teaching classes at a university. In particular, from April 28, 2020, the range in which copyrighted works by others can be used without permission has been expanded in the case of online classes.

For details on these exceptions, please refer to section 2 of this document.

1.2 Portrait rights, privacy rights and personal information

(1) Portrait rights

In online classes, it is necessary to consider portrait rights. There is no problem in showing the student's appearance in an interactive class (this is similar to how teachers and students can recognize each other in a normal classroom). However, student consent is required to record the student's physical appearance and to reuse the recording for content such as video streaming lessons. If such a situation is expected, it is necessary to obtain the consent of the student in advance or take measures to prevent the appearance of the student from being shown.

(2) Privacy rights

'From the standpoint of a private person based on the sensitivity of the general public, things that one would not want to be disclosed' are those that are protected by privacy rights. Information related to such matters should not be mentioned in online classes without the consent of the student. Moreover, since such information may be circulated over time, it may cause unexpected disadvantages for the person, so unless there is a special need to mention it, we should not mention it even with the individual's consent.

(3) Sensitive personal information

The Act on the Protection of Personal Information stipulates that 'Special care-required personal information means personal information comprising a principal's race, creed, social status, medical history, criminal record, fact of having suffered damage by a crime, or other descriptions etc. prescribed by cabinet order as those of which the handling requires special care so as not to cause unfair discrimination, prejudice or other disadvantages to the principal.' Such sensitive personal information requires the consent of the person both for the acquisition of the information itself and its provision to a third party. Specifically, the following eleven types are personal information: (1) race (2) creed (3) social status (4) medical history (5) criminal record (6) fact of having suffered damage by a crime (7) having a physical, intellectual, or mental disorder (8)

results of medical examinations and other tests (9) health guidance, medical treatment / prescriptions (10) procedures for criminal cases, such as arrest, search, etc., which have been performed with the person himself or herself as a suspect or a defendant (11) procedures related to juvenile protection cases, such as protective measures, which have been performed with the person as a juvenile delinquent or a suspect. Such information is not allowed to be collected in itself without the consent of the student, and, of course, should not be mentioned in online classes.

(4) Personal information (excepting privacy information and sensitive personal information)

Personal information is information that can identify a specific individual. The basic rule about how to handle this personal information is to collect and use personal information only as much as is necessary for the purpose of using the information. Unlike privacy information and sensitive personal information, there is no uniform rule or principle that ‘personal information should not be treated in online classes.’

For example, when conducting an exercise in an interactive class, students may be identified by their names and asked to speak. In a practical interactive class, it is educationally necessary to identify students and make comments, so first of all, the purpose of using personal information is legitimately recognized. In addition, considering that the students participating in the class know each other’s names, and that the names are the most standard means of identifying students, there is no problem in using personal information such as names.

On the other hand, for example, a mobile phone number is also personal information that identifies a student, but considering the risk incurred when it is circulated, it should not be used in online classes.

Therefore, when handling personal information in online classes, it is necessary to consider what personal information should be handled and how it should be handled in light of the educational purpose (necessity), and to judge the risks involved in its handling. It should be noted that the consent of the person is not a legal requirement, but it is recommended to obtain it if it can be obtained.

2. How to use the copyrighted work of others in university classes

2.1 Outline

There are several ways to use the work of others in university classes. The following introduces three methods: (1) permission of the copyright holder (2) quoting (Copyright Act, Article 32), (3) reproduction at schools and other educational institutions (Copyright Act, Article 35).

Details will be given in section 2.2.3, but in relation to the online classes that are currently being used more widely, the 2018 Copyright Act Amendment explained in (3), which will be enforced on April 28, 2020, is particularly important. The new law has expanded the range in which other people’s works in online lessons can be used free of charge (including some points valid only for 2020) without the permission of the copyright holder, beyond the scope of quotation.

2.2 Method in detail

2.2.1 Permission of the copyright holder

Gaining the copyright owner's permission is the most basic way to use the work of others. Whether the license is paid or free depends on the judgment of the copyright holder. However, in reality, it is often difficult to determine the copyright holder and contact them. For university classes (especially online classes) where preparation time is limited and available funds are low, it is better to consider using another method unless you can get permission from a direct acquaintance.

2.2.2 Quoting (Citation)

The Copyright Act allows 'quoting' in which you are able to use other people's copyrighted works without permission. This is true for regular lessons, online lessons, and research papers. If you distribute and use a copy of another person's work itself (e.g. the paper itself) as a lesson material, this will fall under 'exception for reproduction at school or other educational institution' rather than under 'quoting'. However, if you use a part of another person's work in your own material (e.g. taking a part of another person's paper or textbook to explain a theory), this is regarded as 'quoting'.

To use a quote legally, you must meet the following requirements:

(a) Being a published work

Only published works can be quoted. Unpublished works cannot be quoted.

(b) Clear distinction

There must be a clear distinction between the original part and the quoted part. When citing someone else's paper in your work, please distinguish it with quotation marks or lower it in the text.

(c) Master-subordinate relationship

In terms of both quality and quantity, it is necessary that the original part is the 'main' part and the quoted part is 'subordinate' to it. If most of the content is the work of someone else, it cannot be counted as a 'quote'.

(d) Be within an appropriate amount for the purpose of quoting

For example, it is legitimate to cite the relevant part of a textbook to introduce a theory on a particular topic, but quoting an entire textbook is not.

(e) Specify the source

(f) Do not modify and do not violate the moral rights of the author

2.2.3 Exceptions such as reproduction at schools and other educational institutions

The use of copyrighted works by others by this method will be greatly expanded after April 28, 2020. Please be aware of the following, as old and new information is mixed on the Internet and

there are many inaccurate explanations.

After April 28, 2020, based on Article 35, Paragraph 1 of the Copyright Act, the works of others can be used without the consent of the copyright holder in the following cases:

2.2.3.1 Reproduction

‘A person in charge of teaching or a person taking classes at a school or other educational institution (except one founded for commercial purposes) may reproduce a work that has been made public to the extent that is found to be necessary if the purpose of doing so is use in the course of those classes.’ However, ‘this does not apply if the action would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work, the number of copies that would be made, or the mode of public transmission or communication.’

For example, it is possible to ‘make a copy of a newspaper article subject to analysis and consideration in class and distribute it to students’ without the permission of the newspaper publisher. In addition, by combining it with the ‘public transmission’ clause below, it is permissible to ‘make a digital copy of the newspaper article to be analyzed and examined in the class and distribute it by e-mail to the students’ as well as to ‘download a copy from the server’ without the permission of the newspaper publisher.

There are several points to be borne in mind when reproducing works:

- (a) Reproduction is possible for the purpose of ‘education at schools or other educational institutions (except one founded for commercial purposes)’. Therefore, if a university faculty member is invited to speak at a lecture, etc. and speaks, it falls outside the scope of this article. It is also necessary to make individual judgments regarding the use of this exception for ‘classes’ conducted on university campuses and, for example, paid extracurricular courses.
- (b) Reproduction is possible for ‘a person in charge of teaching or a person taking classes’. Therefore, instructors can make copies themselves and distribute them in the classroom, or they can show the sources (the name of the author of the paper, the title of the paper, the name of the journal, the number of the volume, etc.) to the students and have them make copies themselves.
- (c) Reproduction is possible ‘if the purpose of doing so is use in the course of those classes’. Beyond the scope of classes (including preparation and review), it is not permissible to duplicate various materials whenever you feel like it and distribute them to students.
- (d) Reproduction is permissible only ‘to the extent that is found to be necessary’. Although it is considered acceptable to distribute a copy of an entire paper in a class in which the analysis and examination of the paper is conducted, copying an entire book would usually be regarded as exceeding the limit considered necessary.
- (e) Only works that have been ‘made public’ can be reproduced. A copyrighted work prior to publication cannot be duplicated. On the other hand, there is no limit to the type of work that can be made, so it is permissible, for example, to reproduce paintings that will be analyzed and examined in art classes.

(f) Reproduction is not permitted ‘if the action would unreasonably prejudice the interests of the copyright owner’ in light of the various conditions. For example, if the teacher in charge of a class purchases only one workbook or drill that is edited and published for students to use in the course of the class, and then copies and distributes it to all the students, this would unreasonably prejudice the interests of the copyright owner.

2.2.3.2 Public transmission

(1) Outline

‘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 publicly transmit a work that has been made public to the extent that is found to be necessary if the purpose of doing so is use in the course of those classes.’ However, ‘this does not apply if the action would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work, the number of copies that would be made, or the mode of public transmission or communication.’

Here, public transmission means ‘making a transmission of wireless communications or wired telecommunications with the objective of allowing the public to receive them directly’. (However, transmission to the same premises does not correspond to public transmission, except for transmission of program copyrighted works.) Typical examples are online lessons using the Internet (including both real-time and on-demand types), and sending teaching materials by e-mail.

For example, in a real-time online lesson, it is permissible to show a clip of a newspaper article to be discussed in a camera and add a comment about it or, for on-demand online classes, to e-mail a newspaper article to be discussed in advance without the permission of the newspaper publisher.

(2) Situation until April 27, 2020

Until now, there have been strict restrictions on the unauthorized use of others’ copyrighted work in such online classes. In particular,

- Classes be conducted on both the sending side and the receiving side (= there must be students attending the class at the location of the teacher)
- Students at different locations take classes at the same time (= real-time online classes only)

Because of these two requirements, for example, ‘clipping and showing newspaper articles in an actual online class and being able to use it,’ was effectively limited to ‘having students in Classroom B view the class taught by the instructor in front of students in Classroom A in real time’.

(3) Situation from April 28, 2020

However, from April 28, 2020, these two requirements have been abolished. As a result, the

following actions are possible without the permission of the copyright holder. Note that these are examples, and do not preclude the possibility of other unauthorized uses.

(a) Including the copyrighted works of others in online content (videos / audio)

For this, there is no need for students to be in front of the teacher and it does not matter whether it is a real-time type or an on-demand type class.

(b) Sending the copyrighted works of others, to be used as preparation / review material for a class (whether it is a regular face-to-face lesson, real-time online lesson or on-demand online lesson) to the students by e-mail.

(c) Storing the copyrighted works of others, to be used as teaching and review materials for classes (same as above), on a server and making them accessible to students.

(d) Sending the copyrighted works of others, to be used as material in the class (same as above), by e-mail.

(e) Saving the copyrighted works of others, to be used as material in the class (same as above), on a server and letting the students access it.

Please note, however, that the above-mentioned points regarding ‘reproduction’ still apply to ‘public transmission’ as they are, so it is not possible to publicly transmit the copyrighted works of others without limitation.

Regarding the point of ‘Reproduction’ (b), in the case of public transmission, not only instructors but also students participating in the class can make a public transmission. Specifically, during an online lesson exercise (seminar), when a student gives a presentation, the student may indicate a clipping of a newspaper article and send it online to the teacher or other students.

2.2.3.3 Public communication

‘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 publicly transmit using a receiving device a work that has been made public to the extent that is found to be necessary if the purpose of doing so is use in the course of those classes.’ However, ‘this does not apply if the action would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work, the number of copies that would be made, or the mode of public transmission or communication.’

In concrete terms, a newspaper article on the website of a newspaper (i.e. a ‘published work and publicly transmitted’) displayed on the screen of a personal computer (i.e. a ‘reception device’) can be directly used in the content of online lessons (i.e. publicly transmitted’) without the

permission of the newspaper publisher.

Prior to April 28, 2020, while it was possible to take a picture of a newspaper article clipping with a camera or save a newspaper article data on a PC and then display it without the permission of the copyright holder, it was necessary to obtain permission from the copyright holder to use website content directly. From now, however, the latter will no longer require permission from the copyright holder.

However, please note that the above-mentioned notes regarding 'reproduction' still apply to 'public communication' as they are, so it is not possible to publicly communicate the copyrighted works of others without limitation.

Regarding the point of 'Reproduction' (b), in the case of public communication, not only instructors but also students participating in the class can make a public transmission. Specifically, during an online lesson exercise (seminar), when a student gives a presentation, the student may access a newspaper through a website and send it online.

2.2.3.4 Compensation system

Excepting cases covered by the 2018 Copyright Act Amendment, Article 35 Paragraphs 2 and 3, when publicly transmitting the copyrighted work of another person, based on paragraph 1 of the same Article reproduction and public transmission permitted by the copyright law before revision, compensation payment is required.

Please note that the collective recipient of this compensation, the Association for the Management of Public Transmission Compensation for Educational Purposes (SARTRAS), has decided to make this compensation 'free' as a special exception for the year 2020. However, since a sample survey is to be conducted in order to understand the usage record of copyrighted works, there is a possibility that this university will be a target. Therefore, teachers who have used the copyrighted works of others in the courses of their classes, please keep a record of it.