

# Guidelines for the Publication of Academic Information via the Internet

March 9<sup>th</sup>, 2021

1<sup>st</sup> Edition

National Museum of Ethnology

## Introduction

These guidelines are based on the “Policies for the Publication of Academic Information via the Internet of the National Museum of Ethnology”, and they set out the specific points for employees of the National Museum of Ethnology (Minpaku) to note when publishing any type of academic information via the internet under the museum’s name. If ever a situation arises where there is a discrepancy between the stipulations in these guidelines and actual practice, any necessary measures to resolve this should be taken as swiftly as possible.

Whenever Minpaku’s research and education staff, teachers and students involved in its research activities (hereafter “researchers”), as well as its clerical and technical staff (hereafter “staff”) post academic information on a website as part of their research or museum activities related to Minpaku, but under their own name, they should clearly indicate the website’s managing entity, and observe the stipulations in these guidelines. If it is necessary to operate a website with standards that deviate from these guidelines, the website manager should clearly indicate that it is operating the site independently of Minpaku.

(Revision history)

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## I Points to note when publishing content

When publishing academic information via the internet, please first consider whether the necessary copyrights have been cleared for any artifacts or other academic materials which are themselves copyrighted works (see “2. Copyrighted academic materials”), whether copyrights have been cleared for any copyrighted images (still or video) of academic materials (see “3. Copyrighted images (still or video) of academic materials”), and, further, whether other considerations aside from copyright (portrait rights and the respect for dignity of specific cultural groups; see “4. Rights relating to people and behaviors recorded in academic information”) have been appropriately addressed.

When the academic materials in question are not themselves copyrighted works, please consider whether copyrights have been cleared for any copyrighted images (still or video) of the academic materials (see “3. Copyrighted images (still or video) of academic materials”), whether other considerations aside from copyright (portrait rights and the respect for dignity of specific cultural groups; see “4. Rights relating to people and behaviors recorded in academic information”) have been appropriately addressed before publishing the content online.

### 1. Copyrighted work

Article 2, Paragraph 1, Item 1 of the Copyright Act defines a copyrighted work as “a creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic or musical domain”, and in Article 10 the following specific examples are given:

- (1) novels, scenarios, articles, lectures and other literary works;
- (2) musical works;
- (3) works of choreography and pantomime;
- (4) paintings, woodblock prints, sculptures, and other works of fine art;
- (5) works of architecture;
- (6) maps and other diagrammatic works of an academic nature, such as plans, charts, and models;
- (7) cinematographic works;
- (8) photographic works;
- (9) works of computer programming.

## 2. Copyrighted academic materials

Artifacts or other academic materials which are themselves copyrighted works can only be published via the internet if they fall into one of the following categories.

- (1) Materials for which Minpaku owns the copyright
  - (1-1) Materials defined by the Copyright Act as made by an employee in the course of their duties. In other words, works published under Minpaku's name, which were created on Minpaku's initiative by researchers and staff during the course of their duties.
  - (1-2) Materials whose copyright belongs to Minpaku, according to Minpaku's regulations (e.g. labor regulations).
  - (1-3) Materials whose copyright has been transferred to Minpaku by the copyright holder.
- (2) Materials for which permission has been granted to Minpaku by the copyright holder for reproduction and public transmission (including cases where the copyright holder has granted permission for reproduction and public transmission to unspecified third party)
- (3) Materials no longer under copyright protection
  - (3-1) Materials whose copyright protection period has expired

Based on the provisions of the current Copyright Act, as of 2021, the copyright protection period for copyrighted works that fall into the following categories has expired. (However, it should be noted that for foreign copyrighted works created during or before World War II, the term of protection may be longer due to the wartime extension.)

    - ① Copyrighted works whose authorship is attributed to an individual: Materials whose authors had passed away by the end of 1967
    - ② Copyrighted works whose authorship is attributed to a corporation or other organization: Materials published up to the end of 1967
    - ③ Images (still images) or photographs: In addition to ① and ② above, photographic materials that were published up to the end of 1956

④ Images (moving images) or video: In the case of works copyrighted and published by organizations, works published up to the end of 1953. In the case of works published and copyrighted under the name of an individual (eg. the film director's name), works published up to the end of 1950, and whose author (eg. film director) had passed away by the end of 1982. (However, as the calculation of the term of protection for cinematographic works is complex, as there are different standards for news footage, for example, so should also be considered on the basis of the Copyright Act.)

Copyrighted works which do not fall into the categories above, but are old enough for the copyright protection period to have expired, should be considered individually.

(3-2) Materials whose authors have abandoned copyright

(4) Materials which have been cleared for publication through a process of compulsory license by the Agency for Cultural Affairs (a system where the Commissioner of the Agency for Cultural Affairs, instead of obtaining permission from the copyright holder, grants compulsory licenses so that the copyrighted work can be legally used), in cases where it is not possible to contact the copyright holder, either because they are unknown or for other reasons

(5) Materials for which the Copyright Act makes special provisions in allowing publication

(5-1) Material used to provide information that a particular copyrighted work is a Minpaku collection item. According to Article 47, Paragraph 3 of the Copyright Act and the "Copyright Act Article 47 guidelines for reproduction when exhibiting works of fine art", the images must be displayed as thumbnail (still) images of no more than 32,400 pixels.

(5-2) Quoted material which meets the quotation requirements specified in Article 32, Paragraph 1 of the Copyright Act (when the text of a quotation is from a copyrighted work, a clear distinction must be made between the quotation and the author's own work, it should be evident that the author's own work is the "main" part of the work and the quotation "secondary", and the original source of the quotation should be clearly cited).

(5-3) Material defined by Article 30, Paragraph 2 of the Copyright Act, which covers the incidental or unexpected appearance of something in a photograph (exploitation of an incidentally captured work). For example, when another copyrighted work (object or sound) is captured in the background of an image (still image, video) to a minor part and in such a way that it cannot be easily removed.

### 3. Copyrighted images (still or video) of academic materials

In addition to academic materials themselves, there are cases where the photographer may own the copyright to images (still or video) of academic materials.

When an image of flat, two-dimensional material is captured front-on in order to faithfully document it, no original copyright is considered to be present in that image. However, in cases where three-dimensional materials are photographed, or two-dimensional materials are photographed from a particular angle, the photographer is considered to own the copyright in the image (still or video) that they have captured.

For that reason, it is only possible to publish this kind of image (still or video) if it falls into one or more of the following categories.

- (1) Materials defined by the Copyright Act as authored by an employee in the course of his duties. In other words, works published under Minpaku's name, which were created on Minpaku's initiative by researchers and staff during the course of their duties.
- (2) Materials whose copyright belongs to Minpaku, according to Minpaku's regulations (e.g. labor regulations).
- (3) Materials whose copyright has been transferred to Minpaku by the copyright holder.
- (4) Materials for which permission has been granted to Minpaku by the copyright holder for reproduction and public transmission (including cases where the copyright holder has granted permission for reproduction and public transmission to unspecified third party)

#### 4 . Rights relating to people and behaviors recorded in academic information

Regardless of whether or not academic information includes copyrighted works, when publishing records of people and their behavior, there are cases when this infringes on the rights of specific individuals or their dignity is impaired. The protection of these rights and dignity may not be regulated by any specific laws, such as portrait rights. However, portrait rights are occasionally recognized in case law and there is sometimes a need to consider the issues not from a legal regulatory perspective, but from the perspective of the dignity of a particular cultural group. For this reason, if the form and physical appearance of people are captured in academic materials, a careful judgment must be made on whether to publish the content via the internet, which takes into account the high degree of public interest in Minpaku's academic research, and gives due consideration to portrait rights and cultural sensitivities. The following are cases where particular care should be exercised.

- (1) For materials with the potential to infringe the dignity and privacy of specific individuals, as well as materials with the potential to infringe the dignity of particular cultural groups, the wishes of the relevant parties should be given the utmost respect. If there is a disagreement between the parties, every endeavor should be made to achieve consensus, before deciding whether or not to publish the content.
- (2) Images which have been taken secretly or without the permission of the appropriate authority in charge of the shooting location, which contain elements that may defame the subject, or whose publication for any other reason gives cause for concern even in consideration of the public interest of academic research, should not be published online,.

#### 5 . Method of publication

The methods for publishing academic information judged to be suitable for publication via the internet are specified below according to each of the following types: images (still, video), audio recordings.

- (1) Images (still)
  - (1-1) In order to comply with the definition of “special use” as stipulated in the National Institutes for the Humanities' regulations governing



special utilization of objects (close examination for research, reproduction of materials etc.), the long dimension of the image (still) should not exceed 1,500 pixels (eg. in the case of 1,500 x 1,200 pixels, it would be 1.8 million pixels).

(1-2) When publishing in high resolution (long dimension of over 1,500 pixels), measures, such as adding a watermark, should be employed to prevent the image being used for other purposes.

(2) Images (video)

(2-1) A system should be used which prevents the images (video) from being downloaded.

(2-2) Where necessary, the following measures may also be taken.

- Limit the people who are able to view the content to users, rather than allowing access to the general public.
- Limit the period of time the content is made available for, according to the purpose it is intended to fulfill.

(3) Audio recordings

(3-1) A system should be used which prevents the audio recording from being downloaded.

(3-2) Where necessary, the following measures may also be taken.

- Limit the people who are able to listen to the material to users, rather than allowing access to the general public.
- Limit the period of time the content is made available for, according to the purpose it is intended to fulfill.

## II Points to check for each type of content

The following are examples of the points to check when publishing academic information via the internet in accordance with these guidelines. Note that, in each case, it is necessary to consider separately whether cultural sensitivities are being given due attention.

Example 1: Two-dimensional image (still, video) of an artifact captured using a digital camera for inclusion in a database.

- ① Copyright clearance with the author of the artifact captured in the image (still, video)
  - Is the artifact a copyrighted work?  
Artifacts, such as masks, which include a strong design element, are often copyrighted works, while practical items such as agricultural tools, which have a general shape or form, are not usually copyrighted works (when in doubt, err on the side of caution and assume the item is a copyrighted work)
  - Is publication possible according to this guideline point number 2.?
- ② Copyright clearance with the person who captured the image (still, video)
  - In the case of a two-dimensional, front-on image of an artifact, the image is not generally a copyrighted work, so copyright clearance is not necessary.
  - In the case of a three-dimensional artifact, the image is generally a copyrighted work, so it is necessary to check whether copyright has been cleared with the photographer (at Minpaku the rights have usually already been cleared with the photographer)
- ③ Check whether there are any cultural sensitivity issues.

Example 2: Image (still, video) of three-dimensional artifact captured with a digital camera where special arrangements have been made for the composition, lighting etc.

- ① Clear copyright with the author of the artifact captured in the image (still, video) (same as Example 1)
  - Is the artifact a copyrighted work?
  - Is publication possible according to this guideline point number 2.?
- ② Clear copyright with the person who captured the image (still, video)

- ③ Check whether there are any cultural sensitivity issues.

Example 3: Image (still, video) of an exhibition hall captured using a digital camera

- ① Clear copyright with the author of the artifact captured in the image (still, video)
  - Is the artifact a copyrighted work? (Same as Example 1)
  - Is publication possible according to this guideline point number 2.?
- ② Clear copyright with the person who captured the image (still, video)
- ③ Clear portrait rights of any people captured in the image
  - If any person is clearly captured in the image, check whether permission has been granted by that person, or consider whether publication is possible in light of this guideline point number 4.
  - If a person's face has been clearly captured and that person's permission is not thought to have been received, then the basic approach should be to mask the face in some way.
  - If the people in the image have been captured in such a way that they cannot be identified, then it is ok to publish it.
- ④ Check whether there are any cultural sensitivity issues.

Example 4: Image (still, video) of people

- ① Clear copyright with the person who captured the image (still, video)
  - ② Clear portrait rights of any people captured in the image
    - If any person is clearly captured in the image, check whether permission has been granted by that person, or consider whether publication is possible in light of this guideline point number 4.
    - If the people in the image have been captured in such a way that they cannot be identified, then it is ok to publish it.
  - ③ Check whether there are any cultural sensitivity issues.
- \* Note that no copyright is owned by someone who digitizes a photograph (still) taken with a film camera for the purposes of publishing it via the internet.

Example 5: Image (still, video) of a lecture captured with a digital camera

- ① Clear copyright with the author of the lecture materials captured in the image (still, video)

- Are the lecture materials copyrighted work? (They usually are)
- Is any of the content within the lecture materials that have been captured copyrighted works? (It usually is)
- Is publication possible according to this guideline point number 2.?
- ② Clear copyright with the person who captured the image (still, video)
- ③ Clear portrait rights of any people captured in the image
  - If any person is clearly captured in the image, check whether permission has been granted by that person, or consider whether publication is possible in light of this guideline point number 4.
  - If the people in the image have been captured in such a way that they cannot be identified, then it is ok to publish it.
- ④ Check whether there are any cultural sensitivity issues.

Example 6: Audio recording of an interview captured with a voice recorder

- ① Clear copyright with the interviewee
  - Is the interview content a copyrighted work? (It usually is)
  - Is publication possible according to this guideline point number 2.?
- ② Clear copyright with the person who recorded the interview (strictly speaking it is not clearing copyright, but clearing neighboring rights)
  - Has copyright been cleared with the person who recorded the interview?
- ③ Check whether there are any cultural sensitivity issues.

### III Points to check when transmitting video

The following are points to check when transmitting Minpaku's video content, including Minpaku Visual Ethnography, according to these guidelines.

- When supplying content for university lectures etc.  
The mode of delivery should be on-demand streaming. Upload the image (video) data to Minpaku's streaming server, and set individual URLs, user IDs, and passwords for each applicant. The period of availability should be set to the period specified in advance by the applicant.
  
- When hosting the Visual Ethnography Theater etc. online  
The mode of delivery should be live streaming via YouTube. Upload the image (video) data to YouTube, set the privacy setting to "unlisted", and send a link to the video in advance to those who wish to view it. Once the live streaming has ended, promptly remove the image (video) data from YouTube.

#### IV Definition of terms

The definition of the legal terms used in these guidelines, based on the 9<sup>th</sup> edition of the Copyright Law Handbook (*Jitsumusha no tame no chosakuken handobukku*) by the Copyright Law Research Group (*Chosakuken Horei Kenkyukai*), are set out below.

##### Copyrighted work

Article 2, Paragraph 1, Item 1 of the Copyright Act defines a copyrighted work as “a creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic, or musical domain”. Anything that meets the following four criteria is considered to be a copyrighted work.

- ① Something which expresses “thoughts or sentiments”
- ② Something expressed “creatively”
- ③ Something which has been “produced” (an “idea” is not a copyrighted work)
- ④ Something falls within the “literary, academic, artistic or musical domain”

##### Author

Article 2, Paragraph 1, Item 2 of the Copyright Act defines an “author” as “a person who creates a work”.

##### Employee’s work (or corporation’s work)

Article 15 of the Copyright Act defines the criteria under which corporations etc. become authors as follows.

- ① Something created at the initiative of a corporation
- ② Something created by a person working for a corporation
- ③ Something created by an employee of a corporation in the course of their duties
- ④ Something published under the name of a corporation
- ⑤ So long as it is not stipulated otherwise in a contract, in employment rules, or elsewhere

##### Copyright

The rights of an author are: copyright in the work as a property right; the author’s moral rights. In the Copyright Act, the term “Copyright” is used only to mean rights in the sense of property rights.

Copyright is divided into several different types according to the form of usage of the work.

These rights expire after a certain period of time has passed. As a rule, they continue to exist until 70 years have passed since the death of a work's author.

Reproduction rights: Stipulated in Article 21 of the Copyright Act.

Article 2, Paragraph 1, Item 15 of the Copyright Act defines reproduction as the “physical replication of a work through printing, photography or copying, through the recording of sound or visuals, or in any other way”. For example, converting something to digital data is also a form of “reproduction”.

Stage performance rights, musical performance rights: Stipulated in Article 22 of the Copyright Act.

The author has the exclusive right to publicly perform a play or piece of music that they themselves have created. Article 22-2, of the Copyright Act (the right to present a work via an on-screen presentation) also stipulates the right to present a work via an on-screen presentation.

Right to transmit to the public: Stipulated in Article 23 of the Copyright Act.

The author has the exclusive right to transmit their work to the public. Public transmission is defined as “making a transmission of wireless communications or wired telecommunications with the objective of allowing the public to receive them directly”. For example, transmitting something via the internet is a form of “public transmission”.

Recitation rights: Stipulated in Article 24 of the Copyright Act.

The author of a work has the exclusive right to give an oral recitation of it.

Exhibition rights: Stipulated in Article 25 of the Copyright Act.

The author of an artistic or unpublished photographic work has the exclusive right to publicly exhibit the original work.

Distribution rights: Stipulated in Article 26 of the Copyright Act.

As a rule, this only applies to cinematographic works. “Distributing” means “transferring or renting out copies of a work to the public, regardless of whether this is done for a price or at no charge”. Article 26, -2 of the Copyright Act also stipulates the right of transfer (the exclusive right to make works, excepting cinematographic works, available to the public through the transfer of the original work or a copy of the work). Article 26-3 of the Copyright Act also stipulates the right to rent out (the exclusive right to make works, excepting cinematographic works, available to the public by renting out copies of the work).

Translation rights, musical arrangement rights, reformulation rights, adaptation rights: Stipulated in Article 27 of the Copyright Act.

The author has the exclusive right to translate, compose a musical arrangement, reformulate, or create a derivative work of a work they themselves have authored.

Right to exploit a derivative work: Stipulated in Article 28 of the Copyright Act.

While the translator or musical arranger of a derivative work is the author of that work, the author of the original work retains the same rights in connection with the exploitation of derivative work as they have with regards to the original work.

#### Author’s moral rights

These are personal rights which cannot be transferred, and they encompass the following three rights.

- ① Right to make a work public: This is the right of the author to decide whether or not to publish a work and, if they decide to publish the work, the timing and method of publication.



- ② Right of attribution: This is the right of the author to decide whether to use their name to indicate authorship when a work or reproduction of the work is made available to the public, and also whether to use their true name or a pseudonym.
- ③ Right to integrity: This is the right to have the integrity of a work preserved, and not to allow modifications that is contrary to the author's intention.

#### Derivative work

Article 2, Paragraph 1, Item 11 of the Copyright Act defines a derivative work as a “work that a person creates by translating, composing a musical arrangement of, reformulating, dramatizing, making a cinematographic adaptation of, or otherwise adapting a pre-existing work”.

#### Incidentally captured work

Article 30-2 of the Copyright Act defines this as follows: “When images of objects or sounds are reproduced, or transmitted without reproduction by means of photography, recording of sounds or visuals, broadcasting or any equivalent means, a copyrighted work relating to any objects or sounds (including any objects or sounds that comprise a part of the thing that is being reproduced or transmitted) that are captured incidentally to the objects or sounds in question, and constitute a minor part of the work in question (the thing being created or transmitted through the act of reproduction or transmission), taking into account the proportion, definition at which it will be reproduced and other factors.”.

#### Portrait rights

These are not governed by the Copyright Act or other specific legal regulations, but they are recognized in case law. This is the right for people not to have a photograph of their appearance or form taken or used with their permission or consent.