

Graduate School of Humanities and Social Sciences
Degree Programs in Humanities and Social Sciences

Policy on Making the Doctoral Dissertation Publicly Available via the Internet

1. Obligation to Make the Doctoral Dissertation Publicly Available via the Internet

One who receives the doctoral degree from Japanese universities must making the full contents of his/her dissertation publicly available via the internet by depositing an electronic copy into the University Institutional Repository within a year from the conferment of a doctoral degree after April 1, 2013, as a result of the revision of the “Degree Regulations,” Ordinance of the Ministry of Education, Science and Culture No. 9 of 1953¹ (Article 9, paragraphs 1 and 3 of the Ordinance). In addition, the University of Tsukuba stipulates that within one year of the conferral of the doctoral degree, the full text of the dissertation must be made available electronically on the internet using the university institutional repository, the Tsukuba Repository (Tulips-R)² (Article 14-2 of the Corporate Regulation No. 53 of 2013).

It is beneficial and convenient for the doctoral degree recipients to make his/her doctoral dissertation publicly available via the internet, because there is no better way to show it the cutting-edge research around the world quickly, simply, and inexpensively. Even if part of the doctoral dissertation is plagiarized, he/she will be able to defend one’s right easily because it is confirmed earlier study by the plagiarism checker. In addition, he/she can certify the authenticity of his/her doctoral degree.

It is significant for academia and necessary for the universities that award the degrees to make the doctoral dissertation publicly available. In fact, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) has revised the “Degree Regulations” to “stipulate that doctoral dissertations be made public so that they can be cross-referenced as a mechanism to mutually guarantee the quality of doctoral dissertations, etc., which are the results of university education and research³.” In 2005, the Central

¹ The university that conferred the degree must publicize the summary of the contents of the doctoral dissertation and a summary of the results of the dissertation review via the internet within three months from the conferment of a doctoral degree (Article 8 of the “Degree Regulations”).

² URL: <https://tsukuba.repo.nii.ac.jp/>.

³ Ministry of Education, Culture, Sports, Science and Technology, Higher Education Bureau, “Revision

Council for Education stated that "while promoting the awarding of degrees, it is also important to ensure the transparency and objectivity of degree standards and examinations," and that doctoral dissertation abstracts and examination results "should be actively disclosed to society at large in an easily accessible manner, including posting on the internet⁴." In 2012, a working group of the Council for Science and Technology stated that "dissertations are not only the research results of degree recipients, but also the results of graduate education at degree-granting universities, and there is a high demand for their use as a reflection of the latest trends in specialized fields. It is important to further promote the inclusion of dissertations in institutional repositories to return the results of universities to society and to fulfill their accountability⁵."

Thus, making the doctoral dissertation publicly available via the internet is a way for the university to return the results to society and to guarantee the level of the degree and the transparency and objectivity of the examination. The "full text" of the dissertation is the basis for the award of the degree, both for the person receiving the degree and for the university. Therefore, the university must preserve and publish it. The "full text" of the doctoral dissertation must also be sent to the National Diet Library⁶. The "full text" of the doctoral dissertation can be viewed at the University of Tsukuba Library and the National Diet Library, even if it has not been published via the internet .

In the Graduate School of Humanities and Social Sciences and the Degree Programs in Humanities and Social Sciences, a PDF of the "full text" of the doctoral dissertation is to be submitted to the each Office of Degree Program/Subprogram no later than two weeks after the final examination⁷.

of Degree Regulations (Summary),"

https://www.mext.go.jp/component/a_menu/education/detail/_icsFiles/afieldfile/2013/03/13/1331809_03.pdf (Accessed January 31, 2021).

⁴ Central Council for Education, "Graduate Education in the New Era: Toward the Construction of Internationally Attractive Graduate Education: Report," September 5, 2005, https://www.mext.go.jp/b_menu/shingi/chukyo/chukyo0/toushin/_icsFiles/afieldfile/2019/04/03/1212701_001.pdf (Accessed January 31, 2021), p. 33. Shinya Tatematsu, 2013, "Revision of Degree Regulations: Internet Publication of Doctoral Dissertations," Open Access Summit 2013, Part 2, "Achieving Open Access for Doctoral Dissertations," June 7,

https://www.nii.ac.jp/irp/event/2013/OA_summit/docs/2_3.pdf

(Accessed January 31, 2021), p. 5. Makoto Suto, "Looking back on the revision of degree regulations for dissertation OA," *Journal of University Libraries*, No. 103, 2016, p. 25.

⁵ Council for Science and Technology Policy, Subcommittee on Science, Research Environment and Infrastructure, Working Group on Academic Information Infrastructure, "Enhancement of Infrastructure for Strengthening International Dissemination and Distribution Capabilities of Academic Information," July 2012, https://www.mext.go.jp/component/b_menu/shingi/toushin/_icsFiles/afieldfile/2012/08/02/1323890_1_1.pdf (Accessed January 31, 2021), p. 17. Tatematsu (2013): 7 (note 5 above).

⁶ Making the doctoral dissertation publicly available via the University of Tsukuba's Institutional Repository, the dissertation will be automatically collected by the National Diet Library system (even if the electronic data is replaced, the dissertation before the replacement will be published in the National Diet Library). If the full text is not published, the electronic data of the full text must be sent to the National Diet Library. National Diet Library, "Collection of Domestic Doctoral Dissertations," <https://www.ndl.go.jp/jp/collect/hakuron/index.html> (Accessed January 31, 2021).

⁷ For more details, please refer to "Publication of Doctoral Dissertations on the Internet," which will be distributed when you submit your doctoral dissertation.

2. “Unavoidable Circumstances” to Publish an Abstract Instead of the Full Text of a Doctoral Dissertation

Article 9, paragraph 2 of the “Degree Regulations” states that “one who has been awarded a doctoral degree may, under unavoidable circumstances, publish a summary of the contents of the dissertation pertaining to the award of the doctoral degree instead of the full text of the dissertation, with the approval of the university that awarded the doctoral degree.” According to Notification dated March 11, 2013 by the Director General of the Higher Education Bureau of MEXT, the “unavoidable circumstances” are “when the university that conferred the degree approves that there are special reasons that are objectively unavoidable⁸.” Some examples of “unavoidable reasons” are as follows⁹:

- (1) when the doctoral dissertation contains content that cannot be made publicly available via the internet for reasons such as including expression by three-dimensional shape.
- (2) when the doctoral dissertation contains content that cannot be made publicly available via the internet for more than one year after the date of conferral of the doctoral degree for reasons such as copyright protection and privacy protection.
- (3) when making the full text of the doctoral dissertation publicly available would cause obvious disadvantages to the doctoral recipient in relation to publication, publication in an academic journal that prohibits multiple publication, or patent applications for a period exceeding one year from the date of the doctoral degree was conferred.

When the “unavoidable circumstances” cease to exist, the person who has been awarded the doctoral degree must make the “full text” public available via the internet¹⁰.

Even if the “unavoidable circumstances” have not been resolved, the university that has conferred the degree must make the “full text” of the dissertation available for inspection upon request¹¹ (Article 9, paragraph 2 of the “Degree Regulations”). As already indicated, the “full text” of the dissertation can be viewed at the University of Tsukuba Library and the National Diet Library. Therefore, even if it is recognized as “unavoidable circumstances” to publish the “summary” instead of the “full text,” the

⁸ Director General of the Higher Education Bureau, Ministry of Education, Culture, Sports, Science and Technology, “Notification: Enforcement of the Ministerial Ordinance Partially Amending the Degree Regulations” (24 MEXT High No. 937), March 11, 2013, available at https://www.mext.go.jp/a_menu/koutou/daigakuin/detail/1331796.htm (Accessed January 31, 2021).

⁹ Regarding (2) and (3), the University of Tsukuba states that for administrative reasons, even if a doctoral dissertations cannot be made publicly available via the internet for a period of less than one year, it must be approved as having “unavoidable circumstances.”

¹⁰ Director General of the Higher Education Bureau, “Notification” (note 9 above) .

¹¹ Director General of the Higher Education Bureau, “Notification” (note 9 above) .

doctoral degree recipient must submit the electronic data of the “full text” in addition to the “summary.” Copyright or other issues should not arise at the time of submission of the doctoral dissertation.

As mentioned earlier, making the doctoral dissertation publicly available is a mechanism for quality assurance of research results at universities. In order to fulfill the objective of guaranteeing the level of degrees and the transparency and objectivity of examinations, “doctoral dissertations must be prepared on the basic premise that they are to be published, and should be prepared in consideration of copyright protection and privacy protection¹².” Therefore, doctoral dissertations should be prepared so that they can be published through the use of the internet, and statements that cannot be published on the internet should be avoided as much as possible.

Those who received their doctoral degree on or after April 1, 2013, must, in principle, publish the “full text” of the original doctoral dissertation through the use of the internet, even if they publish their doctoral dissertation as a book with few changes, whether it is a course doctorate or a thesis doctorate¹³. The “full text” must also be made publicly available via the internet, if the doctoral degree is conferred after submitting a dissertation based on a book published before April 1, 2013¹⁴.

When a publisher requests that the “full text” of a doctoral dissertation be withheld from internet publication because publication of the “full text” would affect book sales, the “summary” may be published instead of the “full text” for a certain period if approved as having “unavoidable reasons.” Even if the “full text” publication is not possible, as much as possible of the text should be made available via the internet to the extent that it is reasonable to do so¹⁵. In addition, the “summary” should include a bibliography of previously published books (book title, publisher, year of publication, ISBN, etc.) for the convenience of the reader’s reference. In the Graduate School of Humanities and Social Sciences and the Degree Programs in Humanities and Social Sciences, a doctoral degree recipient who wishes to publish the “summary” instead of the “full text” at the request of the publisher must apply together with a certificate of publication from the publisher and a written request for postponement of publication of the full text.

When submitting a doctoral dissertation to an academic journal, if it conflicts with the prohibition against double submissions, the “summary” may be published instead of the “full text” for a certain period of time if approved as having “unavoidable reasons.” However, it should not be arbitrarily judged that even those for which the destination and timing of submission have not yet been decided fall under the category of “unavoidable

¹² Division of Educational Promotion, Department of Educational Promotion, University of Tsukuba, “Response to the Graduate School’s Opinions on the Internet Publication of Doctoral Dissertations in Conjunction with the Awarding of Doctoral Degrees” (August 9, 2018), the 211th Steering Committee of the Graduate School of Humanities and Social Sciences (9) Document, September 5, 2018, p. 70.

¹³ Division of Educational Promotion, “Response” (note 13 above), p. 73.

¹⁴ Division of Educational Promotion, “Response” (note 13 above), p. 73.

¹⁵ Division of Educational Promotion, “Response” (note 13 above), p. 73.

circumstances.” Therefore, those who have been awarded a doctoral degree should apply with concrete plans¹⁶. In the Graduate School of Humanities and Social Sciences and the Degree Programs in Humanities and Social Sciences, the doctoral degree recipient must apply at the stage of actual submission to the academic journal, together with a certificate of acceptance of the submission and a stipulation prohibiting double submissions. In addition, parts of the doctoral dissertation are not related to the journal submission must be made publicly available as much as possible.

The Graduate School of Humanities and Social Sciences and Degree Programs in Humanities and Social Sciences sets a deadline of two years in principle for the publication of “summary” instead of “full texts” at the request of publishers or by submission to academic journals. However, if the “unavoidable circumstances” are not resolved by the deadline, the deadline can be extended for two years if the application is approved again.

The “abstract” (dissertation outline) submitted at the same time as the submission of the doctoral dissertation is not sufficient for the “summary.” The policy of the Graduate School of Humanities and Social Sciences and Degree Programs in Humanities and Social Sciences is as follows:

- When masking is used to protect copyright and privacy, the relevant sections should be masked in a manner appropriate to the content of each dissertation, and the rest of the original text should be retained¹⁷.
- When a doctoral degree recipient submits a portion of the doctoral dissertation to a journal that does not allow double submissions, the "summary" of the submitted portion must be published on the internet, along with the original text of the non-submitted portion.
- If the entire doctoral dissertation is to be published in book form and is to be published on the internet as a "summary" rather than a "full text," a "Doctoral Dissertation Summary" of at least 12,000 characters in Japanese or 5,000 words in English should be prepared and submitted using the "Doctoral Dissertation Summary Form. The summary should be written in chapters that describe the theme, methods, data, analysis, thought process, etc., so that the structure and flow of the dissertation can be understood.

3. Author's Rights (Copyright in the Broad Sense)

A doctoral dissertation involves the rights of the author of the dissertation and the rights of other authors whose works have been “cited” or otherwise referred to in the dissertation.

¹⁶ Division of Educational Promotion, “Response” (note 13 above), p. 71.

¹⁷ If part of a doctoral dissertation published on the internet is masked, the "full text" is not considered to be published.

Protecting not only the rights of the author of the doctoral dissertation but also the rights of others is important when authoring a doctoral dissertation. In the following, we will discuss “author’s rights,” or copyright in the broad sense, as they relate to both authors and quoters.

Copyright in a broad sense is included in intellectual property rights (IPR) together with industrial property rights such as patent rights to protect inventions, utility model rights to protect the devising of the shape and structure of things, design rights to protect designs that can be mass-produced, and trademark rights to protect product names and logos, as well as breeder's rights under the Plant Variety Protection Law (Article 2, paragraphs (1) and (2) of the Basic Act on Intellectual Property). An industrial property right or a breeder's right cannot be granted without application, examination, and registration, but if granted, the right holder can exercise it exclusively. In contrast, a copyright in a broad sense arises naturally at the time of creation of a work and does not require application or registration. However, it cannot be exercised exclusively when the same work is created by chance.

The Copyright Act (Act No. 48 of 1970) stipulates the “rights of authors” (copyright in the broad sense) and “neighboring rights” with respect to “works” and the like, “for the purpose of protecting the rights of authors and others and thereby contributing to the development of culture, while paying attention to the fair use of these cultural properties” (Article 1). A “work” is “a creative expression of thought or feeling, which belongs to the field of literature, science, fine arts or music” (Article 2, paragraph (1), item (i)). Language, music, dance/mute drama, fine arts, architecture, maps and figures, films, photographs, programs, etc. fall under the category of “works” (Article 10, paragraph (1)). The person who “created the work” is called the “author” (Article 2, paragraph (1), item (ii)).

The “author's rights” include “moral rights” to protect the author's moral interests and “copyrights (property rights)” (copyrights in the narrow sense) to protect economic interests (Article 17). While the former cannot be transferred to anyone, the latter “may be transferred in whole or in part” (Article 61, paragraph (1)). It can also be inherited. Therefore, the copyright holder may not be the author himself. The term of protection of copyright is, in principle, from the time of creation of the work by the author until 70 years after the author's death. In 2018, the Copyright Act was amended with the enactment of the “Comprehensive and Advanced Agreement on the Trans-Pacific Partnership (TPP)” and the “Act on the Development of Related Laws in Conjunction with the Comprehensive and Advanced Agreement on the Trans-Pacific Partnership” (Act No. 108 of 2016), and the term of protection was extended from 50 to 70 years.

Moral Rights of Authors include: the “right of publicity” (Article 18), which determines whether to publish a work; the “right of name indication” (Article 19), which determines whether to indicate a name (real name, pen name, etc.) on a work; and the

“right of identity preservation” (Article 20), which prevents a person from altering the content or title of a work without permission. On the other hand, “copyright” includes: (1) “the right of reproduction” (Article 21), which is the right not to be reproduced without permission; (2) “the rights of Stage performance and Musical performance ” (Article 22), “the right of showing” (Article 22-2), “the right of public transmission” (Article 23), “the right of dictation” (Article 24), and “the right of exhibition” (Article 25), which are the rights not to be conveyed to the public without permission; and (3) the “right of distribution” (Article 26), the “right of transfer” (Article 26-2), and the “right of lending” (Article 26-3), which are the rights not to be transferred to the public without permission, (4) the “right of translation and adaptation” (Article 27), which is the right not to create and use a derivative work without permission, and the “right of the original author to use the derivative work” (Article 28)¹⁸. As it is sometimes said that “copyright is a bundle of rights,” copyright is a collection of these specific rights (branch rights).

If copyright is infringed, the infringer may be subject to civil claims such as injunction against infringement, compensation for damages and restitution of unjust enrichment, and may be required to take measures such as restoration of reputation. Furthermore, though copyright infringement is a crime that requires a formal complaint to be submitted against the infringer, a guilty verdict can lead to imprisonment or a fine.

Careful consideration should also be given to foreign works to ensure that they do not infringe on copyrights. Japan has signed up to: the Berne Convention (Berne Convention for the Protection of Literary and Artistic Works / Convention de Berne pour la protection des œuvres littéraires et artistiques 1887); the Universal Copyright Convention (UNESCO Convention 1955); the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights 1995) - an annex to the Agreement establishing the WTO (World Trade Organization); and the WIPO (World Intellectual Property Organization) Copyright Treaty (1996). Japan has a relationship of mutual protection of copyrighted works with many countries in the world¹⁶. With respect to the works of countries that are in a relationship of mutual protection with Japan, Japan needs to protect the works of the other country by means of national treatment, i.e., to give them the same protections as those given to its own nationals.

4. Right of Reproduction and Public Transmission

Article 30 of the Copyright Act permits “reproduction” without the permission of the copyright holder for private use, “for personal use or use within the home”, or other

¹⁸ For an easy-to-understand explanation, see “Overview of the Copyright System,” Agency for Cultural Affairs, “Copyright Naruhodo Question Box,” <https://pf.bunka.go.jp/chosaku/chosakuken/naruhodo/outline/4.3.html> (Accessed January 29, 2021).

¹⁶ Regarding neighboring rights, Japan is a signatory to the “Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations” and the “Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms,” which must be mutually protected.

similarly limited scope. However, “transmissions” via the internet are not considered “private use” because they are accessible by anyone in the world, even if the user is enjoying them privately²⁰.

When publishing a doctoral dissertation on the internet, the copyrights involved for the author himself/herself and for the copyright holders of other works that are "cited" are the "right of reproduction" and the "right of public transmission."

The “right of reproduction” is the English word “Copyright,” i.e., the author's exclusive right to reproduce a work (Article 21 of the Copyright Act). No one other than the author can “reproduce” a work. Reproduction” is “the tangible reproduction of a work by printing, photography, photocopying, sound recording, video recording or any other method” (Copyright Act, Article 2, paragraph 1, Item 15). Keyboard input is also included, and scanning a work, converting it to PDF and saving it on recording media, or saving a file of input of a work on a computer or smartphone is also “reproduction²¹.”

The “right of public transmission” is the author's exclusive right to “transmit” a work to the public and to communicate the work to the public by means of a receiving device (Copyright Act, Article 23). It is not permissible to “transmit” a work to the public by wireless, wire, or other means without the author's permission. The term “the public” includes not only unspecified persons but also “a specified and numerous numbers of persons” (Article 2 (5) of the Copyright Act), and, more than fifty persons are deemed to be “numerous.” In the case of "automatic public transmission" in which only works accessed by the recipient are transmitted to the recipient, the author's permission is required not only for "transmission" from the device (server, etc.) but also for "making transmittable" in which works are "stored" (uploaded) or "input" (in cases where "storage" is not involved such as webcasting) in the device. In other words, just by storing another person's work in your computer without permission, you are infringing not only the author's “reproduction right” but also the “public transmission right²².”

This is true not only for the internet, but also for LANs and intranets. It is also a violation of the Copyright Act for universities and other institutions to post copyrighted works on their websites without permission for the purpose of research or education, even if they use IDs and passwords to restrict users, as it is beyond the scope of “private use²³.” As a side note, the 2018 amendment to the Copyright Act introduced the “Remuneration System for Public Transmission for School Lessons,” which allows remote classes to “publicly transmit” copyrighted works in class without individually obtaining the

²⁰ The Japan Newspaper Publishers & Editors Association, “Copyright on the Network,” https://www.pressnet.or.jp/statement/copyright/971106_86.html (Accessed January 29, 2021).

²¹ Stakeholder Forum on Educational Use of Copyrighted Works, “Operational Guidelines for Article 35 of the Revised Copyright Act (2020),” p. 4, <https://forum.sartras.or.jp/wp-content/uploads/unyoshishin2020.pdf> (Accessed January 30, 2021).

²² “Overview of the Copyright System” (note 18 above).

²³ “Copyright on the Network” (note 20 above).

copyright holder's permission²⁴.

5. “Quotation”

As mentioned above, the Copyright Act also aims to “contribute to the development of culture” through “fair use of cultural properties” such as copyrighted works, and it not only protects “the rights of authors” but also indicates exceptional cases in which a work can be used without obtaining permission from the copyright holder (Articles 30 to 47-8 of the Copyright Act). Both the “quotation” and “works of art, etc.” provisions fall under exceptional cases²⁵.

Article 32, paragraph (1) of the Copyright Act provides that “a published work may be used by quotation” and that “in such a case, such quotation shall be in conformity with fair practice and shall be made within the scope justifiable for the purpose of reporting, criticism, research, or other quotation. In the Parody Montage Case, the Supreme Court held that a “quotation” is “in principle, the recording of a part of another's work in one's own work for the purpose of introduction, reference, commentary, or other purposes²⁶. Images and videos can also be “quoted.”

In principle, “quotation” is not illegal even if the copyrighted work is used without permission. However, in its ruling on the “Parody Case,” the Supreme Court stated that “In order for a work to be considered a quotation, it must be recognized in the form of expression of the work containing the quotation, with a clear distinction between the work of the one being quoted and used. Next, it must be recognized that there is a relationship between the two works in which the former is principal and the latter is subordinate. Furthermore, it is not permissible to “quote a work in such a way as to infringe the moral rights of the work being quoted²⁷.” This precedent was based on the former Copyright Act, which stated that “two requirements” of “clear distinction” and “incidental nature”

²⁴ Universities will pay to the Society for the Administration of Remuneration for Public Transmission for School Lessons (SARTRAS) an annual blanket fee of 720 yen per student and remuneration of ten yen per student per public transmission. Education Planning Center, Inc., “Outline of the Remuneration System for Public Transmission for School Lessons [Amount of Remuneration],” January 20, 2021, <https://pcpe.jp/blog/20210120-188/> (Accessed January 30, 2021). The “Remuneration System for Public Transmission for School Lessons” came into effect on April 28, 2020, earlier than originally planned due to the outbreak of the new coronavirus infection and was made free only in 2020. Of course, mock classes at school information sessions and open campuses, faculty meetings, FD seminars, etc., which do not fall under the category of classes, are not allowed to “publicly transmit” another person's work without the permission of the copyright holder. The “Operational Guidelines for Article 35 of the Revised Copyright Act,” p. 6 (note 21 above).

²⁵ In Japan, the law enumerates a limited number of cases where copyrighted works can be used without the permission of the copyright holder, but in the U.S., the law comprehensively stipulates that “fair use” is allowed. Kenji Kajiya, “Contemporary Art and Copyright,” Feb. 14, 2009, https://artscape.jp/blogs/blog2/2009/02/post_89.html (Accessed February 2, 2021). However, since the U.S. does not have the idea of a lawful “citation,” a lawsuit could be filed in the U.S. even if the work meets the requirements for a “citation” in Japan.

²⁶ The Third Petty Bench of the Supreme Court of Japan, March 28, 1980, Minshu Vol. 34, No. 3, p. 244 (parody case), see court website (Showa 51 (o) 923), p. 2.

²⁷ Parody case, pp. 2-3 (note 26 above).

were necessary for “quotation,” and has been followed for a long time²⁸. Based on this precedent, the Agency for Cultural Affairs has set forth the following conditions under which a “quotation” is recognized²⁹.

- (1) Materials to be quoted should be those that have already been published.
- (2) There is a “necessity” for the quotation, and the quoted portions are clearly distinguished (“clear distinction”) and otherwise consistent with “fair practice.”
- (3) The relationship between the “subject and the predicate is clear (“incidental relationship”), and the amount of quoted material is the minimum necessary and within the legitimate range for the purpose of news reporting, criticism, research, and other quotations.
- (4) The source of the work (and the name of the author appearing on it) must be clearly indicated (Copyright Act, Article 48).

It is common sense to clearly distinguish the quoted portions, not to alter them, and to clearly state the source. A statement such as 'This work owes a great deal to whomever' or simply stating a list of cited references at the end of a work is not an 'indication of the source.'³⁰ As for the “subject-predicate relationship,” the question is whether there is a “necessity” to “quote” someone else's work. Some believe that the amount of quotations is irrelevant, but it is undesirable to have more quotations than the text, and furthermore, it is not permissible to give unnecessary quotations just because there are fewer quotations than in the text. The American Psychological Association sets a standard of five hundred words for quotations from published works and requires written permission for longer quotations³¹.

A work that makes extensive use of another person's work beyond the level of "quotation" is, so to speak, a "reprint." “Reprint” cannot be done without the permission of the copyright holder.

²⁸ In the “Artwork Appraisal Certificate Citation Case,” the Intellectual Property High Court ruled that “in determining whether or not a use constitutes a citation, comprehensive consideration must be given to the purpose of the use of another person's work, the method and manner of use, the type and nature of the work used, and the existence and degree of influence on the copyright holder of the work (comprehensive consideration theory). Intellectual Property High Court, October 13, 2010 (Art Appraisal Certificate Citation Case), see court website (No. 2010 (ne) 10052), p. 13.

²⁹ “Related Terms,” Agency for Cultural Affairs, “Copyright Question & Answer Box,” <https://pf.bunka.go.jp/chosaku/chosakuken/naruhodo/ref.asp> (Accessed January 29, 2021).

³⁰ Takashi Onodera, “Limitation of Copyright: Quotation,” *Patent*, Vol. 59, No. 1 (2006), p. 64, https://system.jpaa.or.jp/patents_files_old/200601/jpaapatent200601_4-066.pdf (Accessed February 2, 2021)

³¹ University of the Sacred Heart Library, “Copyright Guidebook for Graduate Students,” p. 6, <https://library.u-sacred-heart.ac.jp/daigakuinseichosakuken2014.7.pdf> (Accessed January 30, 2021). “Footnotes and Endnotes,” Purdue Online Writing Lab, Purdue University, https://owl.purdue.edu/owl/research_and_citation/apa_style/apa_formatting_and_style_guide/footnotes_and_endnotes.html (Accessed January 31, 2021).

6. Copyrights on Works of Art, etc.

“Works of art” and “works of photography not yet published” (hereinafter referred to as “works of art, etc.”) may be “quoted” without the permission of the copyright holder, provided that the “quotation” requirements already mentioned are met. However, unlike linguistic works such as academic or literary works, art works are not composed of lines or paragraphs and tend to be used in their entirety rather than in part. In such a case, the question arises as to whether the quotation is “the minimum necessary,” but it is understood that a work of art, etc. can be quoted in its entirety, because it is not possible to quote only a part of it due to its nature³².

According to Article 25 of the Copyright Act, it is the “author” of a work of art, etc. who has the “exclusive right to publicly display the original work” (the “right of display”). In order for a museum or other institution to publicly display an “original” work of art, etc., it is necessary to obtain permission from the copyright holder. Of course, no copying is allowed without the permission of the copyright holder.

However, the “owner of the original work” of art, etc., or a person who has obtained the owner's consent may publicly display the “original work” in accordance with Article 45, paragraph 1 of the Copyright Act. This is because the meaning of ownership would be lost if the owner of a work of art, etc. had to obtain the permission of the copyright holder each time it is exhibited and pay royalties as necessary. However, in order to avoid undue harm to the interests of copyright holders, the conditions are strictly defined, and permanent installation outdoors where the public can easily view it is not permitted (paragraph 2 of the same article). In principle, works of art, etc. installed outdoors may be used regardless of the method used (Article 46 of the Copyright Act).

Under Article 47 of the Copyright Act, a person who publicly exhibits an original work without prejudice to the right of exhibition (“original work exhibitor”) is allowed to “reproduce” the exhibited work for the purpose of explaining or introducing it to visitors, for publication in a “booklet” or for “automatic public transmission.” As of January 1, 2019, visitors can also use tablet terminals and other devices to provide commentary and introductions to the exhibited works. Naturally, it must not unreasonably prejudice the interests of the copyright holder. The term “booklet” here refers to lists or small illustrated books, and does not include luxurious art books³³.

Works of art may be used without the permission of the copyright holder if the copyright protection period has expired. However, works of art, etc., have owners other than the copyright holder, and “reproduction” or “automatic public transmission” of such

³² Onodera, “Limitations on Copyright,” p. 65 (note 30 above) .

³³ Tokyo District Court, October 6, 1989 (“Leonard Fujita Exhibition” catalog case), see court website (No. 1987 (wa) 1744). Tokyo District Court, September 5, 1997 (Dali exhibition case), see Japan Uni Copyright Center website (No. Heisei 3 (wa) 3682). Tokyo District Court, February 20, 1998 (Barnes Collection Exhibition case), see court website (No. Heisei 6 (wa) 18591).

works without prior inquiry to those owners may cause problems. Therefore, when dealing with works of art, etc. in a doctoral dissertation, it is not sufficient to satisfy only the “quotation” requirement.

Although the copyrights to old shrines and temples and the Buddhist statues enshrined therein have been extinguished, it should be noted that the photographer owns the copyrights when using the photographs taken of them. In addition, shrines and temples may ask for permission to use the camera when taking pictures.

Characters and roles, i.e., characters in novels, movies, comics, animated cartoons, etc., are not "works" because they are "abstract concepts that can be said to be character personalities sublimated from concrete expressions, and are not themselves concrete expressions or creative expressions of ideas or feelings."³⁴ However, the specific text of a novel or the specific picture of a manga or anime is protected by the Copyright Act, and must not be reproduced or adapted without permission. In the case of manga and anime, "the role and appearance of a character given by the author shall be protected as an expression that never changes, regardless of the topic or plot expressed in words, the expression of a particular character in a particular panel, the position of his head, or the movement of his body."³⁵ In other words, if the work is recognized as a representation of a cartoon or animated character known to many people, it is a copyright infringement. In addition to Copyrights, manga and anime characters may also have trademark rights, design rights, protection under the Unfair Competition Prevention Law, and other rights commonly referred to as “merchandising rights.” Character names are not considered copyrighted works, but they can be protected by trademark law if the product is registered as a trademark, or by the Unfair Competition Prevention Act if the name is that of a well-known character. Character designs and three-dimensional shapes can also be registered as flat or three-dimensional trademarks. Publicity rights may also arise if the character has the ability to attract customers. In any case, one should be very careful in "quoting" specific pictures from manga and anime.

7. Confirmation Items When Preparing and Submitting a Doctoral Dissertation

A person who intends to submit a dissertation claiming the degree of Doctor of Philosophy must confirm the following items with respect to the dissertation. Those who intend to submit a doctoral dissertation must personally obtain permission from the relevant persons and institutions.

First, if you are using someone else's work, you must make sure that it falls within the

³⁴ The First Petty Bench of the Supreme Court of Japan, July 17, 1997 (Popeye Tie Case), *Minshu* Vol. 51, No. 6, p. 2714, refer to the court website (No. 1443, 1992 (O)), p. 4.

³⁵ Tokyo District Court, May 26, 1976 (Sazae-san case), see court website (1971 (Wa) 151), p. 3. In the Popeye Tie Case, it was also held that “it is not necessary that the work of a third party matches in every detail the picture of a character depicted on a particular screen of a manga, but it is sufficient that it is possible to know from its characteristics that it depicts the character concerned. The First Petty Bench of the Supreme Court, July 17, 1997, see Court website, p. 5.

scope of a “quotation.” Of course, using another person's work in a manner that is not a "quotation" infringes on that person's copyright. Even if you think that you are “quoting” within the legitimate scope, it may be considered unauthorized reproduction. Unauthorized reproduction, if discovered, may result in damages and revocation of the doctoral degree. Use of highly original diagrams, paintings, or photographs may be considered use of someone else's work. Even "quotations" may incur royalty fees at the discretion of the copyright holder.

Next, you must also make sure that you are not infringing on the rights of others other than copyright. The Copyright Act protects not only the “author's rights” granted to the creator of a work, but also the “neighboring rights” granted to those who transmit the work to others, such as performers, record producers and broadcasters (Copyright Act, Articles 1 and 89). Industrial property rights shall also not be infringed. Because industrial property rights are rights to economic benefits, claims for damages may be excessive.

In addition, if you use photographs taken by yourself or others in your paper, you may infringe on the portrait rights of others, and the portrait rights of others, including their appearance, may not be published or used without their permission. Celebrities have the ability to attract customers and may be subject to large claims for damages due to infringement of publicity rights.

When dealing with works of art, etc., the “right of display” of the author must also be protected from infringement. Even works whose copyrights has expired may be require prior inquiry. However, we cannot afford not to check the rights of doctoral dissertations that deal with works of art, etc., just because of various copyright issues. As already mentioned, the mandatory publication of doctoral dissertations on the internet is intended to ensure transparency and objectivity of degree levels and examinations, and it is essential to minimize masking or other means to be able to confirm this. Therefore, we would like to request that those who intend to submit a doctoral dissertation check the rights by themselves and only those who cannot resolve the issue should apply for disability to publish the "full text" on the internet, and only after the application has been approved, should the masking be done. If your dissertation deals with works of art, etc., it is advisable to confirm the rights when collecting the works of art, etc.

If you are unable to contact the copyright holder to obtain permission, you may legally use the work by obtaining a ruling from the Commissioner of the Agency for Cultural Affairs and depositing consideration equivalent to the normal royalty fee, instead of obtaining permission from the copyright holder (Articles 67, 67-2 and 103 of the Copyright Act).

Third, when using a work written elsewhere for a doctoral dissertation, it is necessary to obtain permission for reprinting from the publisher, academic society, etc. that published the work in question (hereinafter referred to as "publisher, etc."). A person who holds a copyright ("reproduction right") may grant a third party the right to publish or

"publicly transmit" the work as a document or drawing ("publication right") (Article 79 of the Copyright Act). At that time, the copyright holder enters into a publication agreement (1) to retain copyright but to grant permission for reproduction and distribution to the publisher, etc., (2) to transfer only the necessary branch rights such as "reproduction rights" to the publisher, or (3) to transfer all copyrights to the publisher (in the case of submission to an academic journal, the submission rules may specify that copyright belongs to the academic society at the time of submission). In the case of (2) and (3) above, works may not be used without the permission of the publisher, etc. In the case of (2) and (3) above, works may not be used without the permission of the publisher, etc. Even in the case of (1) above, it is desirable to obtain permission from the publisher, etc. Of course, it is also necessary to take care to avoid "self-plagiarism" in terms of research ethics.

Fourth, Article 11 of the "Detailed Regulations Concerning Examination of Dissertations, etc. of the Graduate School of Humanities and Social Sciences" stipulates that "dissertations shall be single-authored," which is not applicable to most dissertations, but when using the results of a co-authored dissertation as part of a doctoral dissertation, permission must be obtained from all other co-authors who hold copyright, even if the results are not used directly.

Fifth, when conducting interviews, questionnaires, experiments, etc. in a doctoral dissertation, sufficient care must be taken in handling personal information. When posting information, it is necessary to obtain permission from the provider of the personal information and to ensure that unnecessary personal information is not included. If you or a group including you conduct an experiment or survey and prepare a paper based on it, it is recommended that you obtain approval from the Institutional Review Board (IRB) of the university or academic association to which you belong. In the Graduate School of Humanities and Social Sciences and the Degree Programs in Humanities and Social Sciences, the supervising professor is required to request a review by the Ethics Review Board for the Institute of Humanities and Social Sciences.

Finally, keep in mind that depending on the language and software in which you are preparing your doctoral dissertation, there may be characters that are not supported as data (e.g., old form of Chinese characters, simplified Chinese characters, etc.).

These are the things you need to do to publish your doctoral dissertation on the internet, but you may want to check them before you prepare and submit your dissertation.