

## **Copyright Legislation in Japan and Recent Trends**

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## 1. Background of Copyright Legislation in Japan.

Japan was the first Asian country to have modern copyright legislation. The first Copyright Law was promulgated as Law No.39, on March 4, 1899. At the same time, Japan joined and ratified the Bern Convention. Since the Yedo period, publishing had been a good business, and the new Meiji Government had issued the first "Publishing Rule" as early as the second year of Meiji (1869) to protect "publishers' rights". One of the earliest best sellers, "Gakumon no Susume" (Recommendation to Learning) by Fukuzawa Yūkichi, was published in 1872. Fukuzawa himself wrote that the first edition of Part I had been printed in 200,000 copies, but pirated editions amounted to 20,000 copies.

The Old Copyright Law of 1899 was amended many times before the current New Law was enacted in 1970 as Chosakuken Ho, Law No.48 of May 6, 1970. The social, technological and international milieu surrounding the New Copyright Law has changed rapidly and dramatically in the eighties and nineties, so there have been 19 partial amendments with the latest one in June 1999.

Note: When I quote provisions and texts from the Copyright Law of Japan, I use the English translation authorized by Ministry of Education, Science, Sports and Culture (Monbush ō), i.e., *Copyright of Japan*, translated by Yukifusa Oyama et al., Copyright Research and Information Center, Tokyo, November 1999, 220 p., ISBN 4-88526-024-8. (URL of Copyright Research and Information Center, <http://www.cric.or.jp>).

## 2. Limitations on Copyright.

### 2-1 Purpose of the Law and Limitations on the Right.

The purpose of the Copyright Law is to pursue compatibility of the protection of rights of authors with fair exploitation by the public of the works that authors create. Article 1 of the Law states the purpose as follows. "The purpose of this Law is, by providing for the

rights of authors and the rights neighboring thereon with respect to works as well as performances, phonograms, broadcasts and wire diffusions, to secure the protection of the rights of authors, etc., having regards to a just and fair exploitation of these cultural products, and thereby to contribute the development of culture." (Article 1, Purpose)

To secure a " fair exploitation" of these works many "Limitations" are placed on the rights of authors by the Law. In Japan, these limitations are formulated separately for the various forms of the copyrighted works and different ways of use. Limitations on rights are set forth in the part from Article 30 to Article 47bis.

### Limitations on Copyright.

- 1) Reproduction for private use, Article 30
- 2) Reproduction in Libraries, etc., Article 31
- 3) Quotations, Article 32
- 4) Reproduction in school textbooks, etc., Article 33
- 5) Broadcasting, etc. in school education programs, Article 34
- 6) Reproduction in schools and other educational institutions, Article 35
- 7) Reproduction in examination questions, Article 36
- 8) Reproduction in braille, Article 37
- 9) Performance, etc. not for profit-making, Article 38
- 10) Reproduction, etc. of articles on current topics, Article 39
- 11) Exploitation of political speeches, etc., Article 40
- 12) Reporting of current events, Article 41
- 13) Reproduction in juridical proceedings, etc., Article 42
- 14) Exploitation by means of translation, adaptation, etc., Article 43
- 15) Ephemeral recordings by broadcasting organizations, etc., Article 44
- 16) Exhibition of an artistic work, etc. by the owner of original thereof, Article 45
- 17) Exploitation of an artistic work located in open places, Article 46
- 18) Reproduction required for an exhibition of artistic works, etc. Article 47
- 19) Reproduction, etc. by the owner of a copy of a program work, Article 47bis

### **2-2 Limitations especially related to researchers and libraries.**

**Of these limitations on Copyright, several items are particularly relevant to the activities of researchers and librarians.**

#### **(1) Reproduction for private use, Article 30**

One can reproduce copyrighted work without permission of the right-holder, if he or she wants to do so for private use within a very limited circle. An 'exclusion clause' was added by the Amendment in 1984 for the use of automatic reproducing machine even in cases of private use, but as far as printed text concerned, the exception exists for the time being.

**Article 30:** (1) "It shall be permissible for a user to reproduce by himself a work forming the subject matter of copyright (hereinafter in this Subsection referred to as a "work") for the purpose of his personal use, family use or other similar use within a limited circle (hereinafter referred to as "private use"), except in the following cases:

(i) where such reproduction is made by means of automatic reproducing machines ("automatic reproducing machine" means a machine having reproducing functions and in which all or main parts of reproducing devices are automatic) placed for the use by the public;

**Supplementary Provisions; Transitory Measures: automatic reproducing machines.**

**Article 5bis.-** "For the application of the provisions of Article 30, paragraph (1), item (i) and Article 119, item (ii) of the new Law, the words "automatic reproducing machines" mentioned in these provisions shall not include for the time being those exclusively for use in copying writings or printings."

**(2) Reproduction in Libraries, etc., Article 31**

Since the public service function of libraries can be considered to be social institutions, libraries such as National Diet Library, public libraries, academic libraries and special libraries and other institutions that are approved by Cabinet Order, can reproduce works without the right owner's permission, as non-profit making service to users. In this case libraries, etc., should follow the requirement stated below.

- Firstly, a user can request a library to reproduce, for his or her own research, a part of a work held by a library, without the permission of the copyright owner. In this case, the user is required to come to the library, and, in principle, obtain one copy of a part of the work. A request through the postal service is regarded as a visit, but the Law says nothing about transmission by facsimile and networks.
- Secondly, for the preservation of library materials.
- Thirdly, a library may ask another library to send a reproduction of rare library materials or out-of print materials.

**Article 31:** "It shall be permissible to reproduce a work included in library materials ("library materials" in this Article means books, documents and other materials held in the collection of libraries, etc) within the scope of the non-profit-making activities of libraries, etc. ("libraries, etc." in this Article means libraries and other establishments, designated by Cabinet Order, having the purpose, among others, to offer library materials for the use by the public) in any of the following cases:

(i) where, at the request of a user and for the purpose of his own investigation or research, he is furnished with a single copy of a part of a work already made public or of all of an individual work included in a periodical already published for a considerable period of time ;

(ii) where the reproduction is necessary for the purpose of preserving library materials ;

(iii) where other libraries, etc. are furnished with a copy of library materials which are rarely available through normal trade channel because the materials are out of print or for other similar reasons."

**(3) Reproduction in schools and other educational institutions, Article 35. Teachers may copy a part of a work by themselves to use in the classroom.**

**Article 35:** "A person who is in charge of teaching in a school or other educational institutions established not for profit-making may reproduce a work already made public if and to the extent deemed necessary for the purpose of use in the course of teaching, provided that such reproduction does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the number of copies and the form of reproduction."

**(4) Performance, etc. not for profit-making, Article 38**

This provision relates to the right to lend published works for not for profit purpose, except cinematography (movies). When a library lends a CD that it holds to users, it is following this provision.

**Article 38 (4):** "It shall be permissible to offer to the public a work (except a cinematographic work) already made public, by lending copies of the work (excluding---) for non-profit-making purposes and without charging any fees to borrowers of such copies."

**(5) Reproduction in juridical proceedings, etc., Article 42**

Courts, legislative assemblies and government organizations can reproduce a work for the purpose of conducting their function, without the permission of right owners.

**Article 42:** "It shall be permissible to reproduce a work if and to the extent deemed necessary for the purpose of judicial proceedings and of internal use by legislative or administrative organs, provided that such reproduction does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the number of copies and the form of reproduction."

**(6) Reproduction, etc. by the owner of a copy of a program work, Article 47bis**

The owner of a computer program can make a backup copy or adaptation as a necessary step in utilization of program in conjunction with the machine, within the limit stated by the provision.

**Article 47bis**-(1) "The owner of a copy of a program work make copies or adaptations (including the making copies of a derivative work created by means of adaptation) of that

work if and to the extent deemed necessary for the purpose of exploiting that work on a computer by himself, provided that the provision of Article 113, paragraph(2) does not apply to the use made of such copies in connection with such exploitation."

### **3. Recent amendments for Computer Program, Database and Interactive Public Transmission**

#### **3-1 Outline**

Corresponding to the rapid development of information technology, especially the diffusion of digitalization of the copyrighted works and enlargement of telecommunication networks, several major amendments have been made since 1980's.

\*Protection of Computer Program by Copyright Law (1985).

\*Protection of Database works (1986).

\*Enlargement of Wire Diffusion Right to Wire Communication Right (1986).

Amendment of the Provision for Wire Communication corresponds to online database services. In this case providers can easily identify users of databases through usage contracts.

\*Introduction of Compensation for Private Recording (1992).

The probability of infringement is increasing, even in private use, due to the introduction of high-quality digital recording apparatus.

As a counter-measure to such an infringement in private recording, a right to claim compensation is introduced. When users purchase specified recording machines, they pay compensation that is added to the price of such machines.

#### **3-2 Amendment in 1997**

Domestic amendment was made in correspond with WIPO Copyright Treaty in 1996.

1. Provision for the rights of public transmission, etc.

The rapid diffusion of the Internet has caused the popular practice of interactive transmission and activities of transmission to become much more instable, because of increases in unidentified interactive communication. The right of public transmission was added as Article 23 to correspond to this new situation. Further, it was recognized as the author's right to give permission to user's "making transmittable to the public of the works" by Article 2 ix quinquies and Article 23 (2).

The act of making transmittable means the so-called "Up-loading" to one's own personal terminal through a network. According to this amendment, the former division of public transmission into "Wire" and "Radio" is integrated into "Public Transmission".

Article 2 ix quarter: " "interactive transmission" means the public transmission made automatically in response to a request from the public, excluding the public transmission falling within the term "broadcasting" or "wire diffusion" ;

ix quinquies: " making transmittable" means the putting in such a state that the interactive transmission can be made by either of the following act : (a), (b) ----(omitted)

(Article 23-(1) "The author shall have the exclusive right to transmit his work publicly (including the making transmittable of his work in the case of interactive transmission).

2. The author shall have the exclusive right to communicate publicly, by means of a receiving apparatus, his work which has been transmitted publicly.) "

### **3-3 Amendment in 1999**

1. Ruling of circumvention of technological protection measures

Information technology makes it possible for a user to avoid various technical protection measures that are integrated into reproducing apparatus. Accordingly an exclusion was attached to the limitation for private use clause (Article 30-(1)- (ii) ). This is the first partial exclusion of limitation on private and family use of reproduction apparatus.

Article 30-(1)- (ii) "where such reproduction is made by a person who knows that such reproduction becomes possible by the circumvention of technological protection measures or it ceases to cause obstruction, by such circumvention, to the results of acts deterred by such measures ("circumvention" means to enable to do acts prevented by technological protection measures or to stop causing obstruction to the results of acts deterred by such measures, by removal or alteration of signals used for such measures; the same shall apply in Article 120bis, item (i) and (ii)) ("removal" or "alteration" does not include such removal or alteration as is conditional upon technology involved in the conversion of recording or transmission systems).

(2) Any person who, for the purpose of private use, makes sound or visual recording on such a digital recording medium as specified by Cabinet Order by means of such a digital recording machine as specified by Cabinet Order (excluding (a) machines having special efficiency generally not for private use but for business use, such as that for broadcasting, and (b) machines having sound or visual recording functions incidental to the primary function, such as telephones with sound recording function) shall

pay a reasonable amount of compensation to the copyright owners concerned."

#### 4. Collective Clearance System for Reproduction.

##### **4-1 Legal base of Copyright Intermediary Function.**

Copyright clearance shall be done principally through individual requests by users and the permission of right owner thereupon. However, the Law admits the existence of intermediary business organizations between users and right owners for different forms and usage of copyright. In Japan, "Law on Intermediary Business Concerning Copyright " was promulgated as, Law No.67, of April 5, 1939. Here, the provision says "The term 'intermediary business concerning copyrights' as used in this Law shall mean the conduct, as an occupation, of an act of agency or mediation on behalf of copyright owners regarding contracts for the use of their works for publication, translation, public performance, broadcasting, cinematography, sound recording, or others" (Article 1).

There are four organizations that are approved by the Law as 'Intermediary Business legal person,' in the areas of musical works, novels and scenarios. **JASRAC** is the largest and most famous intermediary organization.

1. Japanese Society for Rights of Authors, Composers and Publishers-JASRAC
2. Japan Association of Authors [literature, novels]
3. The Writers Guild of Japan
4. Japan Association of Scenario Writers

Besides these Intermediary Business Organizations, there are a dozen Copyright related Associations and Unions which correspond to each division of Copyright. A collective organization for reproduction of printed publications, Japan Reprographic Rights Center-JRRC was established jointly, in September 1991, by six groups of right-holders.

Of these intermediary business organizations, Japanese Society for Rights of Authors, Composers and Publishers-JASRAC is the largest organization, with nearly 10,000 individual members including authors, composers and music publishers. JASRAC exchanges individual Trust Contracts with its members and collects and distributes copyright royalties in Japan. The amount of annual royalties reaches to a level of one hundred billion-Yen (Yen 100,000,000 per year.

##### Collection of Royalties by JASRAC (Unit \ million)

1996 Fiscal Year	90,600
1997 Fiscal Year	94,200
1998 Fiscal Year	98,400

(Source: <http://www.jasrac.or.jp/index/htm>)

## **4-2 Activities of Japan Reprographic Rights Center-JRRC**

The activities of JRRC can be divided into four major areas.

(1) Management of Rights for Reproduction Licensing.

JRRC manages copyrighted works that are licensed by copyright owners. These tasks are carried out by six Licensee groups corresponding to the kinds and type of works.

### **Licenses and Works JRRC manages (as of March 1999)**

(Sources: JRRC News and <http://www.jrcc.or.jp>)

a) Japan Association of Authors [literature, novels]	
Numbers of Authors	1,413
b) The Writers Guild of Japan	
Numbers of Authors	1,405
c) Japan Federation for Artists Rights	
Numbers of Authors	1,802
d) All Japan Photographic Author Union	
Numbers of Authors	4,447
e) Japan Academic Association for Copyright Clearance-JAACC	
Numbers of Societies	446
Publication of Serials	765 titles
Publication of Monographs	1,352 titles
f) Japan Publishers' Association for Copyright	
Number of Publishers	304
Publication of Serials	1,288 titles
Publication of Monographs	49,834 titles
g) JRRC in Total	
Number of Authors	9,097
Publications	53,239 titles

### **(2) Contract for Reproduction and Collection of Fees**

JRRC writes contracts for reproduction with organizational users, mainly firms in the private sector and some public organizations in Government and Foundations, etc. The number of contracts has increased gradually to 2,406 as of March 1999. The number of special libraries that belong to these firms and organizations are thus covered by JRRC's licensing system. JRRC began negotiations in 1998 with the National Diet Library and the Cooperation Committee of Japanese University Libraries to formulate Guidelines for Library Reproduction, based on Article 31, and other licensing conditions including copying and facsimile transmission.

JRRC has just begun talks with the Administration Offices of National Universities (including 99 Universities) on licensing terms for reproduction within their offices. These negotiations and talks are currently continuing. It is investigating now how to handle the newly established right concerning public transmission and electronic library service. The amount of collection of reproduction royalties by JRRC has been in order of ¥160 million in recent years.

1997 ¥166,770,000

1998 ¥161,073,866

### (3) Distribution of Use Fees.

Since 1993, JRRC has distributed reproduction fees that it has collected from users to right-holders' groups. A sample survey of reproduction practices in member firms and organizations has been carried out regularly to estimate the frequency of reproduction by types of literary works such as academic journal article, general books and periodicals, novels and scenarios, etc, so that JRRC can decide a ratio of fee-distribution among right-holder's groups.

Distribution of Reproduction Use Fee, by Rights Owners' Group (1993-1997)

Year of distribution	Total Amounts	to JAAC	to Authors	to Publishers
1993,1994,1995	334 million	56.2%	1.5%	42.3%
1996	132	48.2	23.8	27.8
1997	127			

(Source; JAACC News No.1, September 1998)

### 4-3 Activities of Japan Academic Association for Copyright Clearance-JAACC

JAACC was established in October 1990 for collective clearance of reproduction rights within the area of academic monographs and journals. Its original name in English was "The Copyright Council of the Academic Societies" which was changed to present name in February 1999.

#### (1) License for Reproduction obtained by JAACC.

JAACC does collective processing of reproduction by accepting contracts for licenses of reproduction from Academic Societies. They have contracted with 467 Academic Societies as of December 27, 1999, and the ratio of licensors in major division of Societies is shown in the Table below.

In the Natural Science area, 46% of Societies and 68% of total publication pages are covered. In Humanity and Social Sciences, the ratio of licenses is still low but it has been increasing in recent years. As a total, JAACC represents reproduction rights of 30% of

Academic Societies, 50% of their members and nearly 60% of its publications in terms of pages.

**Reproduction Licensees in Academic Societies (as of November 4th, 1999)**

	Number of Societies	Membership	Publication pages/Year
Humanities/Social Sciences	580	388,925	124,314
(Licensers)	46	44,008	14,669
(Ratio of Licenser %)	(7.9%)	(11.3%)	(11.8%)
Natural Sciences	923	2,519,140	728,329
(Licensers)	421	1,410,575	496,226
(Ratio of Licenser %)	(45.6%)	(56.0%)	(68.1%)
Total	1503	2,908,065	852,643
Licensers	467	1,454,583	510,896
(Ratio of Licenser %)	(31.1%)	(50.0%)	(59.9%)

(Source; JAACC Statistics and *Zenkoku Gakujutsu Kenkyu Dantai Sō ran*, 1996 Edition)

**(2) License for Digitization**

JAACC plans to begin discussing licensing contract terms with the National Diet Library on its newly establishing electronic library project in Kansai in 1999 Fiscal Year. Then it will talk with other public organizations such as JICST on the licensing terms concerning digitized works.

**(3) Bilateral Agreement with CCC**

JAACC has just signed a Bilateral Cooperation Agreement with the Copyright Clearance Center (CCC) in the U.S.A on December 1st, 1999. The duration of the agreement is five years. By this Agreement

CCC authorizes JAACC to collect royalties for the reproduction of works in 840,000 American copyrighted titles, if users make more reproductions than permitted by Law. Reciprocally, the Agreement authorizes the CCC to collect royalties for the reproduction of Japanese works for which JAACC has the right as licensee, if the user in the USA makes a copy of the work beyond the legal limit. The Royalty for the reproduction of Japanese titles in the USA is US\$4.00 per article plus \$0.40 per page after December 1st, 1999. CCC and JAACC also agreed on the remittance of collected royalties to each other. US side has already made a remittance to Japan.

**5. Digital Libraries Projects and their Copyright Licensing Procedures**

## **5-1. NACSIS-ELS**

Negishi, Masamitsu, "Process of electronic library systems and future of scholarly information services: With NACSIS-ELS as the case discussed," *Jō hō kanri*, Vol.42, No.1 (1999 April), 47-60.

### **(1) NACSIS-ILL System**

NACSIS has been operating NACSIS-ILL service, as a supplemental function to its NACSIS-CAT system, since 1992. Through NACSIS-IR service, users can search for bibliographic data and locations of journal articles. When a user asks to reproduce a particular article, he or she usually issues, from their own terminal, Reproduction Request Order which is sent to the Library of the University where they register as an in-house user. Then the Library input these Reproduction Request Orders into the routine ILL process. In this case, the Library follows the limitation on copyright that is set especially for Libraries by Article 31.

### **(2) Academic Associations and Journals available.**

NACSIS began a brand-new full-text service, called NACSIS-Electronic Library, which became available to the public in April 1997. NACSIS has worked to exchange cooperative Memoranda with Academic Societies to be able to build full-text databases of journal articles published by each Academic Society, and to provide them to users. The latest figures for the number of Academic Societies by subject area, number of Journal Titles, number of Articles and number of Pages already input into NACSIS-ELS, are shown below.

Available Resources of NACSIS-ELS (as of 21st February, 2000)

Academic Societies	102 Academic Societies
Academic Journals	320 Titles
Total of Articles Input	624,429 Articles
Total of Pages Input	2,305,563 Pages

Distribution by Subject Areas of Academic Associations contracted with NACSIS-ELS(as of February 21st 2000)

Research Area	Academic Societies
Humanities	31
Jurisprudence	1
Economics	10
Pure Sciences	13

Engineering	16
Agriculture	7
Medicine	24
Total	102

In the Long term, NACSIS plans to cover nearly 1,000 Academic Associations in Japan as well as Japanese Publishers and Foreign Academic Associations, but for the time being, its priority is academic journals that are published by Japanese Academic Associations.

### **(3) Copyright License**

NACSIS secures all licenses for reproduction and digitization from Academic Societies by signing separate contracts. Contracts consist of Memorandum (Oboegaki) and Understanding (M ōshi-awase) which formalize conditions and procedures for the input of academic journals and dissertations into NACSIS-ELS. The user fills out an Application Form and receives the digitized full-text article at his or her own terminal via the Internet. The individual contract covers acts of digitization and interactive public transmission. Actually NACSIS has begun to include these new rights into its Memorandum with Academic Societies, before the 1997 Amendment of Law enacted these rights.

### **(4) Conditions of Use**

- Use Charges: Use Charges consist of system use charge and copyright charge. NACSIS has decided not to ask for system use charge from the user for the time being; copyright charges are determined by each Academic Society. Copyright charges differ from Society to Society and one third of Societies ask the user to pay it. Page charges vary from a low price of ¥2 per page to a high of ¥200 per page. In many cases, the Academic Society does not charge its members and only non-member users are charged royalties for the pages printed-out. The Collection and payment of fees is processed not by NACSIS but by a related organization, the Association for Promotion of Electrical, Electric and Information Engineering.
- User Qualifications: Users are requested to fill out a User Application Form and send it to NACSIS. Most users are concentrated in educational and research organizations, such as universities, colleges, National institutions, students and member of Japanese academic societies. User applications from abroad will be accepted, if he or she belongs to the academy or is a librarian in an institution of higher education. These will be considered "Individual Users." What sort of conditions should be attached to use by "Organizational Users" such as university libraries is presently being investigated. This is a "Site License".

## **5-2 NAIST-ELS**

(Reference: [www.aist-nara.ac.jp/index-j.html](http://www.aist-nara.ac.jp/index-j.html)).

The Nara Advanced Institute of Science and Technology is a Graduate School of Science & Technology, newly established in October 1992. In March 1997, NAIST began a project to construct a prototype of Digital Library.

Authorization to digitize the work is based on Article 63, which says "The copyright owner may grant another person authorization to exploit work." NAIST negotiates individually with Academic Societies and Publishers to obtain authorization to digitize their works into its Electronic Library System. Responses of publishers, when they are requested by NAIST, have been divided in to three types.

- (1) Give overall authorization to digitize the works on which publisher owns copyright.
- (2) Demand a specific fee according to the frequency of access.
- (3) Do not authorize digitization.

Of the copyright owners from whom NAIST has negotiated authorization to digitize in the initial phase of Digital Library Project, nearly 50% of the owners, i.e. about 140 academic journal titles, have agreed to let NAIST use the works.

NAIST is also negotiating with JAACC for a Tentative Agreement on the use of works under the management of JAACC. NAIST will digitize the works within the condition permitted by the right owners, and almost all permissions limit use to intra-campus only.

### **5-3 Tsukuba University Electronic Library Service**

(Reference: <http://www.tulips.tsukuba.ac.jp/pub/tsukubane/>, and Kuriyama, Masamitsu, "Digital Libraries and Copyright," *Jōhō no Kagaku to Gijutsu*, Vol.48, No.8 (1998), 435-439)

In 1997, Tsukuba University Library started a new Electronic Library Service, *Tsukuba University Library digitized Information Public Service-TULIP*. The Library appealed to all Faculty members to register their research papers, dissertations, and contributed articles with the Electronic Library. The rare library materials in the University Library and announcements and publications issues by the Administration Office and course Syllabi are also registered for input. Through registration, the Electronic Library solicits authors to give license to digitize and to make available through University LAN their works to users within and outside University. Licensing negotiations are based on individual application.

## **6. Future Tasks**

### **6-1 Current Legal Situation of ILL in University Libraries.**

Libraries are allowed by Article 31 to reproduce the works without permission of right-owners, when other libraries request a copy of a work which is rarely available through normal trade channels because it is out of print or for other similar reasons. This provision provides legitimacy for ILL services between libraries. However, Article 31 does not limit an author's right of public transmission.

The license which the right owner gives JRRC is for reproduction and reproduction accompanied by wire transmission (By-law Article 3 of JRRC). Therefore firms and organizations that have reproduction use contract with JRRC may copy the work and send it by facsimile to users.

Since 1998, JRRC has begun to negotiate with the Cooperation Committee of Japanese University Libraries to formulate Guidelines for Library Reproduction, based on Article 31, and other licensing conditions including copying and facsimile transmission. Beginning in 1999, JRRC has been investigating appropriate ways to handle the newly established right concerning public transmission and electronic library service.

All of newly established electronic libraries, such as NACSIS-ELS, NAIST-ELS and TULIPS have obtained permission to digitize and transmit the full-text of works from right owners by contracts. Users may enjoy full-text service via Internet or University-LAN, after their registrations have been accepted.

## **6-2 Alternatives for Solution**

What kinds of solutions are appropriate for reconciling the protection of copyright with the user's benefit in this newly and emerging milieu of Internet services and electronic libraries?

I would like to list here several ideal alternatives as topics of discussion. Investigation and evaluation of these alternatives in their legal, economical and technological aspects is a pressing need for our international librarians' community. Throughout these efforts, it should be kept in mind to provide steady harmonization and equal footing for protection and exploitation of copyrights, in US, Canada and Japan.

(Reference: Okamoto, Kaoru, "Electronic Library and Copyright Issues," *J<math>\bar{o}h\bar{o} kanri*, Vol.42, No.1 (April, 1999), 18-31)

(1) Subscription contracts with commercial electronic publishers and network providers, such as OCLC or Elsevier, etc.

(2) Direction for enlarging and strengthening collective clearance system of copyrights. It should be made easier for users, either individuals or organizations, to reproduce, transmit, and download, if they contract with an organization that

provides collective clearance service. In this case, collective clearance organizations, will first get license from the individual copyright-owners and then, through usage contact, collect copyright use fees or royalties from users.

There could be two kinds of collective clearance system, direct and indirect. Direct collective clearance systems provide full-text reproduction service and receive royalties through its own system. An indirect system simply receives the royalty for reproduction from users, while users reproduce the works on-line through another service system or using the library holding the materials. NACSIS-ELS service is an example of the former, while that of JRRC is the latter.

(3) Individual licensing between user and copyright owner. If an electronic library is established within a relatively narrow and local area network such as a university campus or an organization where users and copyright owners are working in comparative proximity, individual licensing contracts would be an effective method to clear copyrights.

(4) Amend the Copyright Law to include public transmission and uploading in the limitation to right owner. Considering the international trend in copyright legislation since the WIPO Copyright Treaty in 1996, amending the Article of public transmission in a direction of looser limitations on the right would cause arguments.

(5) For the copyright owner to announce that it would not exercise its right for works that are input into the electronic library. Premise for this alternative would be bona fide of users, and it seems an ideal solution but impracticable in the Internet environment.