

Frequently Asked Questions concerning the Extension of the Term of Protection for Copyrighted Works

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Prepared by the Copyright Division of the Agency for Cultural Affairs, Japan

Q1: What is a term of protection?

ANSWER

Durations are stipulated for copyrights, neighboring rights, and other rights in the Copyright Act, and these are referred to as terms of protection.

This is based on the belief that, while it is important to ensure rights for authors, performers, etc. and protect them, works should be made freely available as shared assets for all of society after a certain time has passed by lapsing those rights.

In the Copyright Act before these revisions, the term of protection for copyrighted works was set, in principle, at 50 years after the death of the author, but with the Amendment of the Copyright Act under “Act to Adjust Related Acts to Coordinate with the Conclusion of the Trans-Pacific Partnership Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership” (Act No. 108 of 2016; hereinafter, “TPP Development Act”), the term has been extended, in principle, to 70 years after the death of the author. The following outlines the revised terms of protection for various copyrighted works.

(1) Extension of the term of protection for works, performances and phonograms

Category		Current Law	After the Revisions
Works	In general	50 years after the death of the author	70 years after the death of the author
	Anonymous or pseudonymous works	50 years after the work is made public	70 years after the work is made public
	Works attributed to an organization	50 years after the work is made public	70 years after the work is made public
	Cinematographic works	70 years after the work is made public (*)	70 years after the work is made public (*)
Performances		50 years after the performance	70 years after the performance
Phonograms		50 years after the publication of the phonogram	70 years after the publication of the phonogram

* The term of protection for cinematographic works already satisfy the obligations of the agreement

Q2: How is the term of protection calculated?

ANSWER

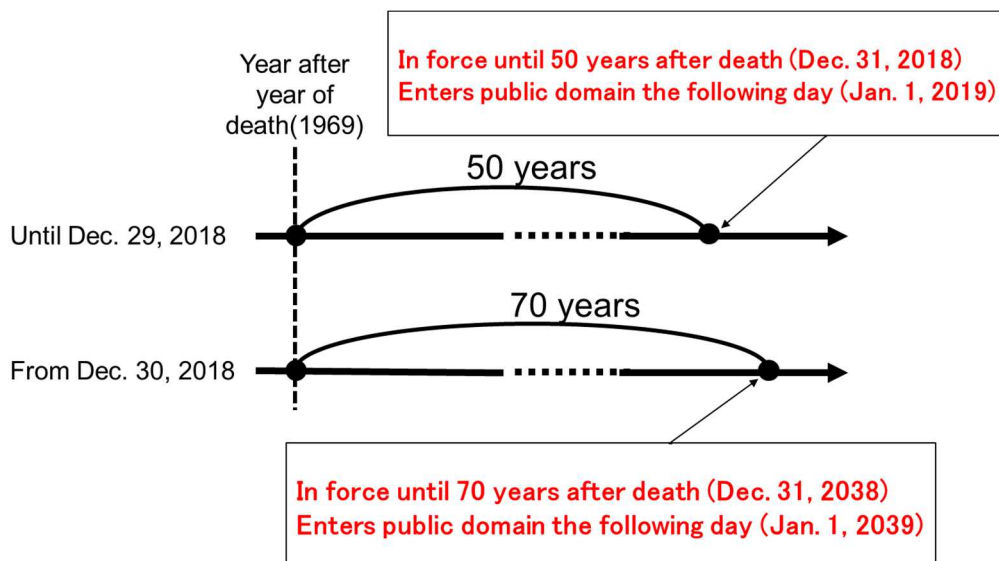
To simplify the method of calculation for the terms of protection, the starting point for the calculation is January 1 on the year after the year in which the author dies or the work is made public or created (Article 57). Under the revised Copyright Act, for example, the term of protection for the works of Tezuka Osamu, who passed away in 1989, will expire on December 31, 2059, which is 70 years from January 1, 1990.

Q3: With the CP-TPP going into force on December 30, 2018, how will the term of protection for copyrighted works change?

ANSWER

Because CP-TPP went into force in Japan on December 30, 2018, amendments of the Copyright Act, including term of protection extensions, went into effect on that same day. As a rule, the term of protection for copyrighted works produced by persons who passed away after 1968 will be extended. Specifically, the term of protection (in principle) for copyrighted works produced by persons who passed away in 1968 was set to expire on December 31, 2018, but because the term was extended from 50 to 70 years after the death of the author on December 30, 2018, these works will remain protected for another 20 years.

For example, Fujita Tsuguharu passed away in 1968, so his works were to be protected for 50 years starting on January 1, 1969 and lasting until December 31, 2018, but due to the amendments of the Copyright Act in accordance with the TPP Development Act, his works will now be protected for the 70 years after his death, until December 31, 2038.



Q4: What will happen to the term of protection for copyrighted works whose terms of protection has already expired?

ANSWER

Under the Copyright Act, once the term of protection has expired for a copyrighted work, in principle, protection cannot be reinstated, so the terms of protection will only be extended for those copyrighted works whose terms of protection have not yet expired as of December 30, 2018, the date of enforcement for the revised Act (Article 7, Supplementary Provisions to the TPP Development Act). Therefore, extensions will not be applied retroactively to any works whose terms of protection have already expired.

Q5: How does the extension of the term of protection affect the term of protection for works by foreigners?

ANSWER

As a general rule, the term of protection for works by foreigners as mandated by the treaty shall be governed by the framework set forth in Japan's Copyright Act, so, in principle, the term of protection in Japan for works by foreigners will also be extended to 70 years. That being said, due to the principle of reciprocity, for works originating in countries where the term of protection is shorter than Japan's, the work will only be protected for the term stipulated by the country of origin (Article 58). For example, if the term of protection in one country is set at 70 years after the death of the author, then copyrighted works from that country will be protected for 70 years in Japan as well. On the other hand, if the term of protection in another country is set at 50 years after the death of the author, then copyrighted works from that country will only be protected for 50 years in Japan, regardless of the extended term of protection in Japan.

Q6: With the extended term of protection, what will happen to the term of protection for Japanese works in foreign countries?

ANSWER

In countries where the reciprocity is adopted and the term of protection is 70 years after the death of the author in principle, copyrighted works from Japan were previously only protected for 50 years in principle. With this extension in Japan, the term of protection for Japanese works in those countries will now be extended to 70 years.

Q7: What is the wartime prolongation as it applies to the term of protection?

ANSWER

In accordance with the San Francisco Peace Treaty, the regular term of protection for copyrights obtained by the Allied Powers and citizens of Allied Powers before or during World War II that Japan was obligated to protect under the Berne Convention shall be prolonged by the total number of days from the start of the war on December 8, 1941 until the day before the San Francisco Peace Treaty went into force in the country in question. (For example, 3,794 days would be added to terms of protection for American and Australian works.) (The term of protection for copyrights obtained during the war are counted from the date on which the copyright was obtained.) (Article 4, Act on Special Provisions concerning Copyrights of Allied Powers and Nationals Thereof)

Q8: What will happen to the term of protection for copyrighted works subject to wartime prolongation?

ANSWER

As mentioned in Question 4, only copyrighted works whose copyrights had not yet expired as of December 29, 2018 (the day before December 30, on which the TPP Development Act went into effect) are eligible for the extended term of protection.

The term of protection for the works subject to the wartime prolongation on the same day (December 29, 2018) will be extended from 50 to 70 years, because those works will still be protected on that day.

Q9: Will copyrighted works subject to wartime prolongation be protected for 70 years plus the period of prolongation?

ANSWER

Legally, these works will be protected for 70 years plus the period of wartime prolongation. Because it would be practically impossible for Japan to modify its obligations under the San Francisco Peace Treaty, which stipulates the wartime prolongation, Japan, as part of the TPP negotiations, exchanged letters with each country eligible for wartime prolongation (namely, the United States, Canada, New Zealand, and Australia) in an effort to realistically overcome the issue of wartime prolongation. In these letters, the following points were confirmed (and these points were reconfirmed with the United States, which withdrew from the TPP, in letters exchanged in April 2018):

(1) To address the issue of wartime prolongation, a dialogue will be encouraged between copyright management societies and copyright holders;

(2) If necessary, government-level meetings will be held to report on the status of this dialogue and deliberate any other appropriate measures.

Furthermore, in the negotiation of the Japan-EU EPA, these points were confirmed with the relevant nations (i.e., United Kingdom, France, the Netherlands, Belgium, and Greece) in letters containing the same content. With these letters, the activities of collective management societies and encouragement from the government are expected to result in the wartime prolongation not being applied in the countries in question, thereby moving us one step closer to realistically overcoming this issue.

Q10: What will happen to the term of protection for copyrighted works protected under the old Copyright Act?

ANSWER

Because the term of protection for copyrighted works in the old Copyright Act (established in 1899; hereinafter “Old Act”) differs from that in the current Copyright Act (enacted on January 1, 1971), it will be necessary to review provisions on the term of protection in the Old Act and the current Copyright Act when determining whether copyrights for works made public or created in the era of the Old Act still exist.

After multiple amendments, the term of protection for copyrighted works in the Old Act and the current Copyright Act are as follows.

Type of work	Type of name	Term of protection under Old Act	Term of protection after amended Copyright Act of 1970 (enacted Jan. 1, 1971)	Term of protection after amended Copyright Act of 1996 (enacted Mar. 25, 1997)	Term of protection after amended Copyright Act of 2003 (enacted Jan. 1, 2004)	Term of protection after amended Copyright Act of 2016 (enacted Dec. 30, 2018)
Works other than cinematographic photographic works (e.g., novels, artwork, music, architecture, computer programs)	True name (while alive)	38 years after death	50 years after death		70 years after death	
	True name (while alive)	38 years after release	50 years after death		70 years after death	
	Anonym / pseudonym	38 years after release	50 years after release		70 years after release	
	Works attributed to an organization	33 years after release	50 years after release		70 years after release	
Photographic works	–	13 years after publication or creation	50 years after release	50 years after death		70 years after death
Cinematographic works (creative works (e.g., films for theater))	True name (while alive)	38 years after death	50 years after release		70 years after release	
	True name (while alive)	38 years after release	50 years after release		70 years after release	
	Anonym / pseudonym	38 years after release	50 years after release		70 years after release	
	Works attributed to an organization	33 years after release	50 years after release		70 years after release	
Cinematographic works (non-creative works (e.g., news films, documentary films))	–	13 years after publication or creation	50 years after release		70 years after release	

If the length of the term of protection has been extended under the revised Acts, then the revised term of protection shall apply only to those works whose copyrights have not yet expired as of the time of the enactment of the respective revised Acts. If the term of protection for works from the era of the Old Act is longer under the Old Act than the revised Acts, the longer term of protection shall be applied.

For example, a novel published under the true name of an author while he or she was still alive but who passed away in 1970 would have been protected until 2008 (38 years after death) under the Old Act, but since that copyright had not yet expired at the time of the enactment of the revised Copyright Act on January 1, 1971, it shall be protected until 2020 (50 years after death). Furthermore, since that copyright had not yet expired at the time of the revised Copyright Act enacted on December 30, 2018, that work will now be protected until 2040 (70 years after death).

Q11: Will the terms of protection for performances (musical and vocal performances) and phonograms under the Old Act also be extended by 20 years?

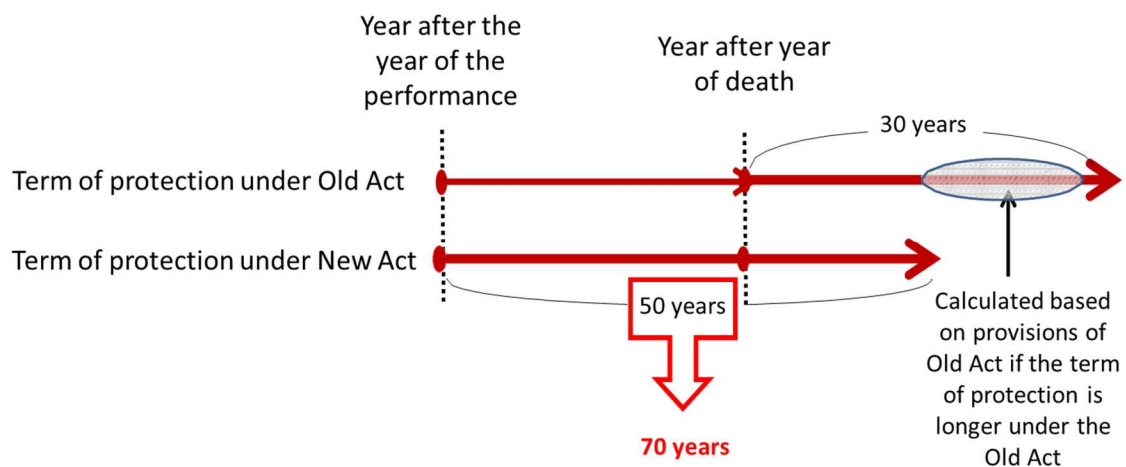
ANSWER

The Old Act protected copyrights for musical performances, vocal performances, and phonograms for a period of 30 years after the death of the author (or 30 years after publication for works attributed to an organization).

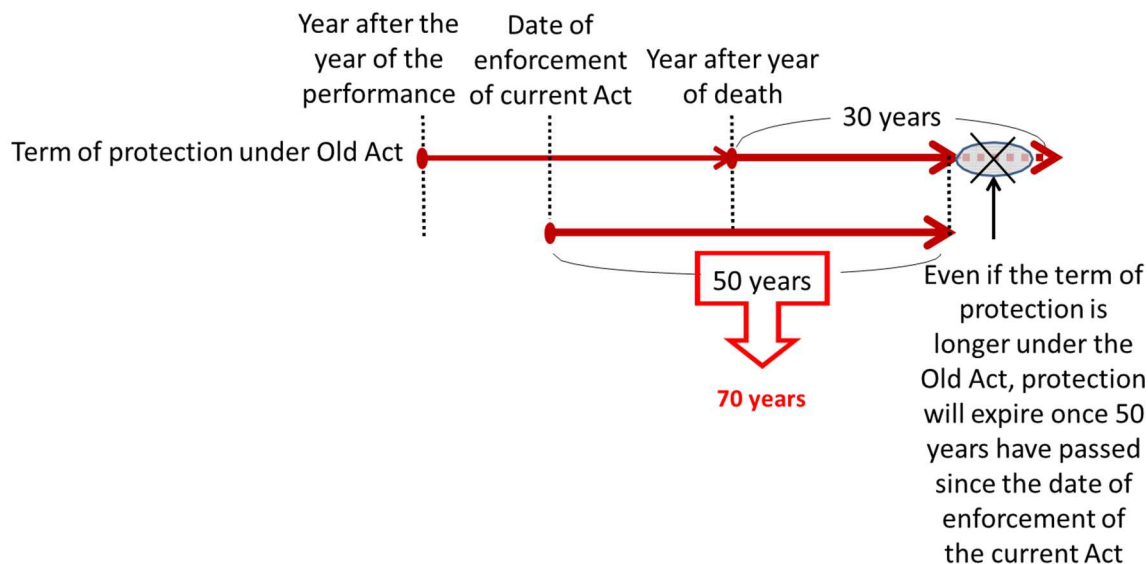
When the current Copyright Act was introduced, the following supplementary provisions were regulated; (1) the term of protection for neighboring rights under the Old Act shall apply if it is longer than the term of protection under the revised Copyright Act, and (2) if the term of protection under the Old Act extended beyond 50 years from the date of enforcement for the New Act, the term of protection shall expire no later than 50 years after the date of enforcement for the current Copyright Act (i.e., December 31, 2020) in consideration of the balance between these works and newly protected performances etc. under the current Copyright Act.

Because the term of protection for the rights of performers and producers of phonogram will be extended from 50 to 70 years with these revisions, the term of protection for Item (1) under the current Copyright Act will be extended from 50 to 70 years; however, if the term of protection defined in the Old Act is longer, calculations will be based on the provisions of the Old Act. Regarding Item (2), the point at which the term of protection will expire for performances and phonograms will be extended from 50 to 70 years from the date of enforcement of the current Copyright Act.

(1) If the duration for copyrights under the Old Act is longer than the duration for the neighboring rights under the current Copyright Act



(2) If the duration under the Old Act extends beyond 50 years from the date of enforcement of the current Copyright Act



Q12: Are copyrighted works not available for use during the term of protection?

ANSWER

In principle, you must be authorized by the copyright holder before using his or her work. However, permission from the copyright holder is not required when applying exceptions under the provisions of limitation. Exceptions under the provisions of limitation refer to reproduction for personal use, usage for educational purposes, social welfare by libraries, art museums, history museums, and the like.

Q13: What should I do if I cannot contact the copyright holder for getting permission?

ANSWER

In lieu of permission from the copyright holder, you can legally use a copyrighted work by paying compensation equivalent to the usual usage fee after a ruling by the Commissioner of the Agency for Cultural Affairs (Article 67, 67-2, and 103). Please refer to the Agency for Cultural Affairs homepage for more information. (Japanese only)

(http://www.bunka.go.jp/seisaku/chosakuken/seidokaisetsu/chosakukensha_fumei/)