

Supplementary Material for Video 18 “Using Foreign Works”

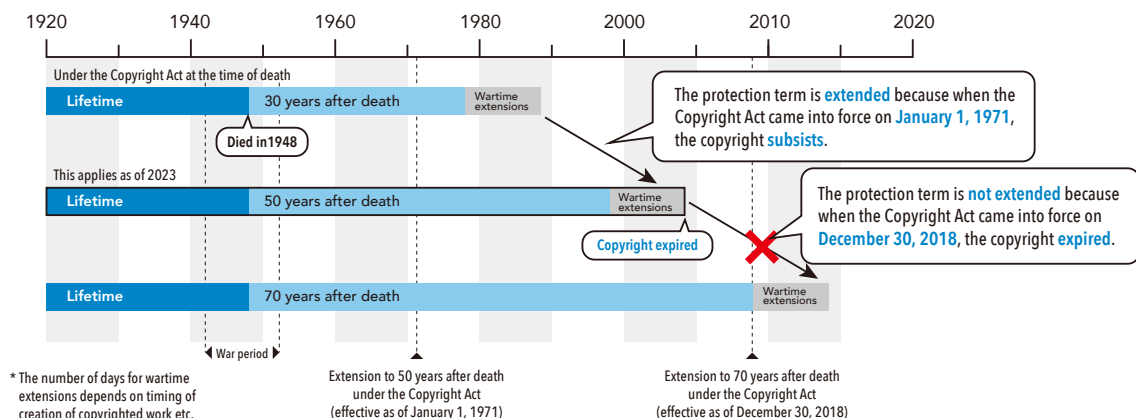
The Copyright Protection Term

At the end of video 18, we posted the following disclaimer: “For simplicity, this story uses a copyright protection term of 70 years after the author’s death, but this is not strictly accurate. The length of the protection term has been changed in the past and also varies depending on the type of work and the form of publication.”

In the video, to briefly explain the treatment of foreign works, the protection term was fixed at 70 years after the author’s death. Therefore, it concluded that the song on the topic “remains copyrighted and requires permission for use. However, [if the video’s setting is 2023, this song is free to use after the expired protection term](#).

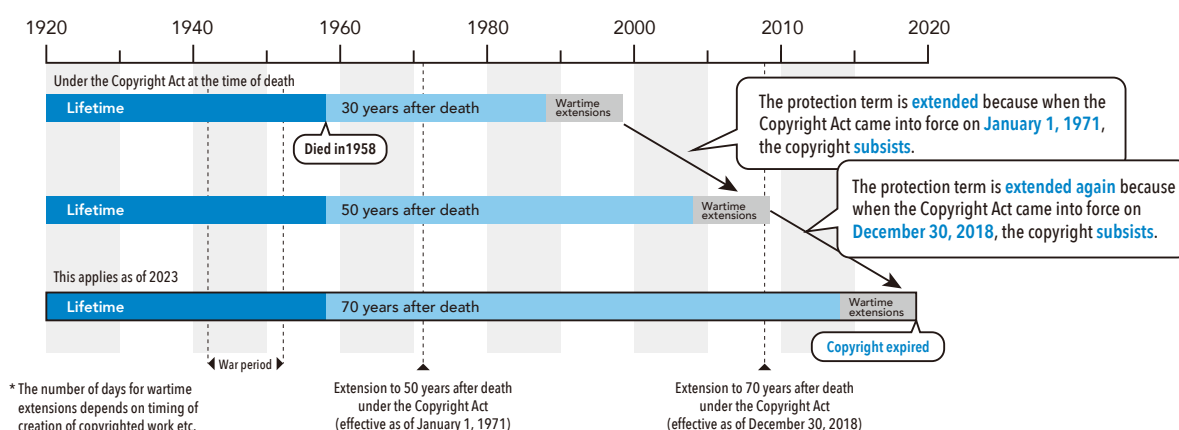
This is because the protection term has been amended in the past, which I would like to explain here. The point is [when the Copyright Act is amended to extend the protection term, only works for which copyrighted work still subsist \(including wartime extensions\) as of the effective date of the amended Copyright Act are subject to the extension of the protection term](#).

The copyright owner of the song Naoya and his friends were going to use “has been dead for 75 years (in 2023),” which means that the copyright owner must have died in 1948. The protection term under the former Copyright Act as of 1948 was 30 years after the author’s death. However, 30 years later, as of 1978, the protection term under the Copyright Act (effective January 1, 1971) was extended to 50 years after the author’s death. The new protection term after the extension is until December 31, 1998 (1948+50). If the work was created before World War II, an additional 3,794 days will be added to the protection term for the U.S., and the protection term will remain until May 21, 2009. Since the date of enforcement of the amended Copyright Act extending the protection term to the current “70 years after death” is December 30, 2018, [this song, which expired in 2009, is not subject to the 70-year extension](#). In other words, based on the transition of the



protection term of the Copyright Act, this song was a copyrighted work that Naoya and his friends were free to use on their site.

What if the author died in 1958? Considering the same as above, the extended protection term would be December 31, 2008, 50 years after the death, plus 3,794 days for wartime extension until May 22, 2019. This is the end of the extended protection term. Since the copyright still subsists as of December 30, 2018, the effective date of the amended Copyright Act, it would be extended for another 20 years, so the protection term would continue until 2039.



Here are some key points to help you understand the copyright protection term.

How to count the protection term

The protection term of copyrighted work is, in general, from the time of creation of the work until 70 years after the author's death (Article 51). 70 years is **counted from January 1 of the year following the year of the author's death** (Article 57), so the protection term is December 31 of the year of the death plus 70.

Example: The copyright of an author who died in 1970 would subsist until December 31, 2040 (1970+70=2040) and would become the public domain on January 1, 2041.

Changes in protection term

The Copyright Act was established in 1899. Initially, the protection term was 30 years after the author's death, but the Act has been amended several times to extend the protection term as follows:

Former Copyright Act

July 15, 1899	to	April 4, 1962:	30 years after the author's death
April 5, 1962	to	May 17, 1965:	33 years after the author's death
May 18, 1965	to	July 26, 1967:	35 years after the author's death
July 27, 1967	to	December 7, 1969:	37 years after the author's death
December 8, 1969	to	December 31, 1970:	38 years after the author's death

Current Copyright Act

January 1, 1971	to	December 29, 2018:	50 years after the author's death
December 30, 2018	to	Present:	70 years after the author's death

As mentioned earlier, when the protection term was extended due to amendments to the Copyright Act, [only works for which copyright still subsists as of the effective date of the amendment are subject to the extension](#). For example, if a person died in 1980, the protection term would be "until 50 years after death" at the time of death, but "until 70 years after death" would apply because the copyright still subsists as of the effective date of the amended Copyright Act in 2018.

The protection term for foreign works

Reciprocity: Article 7(8) of the Berne Convention, which appeared in the video, stipulates that "the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work." In other words, when considering foreign work, if the protection term in the foreign country is 50 years after death, the protection term in Japan is also 50 years, even if it is stipulated to be 70 years in Japan. The Copyright Act of Japan stipulates in Article 58.

Wartime extension: During the Pacific War, there was a system called "wartime extension" that added the duration of the war period to the protection term because Japan did not protect the works of nationals of belligerent countries (Article 15(c) of the San Francisco Peace Treaty, Law concerning Special Provisions for Copyrights of Allied Powers and Allied Nationals). This system applies to belligerent countries that were signatories to the Berne Convention (an international treaty for copyright protection) during the war. The additional term runs from the outbreak date of the war (December 8, 1941) to the day before the San Francisco Peace Treaty enters into force. The dates of entry into force of the peace treaties vary from country to country, with the main countries covered and the number of days added (days) being [the United States, the United Kingdom, France, Canada, and Australia \(3,794 days\)](#), [Brazil \(3,816 days\)](#), [the Netherlands \(3,844 days\)](#), [Norway \(3,846 days\)](#), and [Belgium \(3,910 days\)](#), [South Africa \(3,929 days\)](#), and [Greece \(4,180 days\)](#).

For countries that had not acceded to the Berne Convention on the outbreak date of the war, the accession date shall be deemed the beginning of the accrual term.

China and Russia (Soviet Union) are not ratifying countries of the San Francisco Peace Treaty, and therefore, no wartime extensions apply. Korea and North Korea were Japanese territories at the time and were not engaged in the war, so no wartime extensions apply to works from these countries.

Differences in the protection term depending on the type of work and the form of publication

Whether or not the protection term of copyrighted work currently subsists is quite complicated, as you must consider many factors. The following table is reproduced from the copyright textbook of the Agency for Cultural Affairs. It summarizes the changes in the protection term, along with the differences by type and form of publication. From this table, we can determine the protection term at the time of death (or publication), and if necessary, we can determine whether the copyright still subsists by taking into account the extension of the protection term after that time and wartime extensions, etc.

Types of works	Form of publication	Protection term under the Former Acts.	Protection term after the 1970 Act (effective January 1, 1971)	Protection term after the 1996 Act (effective March 25, 1997)	Protection term after the 2003 Act (effective January 1, 2004)	Protection term after the 2016 Act (effective December 30, 2018)*5
Works other than cinematographic and photographic works (novels, art, music, architecture, computer programs, etc.)	Real name (published before death)	38 years after death	50 years after death			70 years after death
	Real name (published posthumously)	38 years after publication	50 years after death			70 years after death
	Anonymous/pseudonym	38 years after publication *2	50 years after publication *3			70 years after publication
	Organization name	33 years after publication	50 years after publication *4			70 years after publication
Photographic works	-	13 years after issuance or creation	50 years after publication	50 years after death		70 years after death
Original Cinematographic	Real name (published before death)	38 years after death	50 years after publication		70 years after publication	

works (theatrical films, etc.)	Real name (published posthumously)	38 years after publication	50 years after publication	70 years after publication
	Anonymous/pseudonym	38 years after publication	50 years after publication	70 years after publication
	Organization name	33 years after publication	50 years after publication	70 years after publication
Unoriginal Cinematographic works (newsreel films, documentary films, etc.)	-	13 years after issuance or creation	50 years after publication	70 years after publication

(Reprinted from Agency for Cultural Affairs, "Wartime Extensions to the Protection Term," p. 41)

Materials

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- [1] Copyright Act: <https://www.japaneselawtranslation.go.jp/ja/laws/view/4207>
- [2] Former Copyright Act: <https://www.cric.or.jp/english/clj/clold.html>
- [3] Agency for Cultural Affairs "2024 Copyright Textbook" (in Japanese):
<https://www.bunka.go.jp/seisaku/chosakuken/textbook/index.html>
- [4] Ministry of Education, Culture, Sports, Science and Technology "Wartime Extensions to the Protection Term" (in Japanese): https://www.mext.go.jp/b_menu/shingi/bunka/gijiroku/021/07091009/006.htm
- [5] JASRAC material "JASRAC calls for the elimination of wartime extension obligation" (in Japanese):
https://www.jasrac.or.jp/senji_kasan/
- [6] San Francisco Peace Treaty: https://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-P2-795_1.pdf