

# Legal issues of the broadcast and simultaneous Internet transmission of open university courses

Broadcast and simultaneous Internet transmission

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## Abstract

**Purpose** – The purpose of this paper is to investigate the legal issues of simultaneous Internet transmission of broadcasting programs of the Open University of Japan (OUJ) and to take legal measures to promote the mutual utilization of open university courses in Japan, the UK, China and Korea.

**Design/methodology/approach** – The author examines the legal relationship regarding Internet simultaneous distribution of broadcast courses at the OUJ. The author then considers the legal relationship between the UK, China and South Korea regarding the simultaneous transmission of broadcast courses over the internet. Based on that consideration, this paper clarifies legal measures to promote its utilization.

**Findings** – Internet transmission of broadcasting courses will be webcasting. Arguably, it can be assumed to be streaming and on-demand, albeit controversial. Webcasting will be publicly transmitted, but there is only an on-demand provision for Internet transmission. As webcasting is streaming and on-demand, it involves reproduction of broadcasting courses. Therefore, webcasting needs to provide streaming provision for public transmission rights and associate them with reproduction right.

**Originality/value** – The originality of this paper lies in clarifying the legal response of the object, subject and rights of webcasting from the perspective of the OUJ, in order to dispel legal problems that may arise in the future against this unexplored phenomenon. Additionally, this paper is valuable in that it presents legal consistency from the point of view of the comparative laws of Japan, the UK, China and South Korea, based on an examination of the legal response in Japan.

**Keywords** Open and distance education (ODE), Webcasting, Broadcasting, Internet transmission, Copyright, Public transmission right

**Paper type** Research paper

## 1. Introduction

There have been studies made on the broadcast and simultaneous Internet transmission of programs created by the Japan Broadcasting Corporation (NIPPON HOSO KYOKAI: NHK). NHK is an abbreviation for the Japan Broadcasting Corporation. The focus of these studies has been on how to best collect fees for broadcasting and simultaneous Internet transmission and the introduction of online auctions ([Information and Communication Council, 2016](#)). The revision of the Broadcasting Law will expand the scope of NHK's Internet usage business, strengthen the system for ensuring the proper operation of the NHK Group and add certification requirements for the satellite core broadcasting business ([Yabe and Uehara, 2019](#)).

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In addition, the revision of the system for facilitating the processing of rights related to simultaneous transmission of broadcast programs on the internet includes expansion of rights restriction provisions to simultaneous distribution, establishment of presumed permission provisions, rights to claim remuneration for records and record demonstrations (persons with difficulty in access) related to simultaneous distribution, rights to claim remuneration for video demonstrations (persons with difficulty accessing) related to simultaneous distribution of repeat broadcasts and improving the arbitration system (Copyright Committee, 2021). However, before that, from the standpoint of integrating transmissions and broadcasts, broadcasting and simultaneous Internet transmission should also be considered in light of Japanese Copyright Act and telecommunications legislation.

NHK and The Open University of Japan Foundation (OUJF) are involved in the production of The Open University of Japan (OUJ) classes. Based on the OUJF Law, the OUJF is a special educational corporation that operates the OUJ for television and radio channels. The OUJ is an open university based on The Open University (OU); China and Korea also have their own open universities, The Open University of China (OUC) and Korea National Open University (KNOU). The open universities in these countries also cooperate with the British Broadcasting Corporation (BBC), China Central Television (CCTV) and the Korean Broadcasting System (KBS) in creating, producing and disseminating open courses. In addition, the internet is provided on the platforms of each university. Public broadcasting and the open universities have the same legal relationship when it comes to broadcasts and simultaneous Internet transmission.

Synchronous and asynchronous Internet transmission of broadcast content includes broadcast and Internet simultaneous transmission of open university lectures. In the following, we will examine from this point of view. Broadcasting and simultaneous Internet transmission are acts of establishing intangible works on tangible media or imitating such establishment prior to transmission. In examining the relationship with the broadcasting organization, these acts remain unsettled. However, even if international treaties and domestic law on the integration of webcasting communication and broadcasting have not yet been developed, it is still possible to consider these within the current system of broadcasting and simultaneous Internet transmission. From the standpoint of integrating communications and broadcasting, this originates out of a reconsideration of legal responses to Internet Protocol (IP) multicast broadcasts, “The World Intellectual Property Organization Treaty Draft on Protection of Broadcasting Organizations,” the “Information Communication Act” (provisional) and similar matters. Based on OUJ cases, this paper examines the legal issues involved in the simultaneous Internet transmission of broadcasts and the responses to these by comparing and contrasting these with the broadcasting and simultaneous Internet transmission of open universities in Japan, the UK, China and Korea, as well as comparing the legal systems of these countries. The Japan–China–Korea open universities regularly hold seminars on Japan–China–Korea. Among them, mutual use of lectures at open universities in Japan, China and South Korea and joint production of lectures are planned. For example, in September 2018, the JOU and China Open University agreed on the use of broadcasting teaching materials produced by the open university and lent to open university free of charge. But I do not know any other specific moves. The discussion in this paper can provide useful information in shaping such a plan.

## **2. Establishing legal issues related to the broadcast and simultaneous internet transmission of university courses**

MIT’s Open Course Ware (OCW), which was expanded to massive open online courses (MOOCs), is also in keeping with the Open Educational Resources (OER) philosophy. MOOC goes beyond the provision of open content, increasingly offering Internet transmission of

paid course content. Along with traditional universities, as OJ OCW, OJ also distributes some open courses on the internet, with OJ MOOC also delivering open content to the internet. OJF courses are disseminated as open courses (TV and radio), in addition to which they are now being developed for Internet transmission as online classes. University courses exhibit both open and closed qualities depending on the conditions of public transmission. The OJF course televised and radio courses provided via a streaming broadcast are open content, with on-demand automatic public transmission of Internet transmission of TV and radio courses consisting of closed content. At present, Internet transmission of online classes is closed content accessible to OJ students with an ID and password. With regard to Internet transmission of university courses, there are legal issues regarding the broadcasting and simultaneous Internet transmission of OJF courses, meaning that legal measures must be taken.

As an international response to Internet transmission of broadcast contents, there is a relationship with international treaties on broadcasting organizations. Broadcasting organizations are stipulated in the 1961 “International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations” (hereinafter abbreviated as the “Rome Convention”) and on December 20, 1996. There is the World Intellectual Property Organization Performances and Phonograms Treaty (WPPT) drawn up in Geneva which succeeded the Rome Treaty. However, the WPPT excludes broadcasting organizations, and broadcasting organizations are to be considered in the Draft World Intellectual Property Organization (WIPO) Treaty to Protect Broadcasting Organizations.

### *2.1 Legal issues related to the form of Internet transmission of broadcast content*

Regarding the form of online transmission of broadcast content in the “Final Report”, in “Transmission of 4K content for smart TVs”, unicast, hybridcast and multicast forms of network transmission for mobile terminals and PCs are assumed ([Information and Communication Council, 2016, pp. 19–26](#)). One of the points of contention for the Draft WIPO Treaty to Protect Broadcasting Organizations is whether webcasting should be protected. At the WIPO, since November 1998, the WIPO Standing Committee on Copyright and Related Rights (SCCR) has taken into account the proposals of each country to develop the internet. Consideration is being given to creating new rules for the protection of rights of broadcasting organizations that correspond to the times. Although the holding of a diplomatic conference has been proposed several times, due to the cautious stance of some developing countries and differences in opinions among the countries, in 2007 it was decided not to hold a diplomatic conference to adopt the treaty. It has been proposed, but no agreement has been reached.

In addition, as a domestic response to Internet transmission of broadcast content, there is a correspondence relationship between automatic public transmission of the right of public transmission under the Copyright Act and webcasting. Therefore, it is necessary to consider whether webcasting, which is transmitted individually according to the viewer’s access, should be subject to protection under the convention. In other words, there is a difference in how webcasting is perceived as streaming, on-demand or both streaming and on-demand. Streaming webcasting is the same as broadcasting and cable broadcasting, and on-demand is automatic public transmission. Given that webcasting is streaming and on-demand, webcasting must combine simultaneous transmission and automatic public transmission. However, if broadcasting and simultaneous Internet transmission are rebroadcasts of broadcast content, simultaneous transmission and automatic public transmission coexist, albeit virtually. Except for live broadcasts and online simultaneous transmission, it is subject to on-demand. Also, unless webcasting is an on-demand, automatic public transmission, the

current situation raises questions about the relevance of the Broadcasting Act. Therefore, broadcast contents must be produced and written with comprehensive consideration of the legal relationship of webcasting.

Broadcasting and Internet simultaneous transmission require consideration of all forms of broadcasting and Internet transmission. Based on this study, clarification of the relationship between online transmission and webcasting is required. And even if there are no international treaties or information communication legislation regarding correspondence between Internet-transmitted broadcasting and automatic public transmission, and integration of broadcasting and telecommunications, legal correspondence can be envisioned. It can be found from considerations in Internet broadcasting, webcasting and information and communication legislation. The legal response to broadcasting and Internet simultaneous transmission is required to clarify the relationship between the integration of broadcasting and communications and the consistency of webcasting of broadcast content with public transmission and copyright law.

### *2.2 Contributors to Internet transmission of broadcast content and legal issues related to rights clearance*

Regarding the internet transmission of broadcast content, collaboration with broadcasting organizations, telecommunications carriers and CDN (content delivery network) organizations is pointed out in “Internet transmission for mobile terminals and PCs” (Information and Communication Council, 2016, pp. 17–18, p. 24). Regarding the handling of rights for online transmission of broadcast content in the “Final Report,” please refer to “Rights Handling for Simultaneous Transmission by Broadcasting organizations” (Information and Communication Council, 2016, pp. 30–62) and the promotion of appropriate production transactions for broadcast content (Information and Communication Council, 2016, pp. 63–85). They are based on the viewpoint of broadcasting organizations who are copyright holders.

Japanese Copyright Act grants neighboring rights to broadcasting organizations and cable broadcasting organizations among those who engage in public transmission [broadcasting, cable broadcasting, automatic public transmission (making transmission possible)]. However, there is no grant of neighboring rights to the assumed automatic public transmission organization. Therefore, in relation to the public transmission of broadcast content, the correspondence between organizations is not clear. One of the legal issues related to online transmission of broadcast content is that there is no international agreement on the form of public transmission, i.e. the direction of legal responses when assuming simultaneous transmission of broadcasting and automatic public transmission.

Broadcasting organizations are not limited to rights clearance as neighboring rights holders of broadcast content. For example, regarding the infringement of the rights of broadcasting organizations, there is a case of copyright infringement of an overseas transfer service for television programs, where there is a difference in judgment between copyright and neighboring rights. In a lawsuit in which it was disputed whether or not a service that transfers the actual state of Japanese TV program transmission overseas via the internet infringed copyright, the Supreme Court has dismissed the appeal from the forwarding service provider and remanded it to the Intellectual Property High Court of the original trial [1, 2]. And the Intellectual Property High Court has ruled that both cases are copyright infringements against broadcasting organizations [3, 4]. If the broadcasting organization is the copyright holder, the right of reproduction (Article 21 of the Japanese Copyright Act) and the right of public transmission (Article 23 of the Japanese Copyright Act) fall under bundle of copyrights. A broadcasting organization can be the author of a work (broadcast content) created on the job, and the copyright of the broadcast content belongs to the broadcasting organization.

Broadcasting organizations need to handle rights not only from the perspective of copyright holders but also from the perspective of authors and copyright holders. Also, the assumed automatic public transmission organization will be the same as the webcaster if the net transmission is on-demand. Automatic public transmission organizations are included in webcasters if the reality of net transmission is related to streaming and on-demand. At that time, the webcasting organization will be involved in rights clearance from the perspective of neighboring rights holders or authors and copyright holders similar to broadcasting organizations and cable broadcasting organizations. If webcasters are not neighboring rights holders, they will be involved in rights transactions from the perspective of authors and copyright holders. If the webcasting organization is not the author or copyright holder like the publisher, there are two rights clearance depending on the relationship between the author and the copyright holder. The first is to establish publication rights (reproduction rights, public transmission rights, etc.), and the second is permission to use copyrighted works. In any case, those involved in Internet transmission of broadcast content need to consider rights clearance from the viewpoint of authors and copyright holders.

There are also issues when it comes to conveying rights for the internet transmission of university courses. Japanese Copyright Act conveys neighboring rights to broadcasting organizations and wireless broadcasting organizations who provide public transmissions [broadcasts, cable broadcasts, automatic public transmissions (transmission enabled)]. However, there is no granting of neighboring rights to the assumed automatic public transmission organization. Therefore, the relationship of public transmission of university courses is not clear. Legal issues related to Internet transmission of university courses were not originally interpreted internationally in the form of the public transmission of university courses. Put more concisely, when assuming simultaneous transmission of broadcast and automatic public transmission, legal treatments are not recognized internationally.

Even if no response between Internet transmission broadcasts and automatic public transmission and international treaties on communications and broadcasting integration and telecommunications legislation has yet been developed, we can assume some sort of legal treatment. This can be found from analysis related to Internet broadcasts, webcasting and broadcasting in telecommunications legislation. This paper was conceived from the author's career and the fact that he was actually involved in the production of the broadcast lectures of the OJF lectures and online lectures. The idea behind this is that there is no clear legal framework for linking the content of broadcast classes and online classes to be transmitted over the internet. This is inspired by the privileged environment given to the faculty members of the open university and also avoids desk theories. In addition, the methodology of this paper is a study of undeveloped legal phenomena, and the discussion in this paper provides important suggestions for clarifying the issues that require legal development and leading to legislative theories. This methodology is neither induction nor deduction but can be called abduction.

### **3. Legal responses to broadcast and simultaneous internet transmission of OJF courses**

University courses other than OJF courses cannot be classified as open courses. Also, assuming Internet transmission of university courses takes the form of automatic public transmission, such transmission is not definite given the relationship between broadcasts in the public transmission category as defined by copyright laws and wireless broadcasts. Put another way, as an organization that disseminates university courses over the internet, the university can be considered the copyright holder for automatic transmissions and can also be thought of as an automatic public transmission business organization. However, under current circumstances, it cannot be said that the automatic public transmission company is a

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holder of neighboring rights, and there are also no provisions covering the rights of automatic public transmission companies. On the other hand, the OUJF is a broadcasting organization, so for the OUFJ to be in compliance with the Broadcasting Act, it can only broadcast content necessary for OUJ education [Article 4(2) of the OUJF Act]. OUJF courses (TV and radio courses) broadcast as a necessary part of OUJ education are transmitted to the internet on demand. Also, education at the OUJ includes Internet transmission of online lessons. Since OUJF courses are produced and written by the OUJF, a broadcasting company, we need to consider the relationship between Internet transmission and broadcasting.

### *3.1 IP multicast broadcasting*

For broadband broadcasting, usage methods include download, streaming and on-demand methods. IP is a multicast broadcasting service that utilizes a paid communications line to be viewed on a home television, which serves as a broadband broadcasting service. IP multicast broadcasting resulting from the integration of communication and broadcasting has aspects that can be considered as qualifying as automatic public transmission under the copyright law. When broadcasting a program, the scope of requesting permission from the rights holder is broader than that of cable broadcasting. However, according to the copyright law, IP multicast broadcasting was to be treated the same as cable broadcasting. The reason that IP multicast broadcasting is considered to be cable broadcasting where the internet is so predominant has to do with the treatment of rights. This is due to the fact that by positioning IP multicast broadcasting as an extension of broadcasting or cable broadcasting, it is not necessary to deal with rights again. However, this means that IP multicast broadcasting assumes that the internet is in a streaming cable format. Nevertheless, the internet does not have to be limited to cable networks and the on-demand format of IP multicast broadcasting is unresolved.

Broadcasting provisions are related to copyright law. This does not relate to the work itself, but rather to the transmission of the work. The 1961 “Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations” (hereinafter abbreviated as the “Rome Convention”) includes provisions defining broadcasting. Broadcast refers to the transmission by radio communications of sound or of images and sounds intended for public reception, while rebroadcast refers to the simultaneous broadcast by a broadcasting organization of content belonging to another broadcasting organization [Article 3 (f) and (g) of the Rome Convention]. Meanwhile, following on the heels of the Rome Convention, the WPPT deals with the development of information-related technologies such as digitization and networking. However, while the WPPT is concerned with the transmission of copyrighted work, unlike the Rome Convention, it lacks provisions for broadcasting organizations.

### *3.2 Webcasting*

Internet broadcasting is divided into streaming, on-demand and also download formats. When Internet broadcasts of university courses are to be webcast, the Rome Convention comes into play. “Broadcasting” means the transmission by wireless means for the reception by the public of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting.” Wireless transmission of encrypted signals is “broadcasting” where the means for decrypting are transmitted to the public by the broadcasting organization or with its consent. “Broadcasting” shall not be understood as including transmissions over computer networks [Article 2(a) of the Draft WIPO Treaty to Protect Broadcasting Organizations]. In addition to the WPPT, this is to be considered in the Draft WIPO Treaty to Protect Broadcasting Organizations. In November 1998, the Standing Committee on Copyrights and Related Rights (SCCR), which is a part of the WIPO, considered

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creating new rules protecting the rights of broadcasting organizations in the internet age based on proposals made by various countries. Although several proposals have been made to hold a diplomatic conference, due to the wariness of some developed countries and differences in opinions among countries, even though there was a proposal to hold a diplomatic conference to adopt the treaty in 2007, no agreement had been reached [5]. The propriety of protecting webcasting was one of the issues discussed in the draft convention.

In previous discussions on webcasting, Western countries have made various proposals. The US argues that, due to antipiracy measures, “the person engaged in webcasting (Internet broadcasting) should be considered the subject of the broadcast treaty.” Meanwhile, the EU has asserted, “if broadcasting organizations engage in webcasting at the same time they are broadcasting, they should be subject to the protections afforded by the treaty.” In contrast, most countries, including Japan, have argued, “Because webcasting is not yet clearly understood in terms of its actual conditions or operational format, it is too early for it to be targeted by this treaty.”

Under the Japanese Copyright Act, neighboring rights are only granted to simultaneous transmission and cable broadcasts. As such, webcasting, which is transmitted individually according to the viewer’s access, needs to be subject to treaty protection. Views on webcasting also differ depending on whether it is streaming or on-demand or both streaming and on-demand. Webcasting normally refers to on-demand uses as well as real-time streaming. In either of these cases, there should be some connection between webcasting and on-demand.

### *3.3 Broadcasting in telecommunications legislation*

In Japan, communications are based on the Telecommunications Business Act and consist of public transmissions of content based on the Broadcast Act. However, in the internet environment, communication and broadcasting are inseparable and are thought to be integrated. Broadcasting under telecommunications legislation also relates to the transmission of the work and the content of the work itself. Other than OUJF courses, when streaming university courses, to the internet, the protagonist of the act may presently be recognized as a copyright holder, rather than a holder of neighboring rights. With OUJF courses, Internet transmission of online courses is currently divided into TV and radio broadcasts, but TV and radio broadcasts are also transmitted over the internet. Accordingly, the production of content for TV and radio classes as well as online classes must be advanced based on a seamless relationship. In addition, Internet transmission will be in the format of automatic public transmission, i.e. in an on-demand format. Handled in this format, since broadcasts other than those necessary for education at the OUJ are not possible, the internet transmission of OUJF courses should probably be looked at from the viewpoint of the integration of communication and broadcasting, with Internet transmission positioned as webcasting.

OUJF courses are transmitted to the internet on demand, but if this is transmitted by webcasting that combines communications and broadcasting, the legal response to the automatic public transmission provided in the copyright laws is essential. The OUJF is a broadcasting organization as specified in the Broadcast Act, and in addition, the OUJ is expected to respond differently from traditional universities in accordance with circumstances surrounding the “World Intellectual Property Organization Draft Treaty on the Protection of Broadcasting Organizations.” However, if the “World Intellectual Property Organization Draft Treaty on the Protection of Broadcasting Organizations” is created and is not effective, Internet transmission of university courses would not be clear under copyright law but should fall within the scope assumed above. Moreover, the automatic public transmission organization and rights of the automatic public transmission organization, as well as the webcasting organization and the rights of the webcasting organization, are not considered.

#### 4. The legal relationship of broadcasting and simultaneous internet transmission for open university courses in other countries

In broadcasting and simultaneous transmission on the internet, “proposals for facilitating the processing of rights for simultaneous transmission of broadcasting on the internet” have been made ([Liberal Democratic Party Investigation Committee, 2020](#)). [Liberal Democratic Party Investigation Committee \(2020\)](#) states that facilitating the processing of copyright rights is an urgent task and is an important issue that the government should tackle as a whole. In particular, it is specified that the simultaneous transmission of the internet should be treated in the same way as broadcasting under the Copyright Law. It becomes a debate whether simultaneous transmission can be the same as automatic public transmission ([Nikkei new media, 2020](#)). For that purpose, it is necessary to consider whether broadcasting in public transmission and automatic public transmission are associated with Internet transmission ([Kodama, 2020a](#)). Depending on the definitions of public transmission and broadcasting and automatic public transmission, there are differences in position based on copyright laws for simultaneous transmission of university courses via broadcasts and the internet. Moreover, copyright laws are also governed by two legal concepts – civil law and common law – with Japan, Korea and China adhering to the former and the UK to the latter. Under these two legal systems, broadcasts are categorized as a neighboring right under civil law, while under the common law, they are categorized as an author’s right.

##### *4.1 The legal relationship of OU broadcasts and simultaneous Internet transmission*

OU programming is carried on TV, the radio and online (on-demand) [6]. OU’s unique educational partnership with BBC transmits content across television, radio and digital channels and platforms. Through the BBC iPlayer [7], in the UK it is now possible to live stream both TV and radio, as well as programming the viewer or listener missed within the last seven days (For BBC Three, this is five months.). Almost all BBC radio broadcast programs are transmitted in real time via the BBC iPlayer from each station’s homepage, and for a limited time, listeners may also go back and relisten to broadcasts of programs that have ended.

In the UK, broadcasts are transmitted for simultaneous reception by members of the public; with programming, the public can lawfully receive transmitted at a time to be determined solely by the transmitting party for provision to members of the public, where this programming is to consist of telegraphic transmission of visual images, audio and other information [Article 6(1) of the British Copyright Act]. Also, in addition to wireless and cable broadcasts, this definition includes simultaneous transmissions carried out over the internet and using other techniques including simultaneous transmission of live events and the like [Article 6 (1A) of the British Copyright Act]. Because simultaneous retransmission over the internet, including IP multicast broadcasts, corresponds to broadcasts, the UK Copyright Act treats this equally as simultaneous retransmission by traditional cable broadcasts and simultaneous retransmission by Internet. Moreover, the Communication Act of 2003 was enacted with the aim of integrating communication and broadcasting regulations, with parts of electronic communications to be broadcast treated as an electronic communications network that includes all transmission lines such as the internet, terrestrial, satellites and cable television. The Communications Act of 2003 serves as a model for Japanese proposed Telecommunications Act; it has influenced the revision of Japanese laws concerning the integration of communications and broadcasting ([Suzuki, 2004](#)).

##### *4.2 The legal relationship of OUC broadcasts and simultaneous Internet transmission*

OUC’s educational video learning resources are transmitted using a platform provided by the Digital Learning Resource Center. At the same time, free educational video learning resources



are transmitted to the public via China Education Television (CETV) Channel 2 (“RTVU Classroom” channel), one of China’s state-owned education television stations, and the “Open Classroom” section of the RTVU Online Learning Platform. Educational video resources are transmitted through these public broadcasts.

Broadcasting in Chinese refers to the public broadcast or transmission of copyrighted material by wireless system or the transmission or broadcasting of works to the public via cable transmission or a relay method [Article 10(1)11 of the Chinese Copyright Act]. Also, information network transmissions in Chinese will transmit copyrighted works to the public in a cable or wireless format and allows the public to access the work at a time and a place chosen by the public [Article 10(1)12 of the Chinese Copyright Act]. No separate laws govern Chinese television broadcasting; the basic law that applies here is the copyright law, with administrative laws and official policy documents also involved (Liu, 2000).

#### *4.3 The legal relationship of KNOU broadcasts and simultaneous Internet transmission*

KNOU launched Korea Broadcasting University TV (OUN) on September 2, 1992. KNOU courses consist of TV courses broadcast by OUN, radio courses broadcast by EBS FM and courses transmitted over the internet.

In Korea, public transmission is the transmission or provision for use of cable or wireless communication for the purpose of allowing the public to receive or access copyrighted works or similar materials [Article 2(1)7 of the Korean Copyright Act]. Similarly, to broadcast means to transmit sound or image or sound and image for the purpose of transmitting this simultaneously to the public [Article 2(1)8 of the Korean Copyright Act]. The Korean Broadcasting Act divides broadcasting operations into roughly five types (terrestrial broadcasting operations, cable broadcasting operations, satellite broadcasting operations, broadcasting channel usage operations and separately defined broadcasting operations such as electric sign board operations) according to the characteristics of the services provided and provides these with the definition of multimedia broadcasting (Tanaka, 2007). Multimedia broadcasting is broadcasting that involves “some combination of TV broadcasting, radio broadcasting and data broadcasting.”

### **5. The legal relationship of production for open university courses in other countries**

This paper calls into question the situation in which copyright is the only argument for the ongoing copyright law response in the field of open and distance education. As discussed in this paper, it should be discussed in terms of copyright and related rights, and it should be discussed in the author’s moral right, author’s economic right (copyright), publishing right, performer’s moral right and neighboring rights. The same applies to the relationship between rights in broadcasting and Internet simultaneous transmission. However, the OJ, which is in charge of broadcasting and Internet transmission, has yet to discuss copyright laws and other issues related to Internet transmission of broadcast content. Awareness of the above issues is significant in promoting mutual collaboration of university lectures at open universities in each country and promoting Internet transmission as broadcast content.

At each open university, the issues of copyright law are pointed out in promoting mutual utilization and joint production of university lectures. However, it is only pointed out, and it cannot be said that a concrete study has been made. The reason for this is that the copyright systems of each country are different in utilizing the lectures of each open university, and it is difficult to make them consistent for global utilization. Rights clearance in the production of university lecture content is generally within the scope of copyright law, and copyright is the main subject. In Japan, the economic rights (copyrights) of authors are limited to the

copyrights of Britain and the United States. If the content of the text/printed teaching material content is transmitted online and the content of the script of the broadcast program/broadcast class is the same, it is the same as if the text/printed material content is transmitted online in the broadcast program/broadcast class. In Japan, publishing rights are set for copying rights and public transmission rights (Article 79 of the Japanese Copyright Act), but in other countries, it is neighboring rights. In the online transmission of text and printed teaching material contents, it is necessary to set publishing rights and coordinate neighboring rights.

Unless the Draft WIPO Treaty to Protect Broadcasting Organizations is drafted and comes into effect, streaming and on-demand in the form of webcasting of broadcast content will not be clarified under the copyright law. Moreover, webcasting should be associated with automatic public transmissions. Moreover, from the viewpoint of the convergence of broadcasting and communications, it is necessary to make a clear distinction between streaming and on-demand transmission of broadcast content over the internet. For example, broadcast classes (TV and radio) of OIJ lectures are provided in a streaming format, and online classes can be said to be provided in an on-demand format. In addition, although it is assumed that those involved in the internet transmission of broadcast content are broadcasting organizations, in Japan, automatic public transmission organizations and rights of automatic public transmission organizations have not been examined. Further, no webcasting organizations and webcasting rights are envisaged. Inferred from the rights of broadcasting organizations and broadcasting organizations, automatic public transmission organizations have a relationship with broadcasting organizations and cable broadcasting organizations, and the rights of automatic public transmission organizations are neighboring rights (reproduction rights, public transmission rights, etc.).

#### *5.1 Legal correspondence regarding the form of Internet transmission of broadcast content*

Papers on legal responses to online education includes, for example, the US TEACH Act (Lipinski, 2005), and the content of the TEACH Act has been incorporated into Article 35 of the Japanese Copyright Act. The paper on this discussion is extensive. This content is from the perspective of users of copyrighted materials in online classes and relates to copyright restrictions. I have also published research papers on the problem of incorporating the TEACH Act into countries with different cultures and social systems (Kodama, 2020b). This paper is from the perspective of the rights holder of the copyrighted work (webcasting content). Therefore, they are different points of view and are not the subject of direct discussion in this article.

As I have already pointed out, the internet transmission of broadcast content is being promoted in various countries, but although it is being discussed in the Draft WIPO Treaty to Protect Broadcasting Organizations, the direction has not been indicated. When associating streaming and on-demand in the form of webcasting for net transmission of broadcast content with public transmission rights, streaming and on-demand must be dealt with in relation to automatic public transmission. Automatic public transmission of broadcast content will archive streaming TV programs and make them available for on-demand transmission over the internet. But with broadcast and web simulcast, webcasting becomes streaming, not on-demand. However, webcasting, whether streaming or on-demand, involves downloading broadcast content. Downloading becomes duplication, and webcasting is associated with duplication.

In addition, streaming caches often have a small amount of data for still images and text, and currently, when a site is browsed using a major browser, it is immediately saved as a cache in the computer. If this is a cache and not a download, then there is the appropriateness of whether it will be downloaded if it is moved from the storage location to another folder. Also, in considering the illegality of downloading screenshots from “pirate sites,” images are saved in the local computer at the time of viewing, even if screenshots are not taken.

Streaming caches and screenshots are possible send-enables, which also involve replication. Broadcasting is the act of transmitting content (copyrighted works). Net transmission is associated with automatic public transmission. Publishing involves reproduction and public transmission. Both broadcasting and Internet transmission involve duplication. That need alignment.

### *5.2 Persons involved in online transmission of broadcast content and legal responses regarding rights clearance*

It is assumed that parties involved in the internet transmission of broadcast content are broadcasting organizations who are copyright holders. However, under Japanese Copyright Act, not only neighboring rights holders but also copyright holders, publishing right holders and even authors can be assumed. In addition, although there is a possibility that the works (especially teaching materials) of university faculty members will be discussed as work for hire, there is a view that this is a difficult issue (Nakayama, 2020). The stipulations on ownership of copyrights for cinematographic works can also affect the broadcast content of the OUF as a broadcasting organization [Article 29 (2) of the Japanese Copyright Act].

Then, at the OUF, there is a provision that can be presumed to be a work-for-hire provision for the contents of OUF lectures. “With regard to works created by educational staff members in the course of their duties (printed teaching materials, broadcasting teaching materials, correspondence instruction and questions, answers and explanations for credit certification exams), regardless of their status as educational staff members, the OUF can be used freely and free of charge to the extent necessary to carry out the same shall apply to other works of educational staff members used in their works” (Rules of Employment at Article 38(2) of the OUF). This provision can be said to be a license to use copyrighted works. Therefore, those who are involved in Internet transmission of broadcast content can be neighboring rights holders, copyright holders, publishing right holders and authors.

*5.2.1 Broadcasting organizations assumed for online transmission of broadcast content and rights clearance.* In the Consolidated Text, a “broadcasting organization” is “a legal entity that has the initiative and responsibility for the transmission of sound or images or images and sounds or representations thereof to the public and the collection and scheduling of content for transmission” (WIPO, 1981). Therefore, a “broadcasting institution” is limited to a “corporation.” The Treaty of Rome defines “broadcasting” but not “broadcasting organization.” In Japan, the Copyright Law stipulates that a “broadcasting organization” is a “person who engages in broadcasting as a business” [Article 2(1)9 of the Japanese Copyright Act]. Therefore, it is necessary to consider whether to limit the entity of broadcasting protection to corporations. Broadcasting requires a certain amount of investment, and it is necessary to identify rights holders for rights adjustment. Therefore, under the Convention, the broadcasting organization’s object may be limited to a “corporation.” Assuming that the broadcast content is a cinematographic work and the broadcasting organization is the producer of the cinematographic work, it is assumed that the broadcasting organization handles rights from the three perspectives of neighboring rights holders, copyright holders and authors. Furthermore, those who are involved in webcasting for net transmission of broadcast content should consider webcasting organizations starting from broadcasting organizations.

#### (1) Broadcasting organization as a holder of neighboring rights

Broadcasting organizations who engage in broadcasting as a business are owners of neighboring rights. Neighboring rights as rights of broadcasting organizations are exemplified by reproduction rights, broadcasting rights and cable rebroadcasting rights,

transmission enablement rights and transmission rights of cable television broadcasting (Articles 98 to 100 of the Japanese Copyright Act). There is nothing to be added to the contents discussed in the “Final Report” regarding copyrights and neighboring rights in rights transactions involving broadcasting organizations as holders of neighboring rights. Broadcasting organizations are also required to deal with the moral rights of authors and the moral rights of performers.

### (2) Broadcasting organizations as copyright holders

The copyright of broadcast content (cinematographic works) may belong to broadcasting organizations [Article 29(2) of the Japanese Copyright Act]. A cinematographic work may be substituted for an audiovisual work. This is because the distribution right has been recognized only for cinematographic works, and it has been said that the distribution right is not exhausted because the special meaning of cinematographic works and distribution rights has disappeared [8]. The copyright belonging to the broadcasting organization can also be said to be the reproduction right (Article 98 of the Japanese Copyright Act) indicated in the neighboring rights of the broadcasting organization.

### (3) Broadcasting organizations as authors

Broadcasting organizations can be authors who create broadcast content as part of their duties. Broadcasting organizations enjoy the rights of authors. The author of broadcast content (cinematographic work) is defined as a person who, as the author of a cinematographic work, is in charge of production, direction, staging, filming, art direction, etc. and has creatively contributed to its formation. However, there is an alternative relationship between authorship of a work (cinematographic work) made in the course of duty and authorship of a cinematographic work. The rights clearance of the broadcasting organization as the owner of neighboring rights is included in the rights clearance of the broadcasting organization as the author. At that time, it is necessary to correspond the rights of broadcasting organizations as holders of neighboring rights and the rights of broadcasting organizations as authors. In Japan, it should be noted that the Copyright Act and the Act on Management Business of Copyright and Neighboring Rights may coexist in rights clearance. In the rights clearance under the Act on Management Business of Copyright and Neighboring Rights, the rights clearance of author’s moral rights is handled by broadcasting organizations under the Copyright Law. Broadcast content (cinematographic work) includes performers such as actors, but the relationship between the performer’s rights (performer’s moral rights and neighboring rights) is not clear in Japanese Copyright Act. This is also a common issue internationally.

*5.2.2 Corporation assumed for online transmission of broadcast content and rights clearance.* Broadcasting organizations are the providers of online transmission of broadcast content. Businesses equivalent to broadcasting organizations can be cable broadcasting organizations. Broadcasting organizations and cable broadcasting organizations are the cases of broadcast content broadcasting and network transmission through cable broadcasting. By extension, broadcasting organizations and cable broadcasting organizations would be organizations that could be called automatic public transmission organizations or webcasting organizations. Since public transmission includes broadcasting, cable broadcasting and automatic public transmission, automatic public transmission companies can be said to be the holders of neighboring rights in the future. It is a party involved in Internet broadcasting, which can also be a broadcasting organization or a cable broadcasting organization. Other organizations, including those organizations, may also be separately defined as those involved in streaming and on-demand audiovisual works. It can be said that it is a business that transcends wired and wireless broadcasting. In addition,

webcasting companies can be understood from the relationship between streaming and on-demand, assuming simultaneous broadcasting and Internet transmission.

The Draft WIPO Treaty to Protect Broadcasting Organizations forms part of the review of copyright-related treaties in response to digitization and networking and ensures a balance with other neighboring rights. As the internet spread, definitions of webcasting and webcasters may be designated as a de facto standard while the Draft WIPO Treaty to Protect Broadcasting Organizations remain in a state of uncertainty. Broadcasting organizations, cable broadcasting organizations and publishers or even entirely different industries may enter as automatic public transmission organizations or webcasting organizations. YouTubers and Internet TV are examples of those who are not based on broadcasting and cable broadcasting and distribute what is called broadcast content on the internet.

The above-mentioned relationship of rights in Japan is similar in China and Korea, but different in the UK since the UK does not have the concept of neighboring rights, and copyright correspondence is sufficient. When university lectures are transmitted in an Internet environment, they must be consistent in terms of copyright system between Japan and the UK. Copyright, neighboring rights and publishing rights are linked by copying rights (Kodama, 2006). It will also be possible to work with copyrights in the United States and Britain, which do not have the concept of neighboring rights (Kodama, 2012).

## 6. Conclusion

This paper is an unavoidable legal response to the utilization of lectures between open universities on the internet. Unlike the OIJ, which prioritizes or places broadcasting over Internet transmission, open universities in other countries prioritize Internet transmission and make broadcasting a secondary issue in some countries. This paper has focused on the legal issues of broadcasting and simultaneous Internet transmission of university lectures, but the issues to be examined are the same even if broadcasting and Internet transmission are different, not simultaneous broadcasting and Internet transmission is there. This is because the broadcasting of open university lectures and simultaneous transmission on the internet involves legal issues that must be discussed in broadcasting and Internet transmission. Examining the OU, OUC and KNOU case studies, copyright laws' handling of broadcasts and simultaneous Internet transmission as well as the handling of this and information communications legislation in these various countries is easy to coordinate. In contrast, with the OIJ, the situation surrounding broadcasts and simultaneous Internet transmission is such that coordination remains elusive. Accordingly, the legal handling of broadcasts and simultaneous Internet transmission may perhaps be thought of as a domestic issue.

Public transmission under the copyright law should not require a distinction between wireless and wired transmissions and technically inseparable streaming and on-demand transmissions of intangible works. And both streaming and on-demand involve downloading broadcast content. If webcasting is transmitted over the internet by an application, webcasting becomes a public transmission right, etc. that includes streaming and on-demand, and the public transmission right, etc. is integrated with the reproduction right. From the standpoint of the integration of communication and broadcasting, with regards to broadcasts and simultaneous Internet transmission, broadcasting and automatic public transmissions become elements included in telecommunications in the form of webcasting. This assumption is consistent with examinations of simultaneous Internet transmission where TV programs are transmitted simultaneously on the internet and is premised on examining legal issues of the copyright system and problems related to telecommunication system legislation and revisions to the Broadcasting Act.

With regard to the development of Internet transmission of broadcast content, the examination of cases of public broadcasting in the UK, China and South Korea and the broadcasting and Internet transmission of open universities indicates that it is easy to obtain

consistency in terms of correspondence with information and communication legislation in each of these countries. In Japan, on the one hand, it remains difficult to achieve consistency between broadcasting and telecommunications. However, I cannot find any relationship between webcasting and broadcasting/automatic public transmission in Japanese, British, Chinese and Korean broadcasting and Internet transmission. On the other hand, streaming in broadcasting and on-demand in automatic public transmission are both premised on the download of broadcast content by duplication in Internet transmission by applications. Therefore, from the viewpoint of integration of the information communication system of public transmission and the copyright system, public transmission shall be broadcasting (wired and wireless) and web broadcasting [automatic public transmission (transmittable) and passive public transmission] should be duplication and public transmission [broadcasting (wired and wireless) and web broadcasting (automatic and passive)] (Kodama, 2020a, p. 16). It should be noted that an archive of the broadcast content is required in developing the network transmission of the broadcast content. There is a temporary fixation by broadcasting organizations on restrictions on copyrights and restrictions on neighboring rights, and broadcasting organizations are required to limit copyrighted works that can be broadcast without prejudice to the right of public transmission [Article 23(1) of the Japanese Copyright Act]. Such legal responses necessitate legislation for archiving broadcast content to facilitate the transmission of broadcast content over the internet.

#### Notes

1. Supreme Court Third Petty Bench Judgment, January 18, 2011, 2009 (accepted) No. 653 (Supreme Court Precedents Committee (editing), *Supreme Court Civil Precedents*, Vol. 65 No. 1, p. 121).
2. Supreme Court First Petty Bench Judgment, January 20, 2011, 2009 (accepted) No. 788 (Supreme Court Precedents Committee (editing), *Supreme Court Civil Precedents*, Vol. 65 No. 1, p. 399).
3. Intellectual Property High Court Judgment, January 31, 2012, 2011 (Ne) No. 10009.
4. Intellectual Property High Court Judgment, January 31, 2012, 2011 (Ne) No. 10011.
5. Renewal version of revised draft basic proposal for the WIPO treaty on the protection of broadcasting organizations (SCCR/24/3), available at: [https://www.bunka.go.jp/seisaku/bunkashingikai/chosakuken/kokusai/h24\\_02/pdf/siryou1\\_5.pdf](https://www.bunka.go.jp/seisaku/bunkashingikai/chosakuken/kokusai/h24_02/pdf/siryou1_5.pdf) (accessed 1 June 2022).
6. <https://www.open.edu/openlearn/tv-radio-events> (accessed 1 June 2022).
7. [https://www.bbc.co.uk/iplayer/help/outside\\_the\\_uk/](https://www.bbc.co.uk/iplayer/help/outside_the_uk/) (accessed 1 June 2022).
8. Supreme Court First Petty Bench Judgment April 25, 2002, 2001 (accepted) No. 952 etc. (Supreme Court Precedents Committee (editing), *Supreme Court Civil Precedents*, Vol. 56 No. 4, p. 808).

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