

TDM Copyright Exception In Japan

Tatsuhiko UENO

Professor of Law

Director of Research Center for the Legal System of Intellectual Property (RCLIP)

Waseda University, Tokyo

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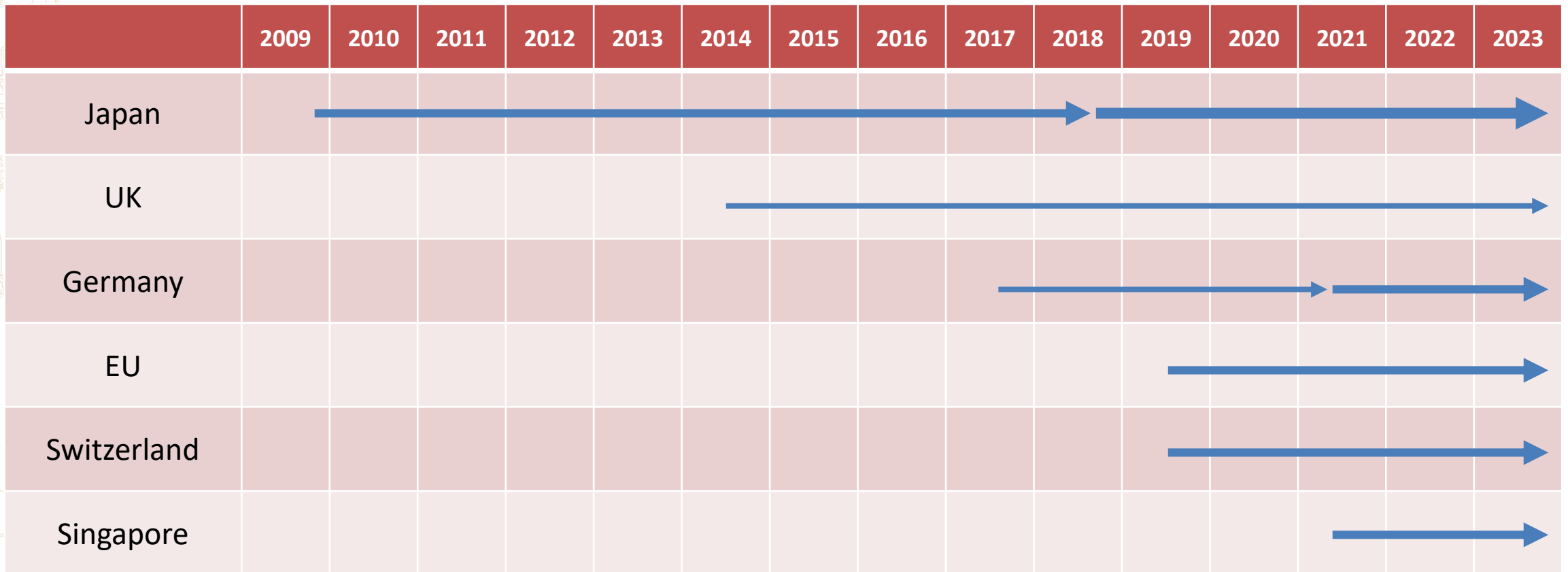


Outline

1. Main features of Japanese TDM exception
 - (1) The first one
 - (2) The broadest one
2. Justification for TDM exception
 - (1) Three possible ideas
 - (2) 'Internal limit' approach
3. Recent discussions on generative AI in Japan
 - (1) Concerns of right holders
 - (2) How can we strike the proper balance?

Timeline of TDM Exceptions

Japan The **first** country to introduce TDM exception in the world



TDM Exception in Japan



Japanese Copyright Act

Introduced in 2009 (Art.47-7), extended in 2018

Art. 30-4 Exploitation without the Purpose of Enjoying the Thoughts or Sentiments Expressed in a Work

It is permissible to exploit a work, in any way and to the extent considered necessary, in any of the following cases or other cases ... ; provided, however, that this does not apply if the action would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work or the circumstances of its exploitation: [...]

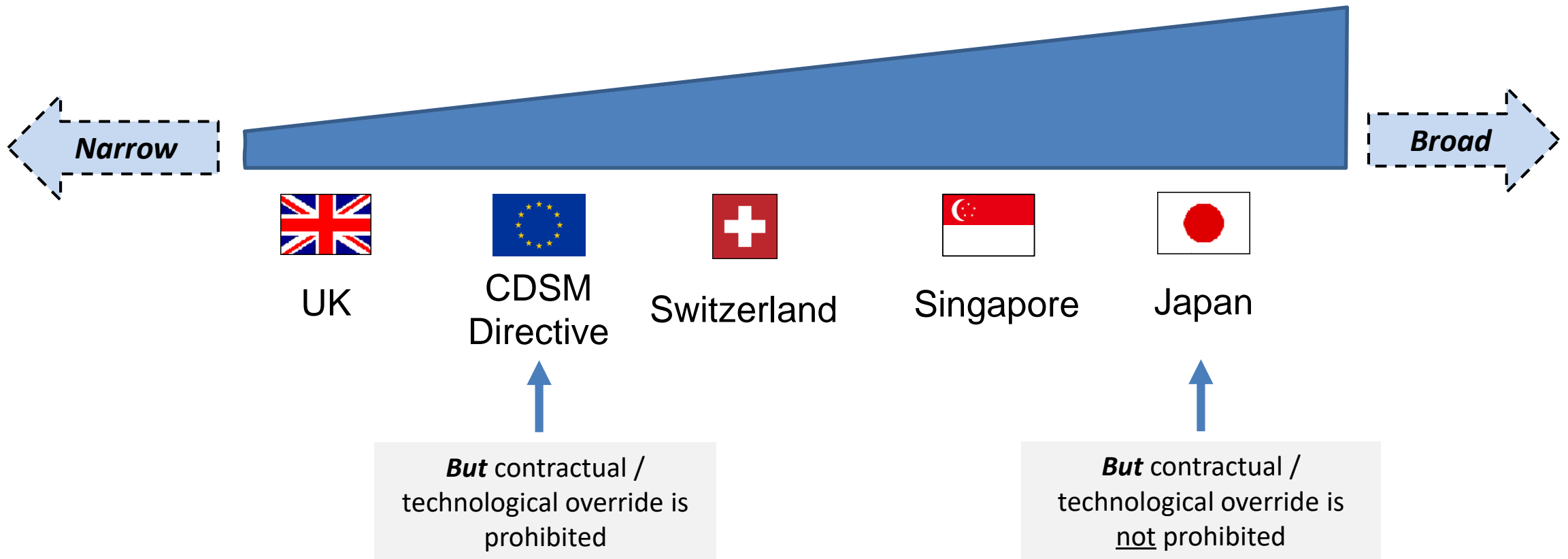
(ii) exploitation for using the work in an **information analysis** (meaning the extraction, comparison, classification, or other analysis of language, sound, or image data, or other elements of which a large number of works or a large volume of data is composed...);

TDM Exception in Japan

- Purpose
 - Not only non-commercial but also commercial TDM
 - Copyright holders cannot opt-out
- Allowed acts (“in any way”)
 - Exploitation other than reproduction can be allowed, insofar as it is conducted for another person’s TDM activities and to the extent considered necessary
- No ‘lawful access requirement’
 - **But** no prohibition of contractual/technological override
 - Proviso (applicable unless it ‘would unreasonably prejudice the interests of the copyright owner’)

TDM Exceptions in Comparison

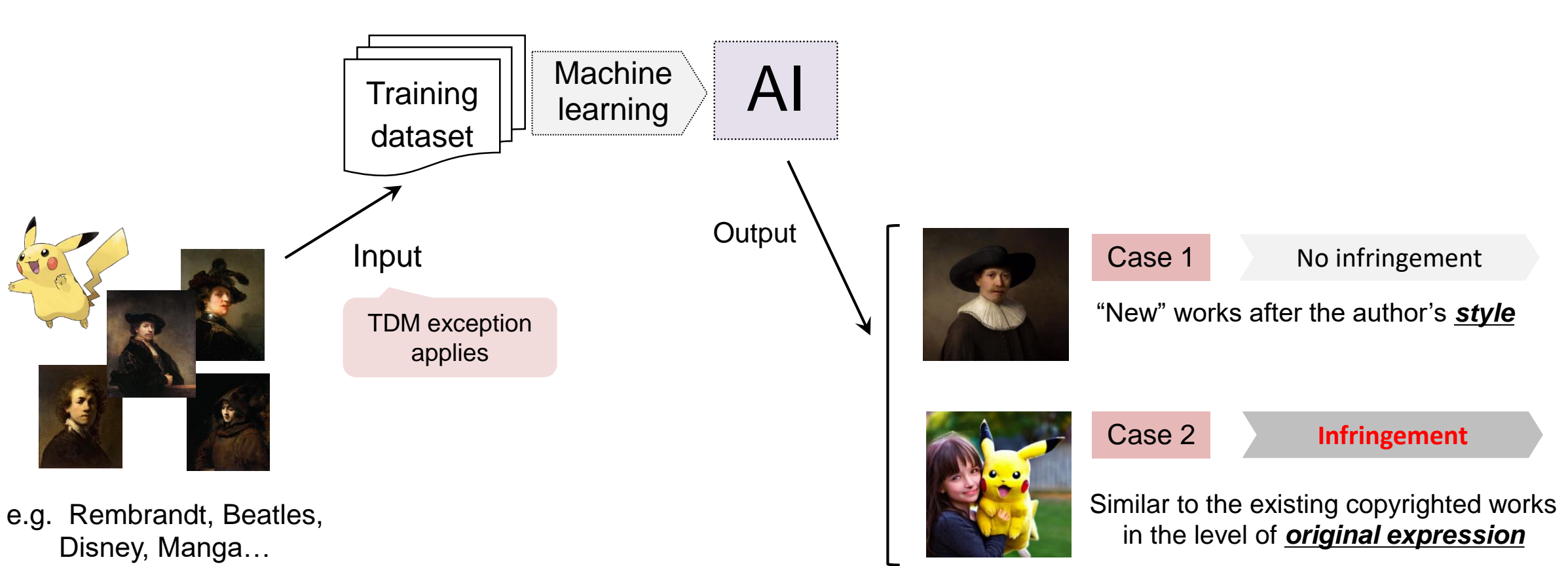
Japan as 'paradise for machine-learning'



TDM Exceptions in Comparison

Type of TDM	UK	EU Directive	Switzerland	Singapore	Japan
For non-commercial scientific research	OK	OK	OK	OK	OK
For commercial research		OK (but opt-out possible)	OK?	OK	OK
Exploitations other than reproduction (e.g. Distribution, communication to the public)				OK (for verifying or collaborative research)	OK
Woks/subject-matter not lawfully acquired (No lawful access requirement)					OK
Prohibition of contractual override	Yes	Yes (for scientific research)		Yes	
Prohibition of technological override		Yes			

Generative AI




Generative AI

- Under the Japanese law, even if the AI output happens to be similar to the existing copyrighted work at the level of original expression and constitutes copyright infringement, the input of the copyrighted works into the AI does not constitute copyright infringement, unless it was originally intended to generate the copyright infringing contents.



Justifications for TDM exception

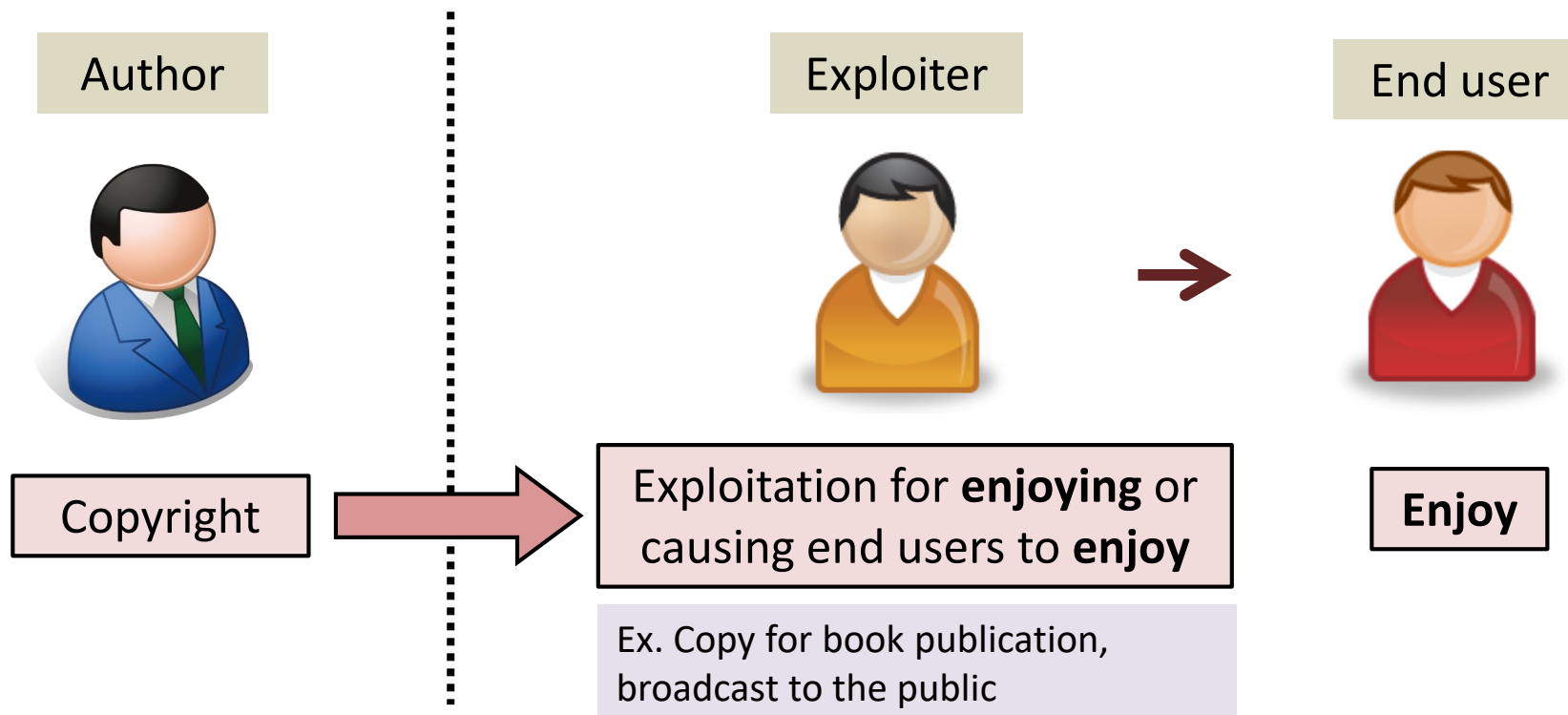
- Three possible ideas:
 1. Enhancing the innovation & competition?
(= *Public interest approach*)
 2. The 'right to research'?
(= *Balance of interests approach*)
 3. Internal limit to the scope of copyright?
(= *Internal limit approach*) ← **JAPAN** 



ALAI Congress
(30.9.2021, Madrid)

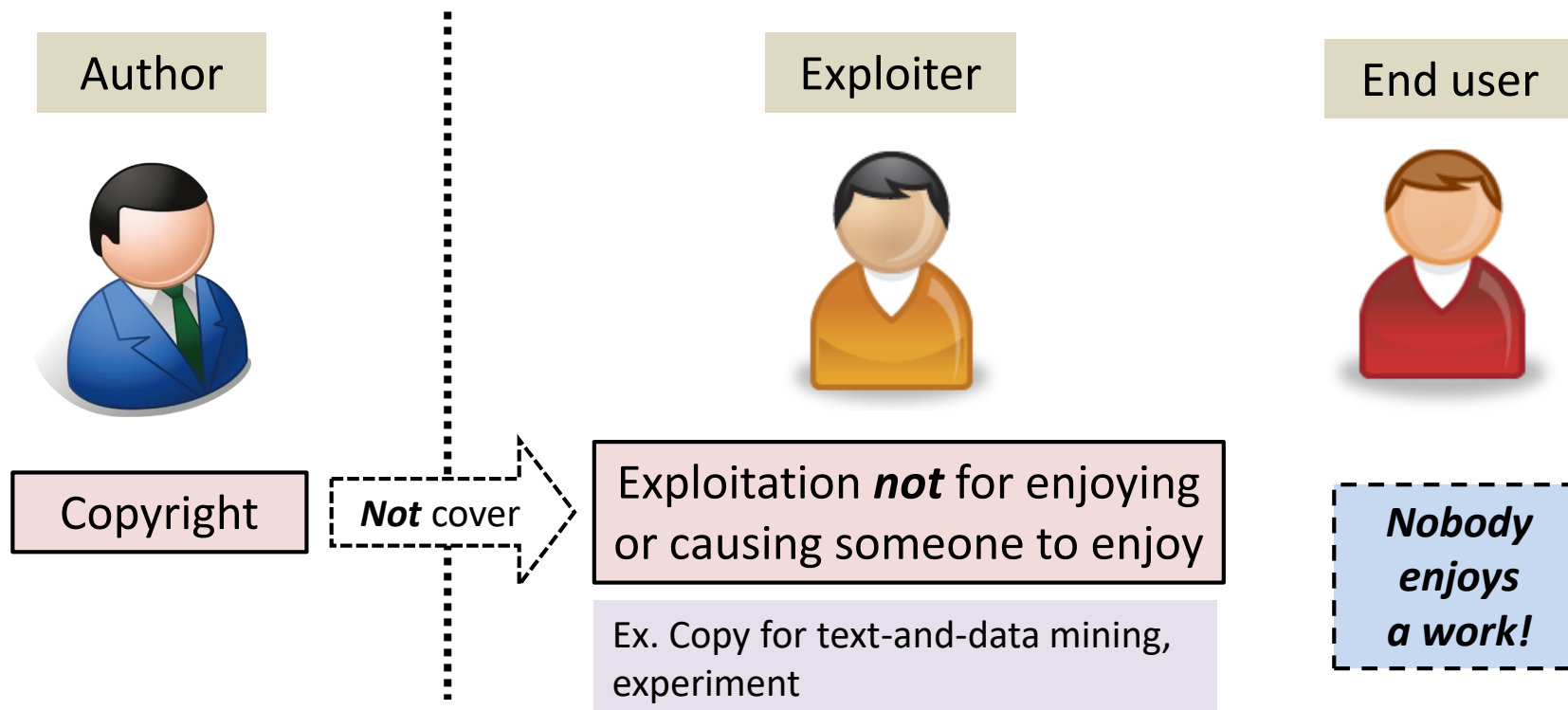
Internal Limit to Copyright

- Copyright covers an exploitation aimed at **enjoying** or causing someone to **enjoy** a work



Internal Limit to Copyright

- Copyright needs *not* cover an exploitation *not* for enjoying or causing someone to enjoy a work



Justifications for TDM exception

- Japanese TDM exception is based on the idea of ‘internal limit’ to the scope of copyright, rather than the idea of encouraging innovation or fostering the development of new businesses.
- The similar idea can be seen also in Europe, such as ‘Use as a work’ (A. Strowel)



See in detail, Tatsuhiro Ueno, The Flexible Copyright Exception for “Non-Enjoymen” Purposes: Recent Amendment in Japan and its Implication, 70(2) GRUR International 145-152 (2021)

Recent discussions on generative AI in Japan

1. Concerns of right holders

ex. Japan Newspaper Association: Opinion (May 17, 2023)

2. How can we strike the proper balance?

(1) Opt-out mechanism

(2) Statutory remuneration right

(3) Transparency obligation

(4) Soft law

ex. Japan Image Generative AI Consortium (JIGAC) (est. June 20, 2023)





**Thank you
Merci**

Prof. Tatsuhiro UENO
uenot@waseda.jp

