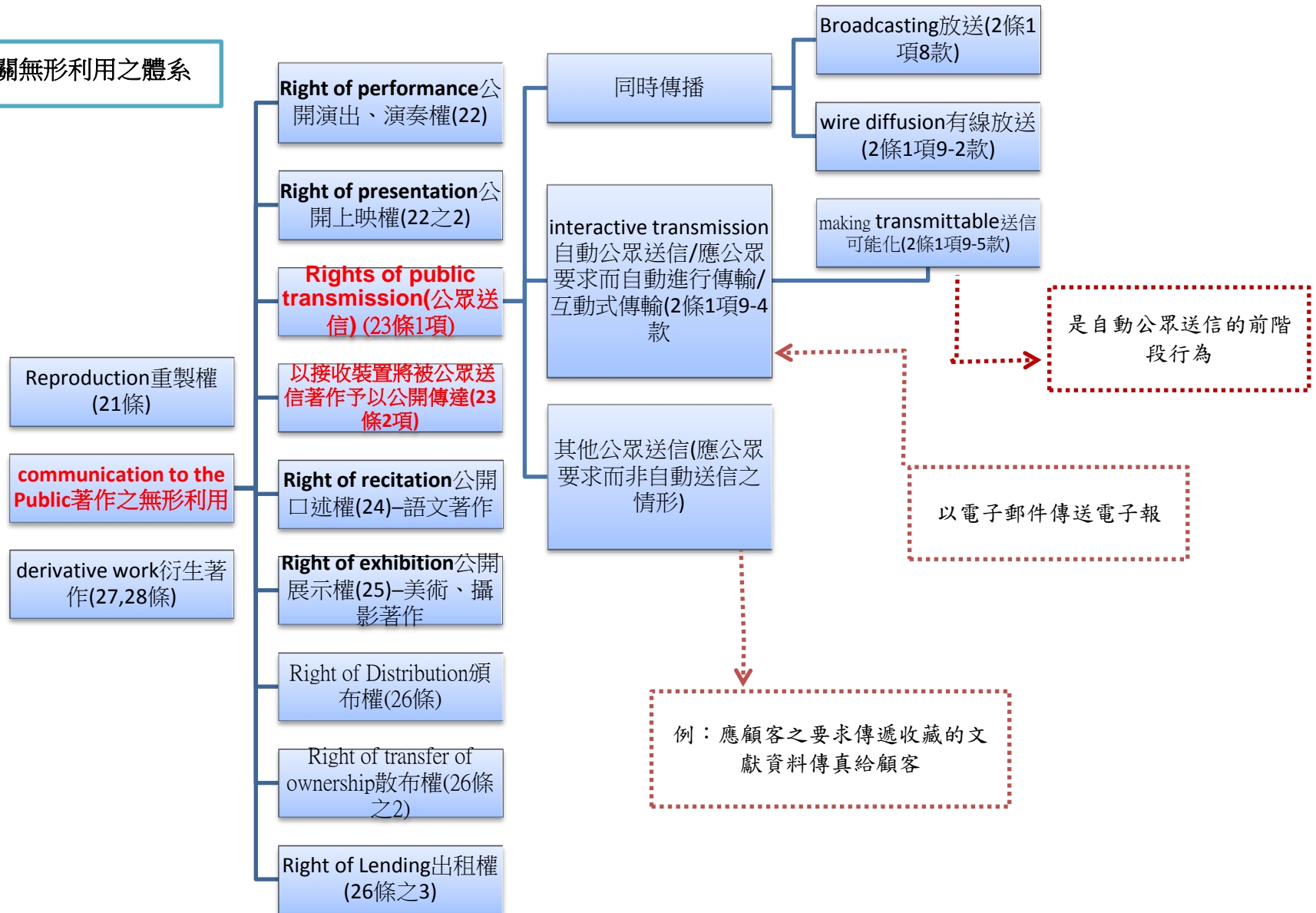


日、德、美、澳及我國著作權法無形利用之體系及定義

日本著作權法有關無形利用之體系



日本著作權法有關無形利用之法條定義

權利/名詞	定義	適用對象 <sup>1</sup>	說明
公眾送信(2 條 1 項 7-2 款、23 條 1 項) public transmission	<p><u>公眾送信</u>：指基於使公眾直接接受之目的所為之無線通訊或有線通訊的傳輸行為（但由其電子通訊設備一部分之設置場所與其他部分之設置場所位於同一建築物內（該建築物為二人以上所占有時，指為同一人所占有之建築物內）之人所為之傳輸行為（但電腦程式著作之傳輸，除外），除外）。</p> <p><u>公眾送信權</u>：著作人就其著作專有公眾送信（於自動公眾送信之情形，含送信可能化）之權利。</p> <p><b>Article 2. (1) (viibis)</b> "public transmission" means the transmission of radio communication or wire-telecommunication intended for direct reception by the public, excluding the transmission (other than that of program works) by telecommunication installations one part of which is located on the same premises where the other part is located or, if the premises are occupied by two or more persons, both parts of which are located within the area therein occupied by one person;</p> <p><b>Article 23. (1)</b>The author shall have the exclusive right to make the public transmission of his work (including the making transmittable of his work in the case of the interactive transmission).</p>	✓所有著作	上位概念
放送/無線廣播(2 條 1 項 8 款) Broadcasting	<p><u>放送</u>：指公眾送信中，基於使公眾同時接收同一內容之傳輸為目的所為之無線通訊的傳輸。</p> <p><b>Article 2. (1) (viii)</b> "broadcasting" means the public transmission of radio communication intended for simultaneous reception by the public of the transmission having the same contents;</p>	✓所有著作	NHK 衛星廣播 (註:放送事業者，指以放送為業者。)

<sup>1</sup> 指適用著作之類別，不包含鄰接權。

權利/名詞	定義	適用對象 <sup>1</sup>	說明
有線放送/有線廣播(2條1項9-2款) wire diffusion	<p><u>有線放送</u>：指公眾送信中，基於使公眾同時接收同一內容之傳輸為目的所為之有線通訊的傳輸。</p> <p><b>Article 2. (1) (ixbis)</b> "wire diffusion" means the public transmission of wire-telecommunication intended for simultaneous reception by the public of the transmission having the same contents;</p>	✓所有著作	有線音樂放送 有線電視(CATV)
自動公眾送信(2條1項9-4款) interactive transmission	<p><u>自動公眾送信</u>：指公眾送信中，應公眾之要求而自動進行傳輸者（但該當於播送及有線播送者，除外）。</p> <p><b>Article 2. (1) (ixquater)</b> "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".</p>	✓所有著作	WWW 上的服務、 BBS 上的服務及網路廣播(Webcast) →以電子郵件發送 email 屬之
送信可能化(2條1項9-5款) making transmittable	<p><u>送信可能化</u>：指利用下列各目行為之一，而使自動公眾送信成為可能者：(a)於連接至為供公眾使用之電信線路的自動公眾送信裝置（指藉由連接至為供公眾使用之電信線路，而具有將被紀錄於其記錄媒體中供自動公眾送信用之部份（以下本款及第四十七條之五第一項第一款，稱此為「公眾送信用記錄媒體」）之資訊，或是將輸入於該當裝置之資訊，加以自動公眾送信之功能者。）之公眾送信用記錄媒體上，將資訊加以記錄，並將該資訊被記錄之媒體增加至該當自動公眾送信裝置之公眾送信用記錄媒體中，或將該資訊被記錄之媒體轉換成該當自動公眾送信裝置之公眾送信用記錄媒體，或者是將資訊輸入於該當自動公眾送信裝置中。(b) 將資訊已被紀錄於其公眾送信用記錄媒體中之自動公眾送信裝置或資訊已被輸入於其裝置中之自動公眾送信裝置，連接至為供公眾使用之電信線路上（於此連接行為係由配線、自動公眾送信裝置的啟動、傳輸接受用電腦程式的啟動及其他一連串的行為所構成時，指該一連串行為之最後一個步驟的行為。）</p> <p><b>Article 2. (1) (ixquinquies)</b> "making transmittable" means the putting in such a state that the interactive transmission can be made by either of the following acts: (a) to record</p>	✓所有著作	資訊上傳(up lode) 到全球資訊網之虛擬空間，讓個人電腦得以隨時傳輸、 接取(access)之狀態

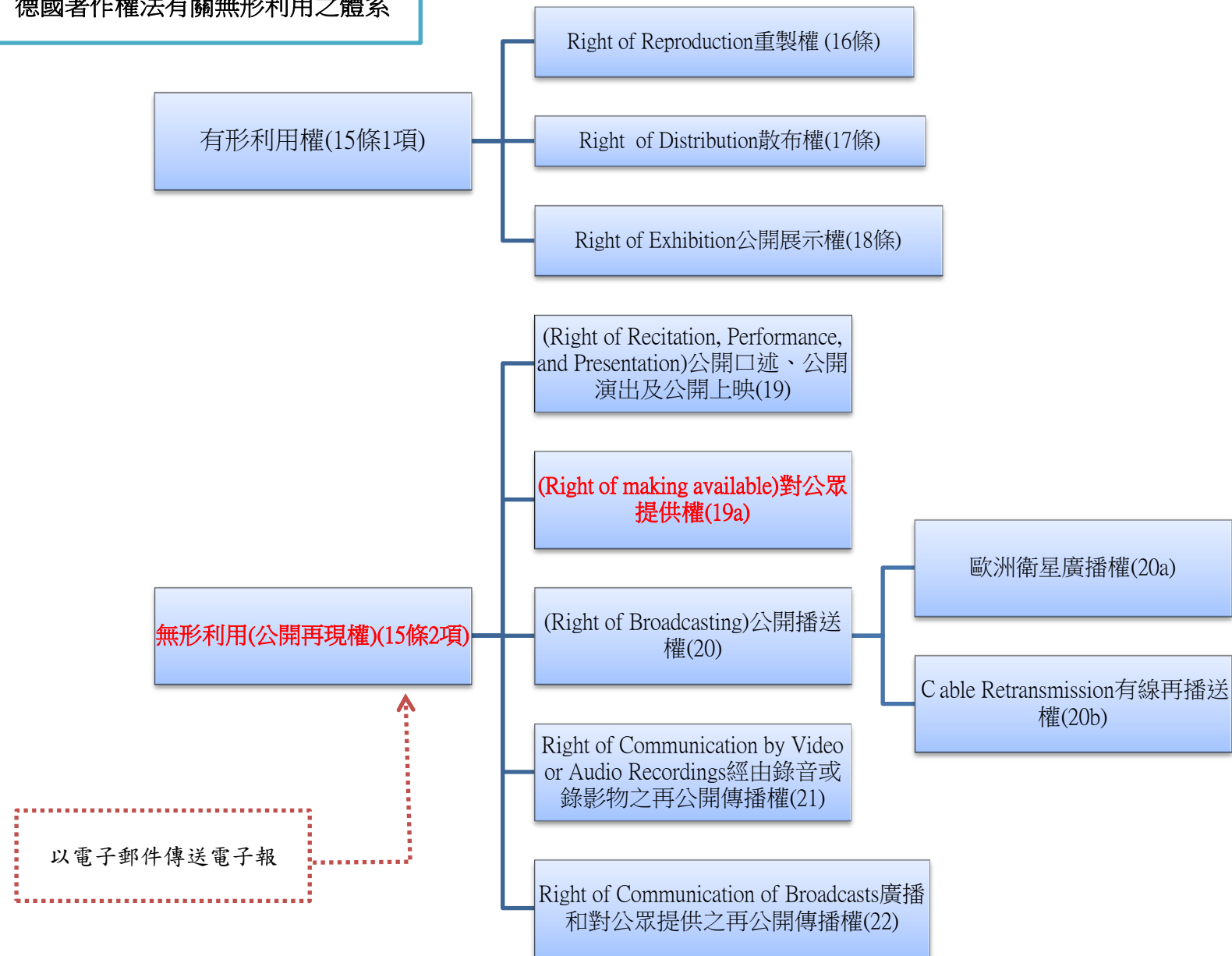
權利/名詞	定義	適用對象 <sup>1</sup>	說明
	information on public transmission memory of an interactive transmission server already connected with telecommunication networks for public use ("interactive transmission server" means a device which, when connected with telecommunication networks for public use, has a function of making the interactive transmission of information which is either recorded on such a part of its memory as used for the interactive transmission (hereinafter in this item referred to as "public transmission memory") or inputted to such device; the same shall apply hereinafter), to add a memory recording information as a public transmission memory of such an interactive transmission server, to convert such a memory recording information into a public transmission memory of such an interactive transmission server, or to input information to such an interactive transmission server; (b) to connect with telecommunication networks for public use an interactive transmission server which records information on its public transmission memory or which inputs information to itself. In this case, where a connection is made through a series of acts such as wiring, starting of an interactive transmission server or putting into operation of programs for transmission or reception, the last occurring one of these acts shall be considered to constitute the connection.		
以接收裝置為公開傳達之權利 (23 條 2 項)	著作人就其被公眾送信之著作專有使用接受裝置予以公開傳達之權利。 <b>Article 23.</b> (2)The author shall have the exclusive right to communicate publicly, by means of a receiving apparatus, his work of which the public transmission has been made.	✓所有著作	限於現場直接傳達之情形。例：將廣播節目直接透過擴音機放給客人聽、將電視節目透過電視機或接收影像的機器放給客人看。
演出權及演奏權	<u>演出及演奏</u> ：將著作以演劇方式加以表演、舞蹈、演奏、歌唱、口述、朗詠或	音樂、戲劇著作	

權利/名詞	定義	適用對象 <sup>1</sup>	說明
Right of Performance(22 條)	<p>以其他方法所為之表演(包含雖不演出著作但具有演藝性質之類似行為)。</p> <p><u>演出及演奏權</u>：著作人專有以供公眾直接觀看或聽聞之目的(以下稱「公開」。)而演出或演奏其著作之權利。</p> <p><b>Article 2 (1)(iii)</b> "performance" means the acting on stage, dancing, musical playing, singing, delivering, declaiming or performing in other ways of a work, and includes similar acts not involving the performance of a work which have the nature of public entertainment.</p> <p><b>Article 22.</b> The author shall have the exclusive right to perform his work publicly ("publicly" means for the purpose of making a work seen or heard directly by the public; the same shall apply hereinafter).</p>		
上映權 Right of presentation(2 條 1 項 17 款、22 條之 2)	<p><u>上映</u>：係指將著作（經公眾送信者除外）投射在投射幕或其他物上之行為，包括於此時所伴隨的將電影著作上固定之聲音再現之情形。</p> <p><u>上映權</u>：著作人專有將其著作公開上映之權利。</p> <p><b>Article 2(1) (xvii)</b> "presentation" means the projection of a work (other than that transmitted publicly) on the screen or other material forms, and includes such an intangible reproduction of sounds fixed in a cinematographic work as made in company with its projection</p> <p><b>Article 22bis.</b> The author shall have the exclusive right to present his work publicly.</p>	✓所有著作	電影上映
公開口述權 Right of recitation(2 條 1 項 18 款、24 條)	<p><u>口述</u>：指以朗誦或其他方法而口頭傳達(屬表演者除外)著作者。</p> <p><u>公開口述權</u>：著作人專有公開口述其語文著作之權利。</p> <p><b>Article 2(1) (xviii)</b> "recitation" means the oral communication by means of reading or otherwise, not falling within the term "performance";</p> <p><b>Article 24.</b> The author of a literary work shall have the exclusive right to recite publicly his work.</p>	語文著作	

權利/名詞	定義	適用對象 <sup>1</sup>	說明
公開展示權 Right of exhibition(25 條)	<p>著作人專有將其美術著作或未發行攝影著作之原件公開展示之權利。</p> <p><b>Article 25.</b> The author of an artistic work or of an unpublished photographic work shall have the exclusive right to exhibit publicly the original of his work.</p>	美術、攝影著作	
頒布權 Rights of distribution(26 條)	<p><b>頒布</b>：指不問有償或無償，將著作之重製物讓與或出租予公眾；於電影著作或被重製於電影之著作之情形，以將該等著作提示給公眾為目的，讓與或出租該電影著作之重製物者，亦屬之。</p> <p><b>頒布權</b>：(1)著作人專有將其電影著作藉由其重製物予以頒布之權利。 (2)著作人專有將於其電影著作中被重製之著作，經由電影著作之重製物，予以頒布之權利。</p> <p><b>Article 2(1) (xix)</b> "distribution" means the transfer of ownership and lending of copies of a work to the public, whether with or without payment, and in the case of a cinematographic work or a work reproduced therein, it includes the transfer of ownership and lending of copies of such work for the purpose of making a cinematographic work available to the public;</p> <p><b>Article 26. (1)</b> The author of a cinematographic work shall have the exclusive rights to distribute copies of his work. (2) The author of a work reproduced in a cinematographic work shall have the exclusive right to distribute copies of his work.</p>	<p>—電影著作</p> <p>—電影著作上被重製之著作</p> <p>—電影著作上被改作之原著小說、劇本</p>	*無耗盡
散布權 Right of transfer of ownership(26 條 之 2)	<p><b>Article 26bis</b>(1)The author shall have the exclusive right to offer his work (except a cinematographic work; the same shall apply hereinafter in this Article) to the public by transfer of ownership of the original or copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work; the same shall apply hereinafter in this Article).</p> <p>(2)The provision of the preceding paragraph shall not apply in the case of the transfer of</p>		*國際耗盡

權利/名詞	定義	適用對象 <sup>1</sup>	說明
	<p>ownership of such original or copies of a work as falling within any of the following items.</p> <p>(i) the original or copies of a work the ownership of which has been transferred to the public by a person who has the right mentioned in the preceding paragraph or with the authorization of such person;</p> <p>(ii) copies of a work the ownership of which has been transferred to the public under the authority of a compulsory license under the provisions of <a href="#">Article 67</a>, paragraph (1) or <a href="#">Article 69s</a> or with a license under the provisions of Article 5, paragraph (1) of the Law concerning the Exceptional Provisions to the Copyright Law required in consequence of the Enforcement of the Universal Copyright Convention (Law No.86, of 1956);</p> <p>(iii) copies of a work the ownership of which has been transferred to the public in accordance with the provisions of <a href="#">Article 67bis</a>, paragraph (1);</p> <p>(iv) the original or copies of a work the ownership of which has been transferred to a small number of specific persons by a person who has the right mentioned in the preceding paragraph or with the consent of such person;</p> <p>(v) the original or copies of a work the ownership of which has been transferred, outside this country, without prejudice to the right equivalent to that mentioned in the preceding paragraph or by a person who has the right equivalent to that mentioned in that paragraph or with the consent of such person.</p>		
出租權(Right of Lending)(26 條之 3)	<p>著作人專有將其著作(電影著作除外)以出租其重製物(於電影著作中被重製之著作之情形，該電影著作之重製物除外。)之方式提供給公眾之權利。</p> <p><a href="#">Article 26ter</a>. The author shall have the exclusive right to offer his work (except a cinematographic work) to the public by lending copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work).</p>		

德國著作權法有關無形利用之體系



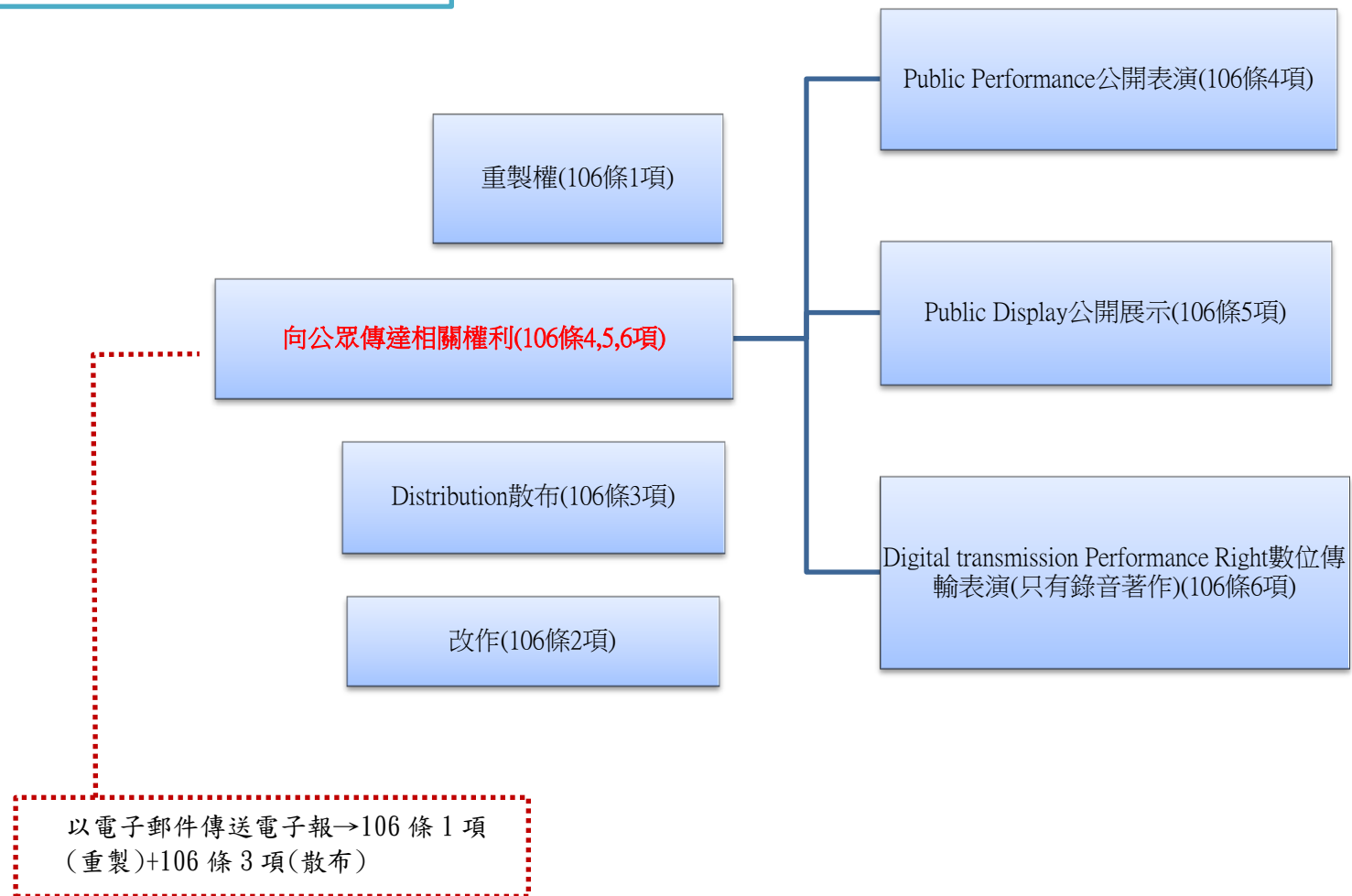
德國著作權法有關無形利用之法條定義

權利/名詞	定義	適用對象	說明
公開再現權(15 條 2 項、3 項)	<p>(15 條 2 項)作者還享有以無形的方式公開再現其作品的排他性權利。公開再現權特別包括：</p> <ol style="list-style-type: none"> <li>1. 朗讀、表演和放映權(19 條)</li> <li>2. 對公眾提供權(19 條 a)</li> <li>3. 公開播送權(20 條)</li> <li>4. 經由錄音或錄影物之再公開傳播權(21)</li> <li>5. 廣播和公眾提供之再公開傳播權(22)</li> </ol> <p><b>Article 15 (2)</b>the author shall further have the exclusive right to communicate his work to the public in non-material form(right of communication to the public);his right shall comprise in particular</p> <ol style="list-style-type: none"> <li>1.the right of recitation,performance and presentation(Section 19).</li> <li>2.the Right of making available(Section 19a)</li> <li>3.the right of broadcasting(Section 20)</li> <li>4.the right of communication by means of video or audio recordings(Section 21)</li> <li>5.the right of communication of broadcasts(Section 22)</li> </ol> <p>(15 條 3 項)公開再現，係指針對公眾成員中之多數人為之。所謂的公眾係指任何人，其不與著作之利用人或其他將著作以無形方式提供利用之人，具有個人關係之關聯者。</p>		<p>無形公開利用之上位概念</p> <p>*19 條 a1 是 2003 年 9 月 10 日通過生效的 (政府公報 BGBl . I S.1774) ，主要是轉換歐盟 2001/29/EG 資訊社會著作指令第 3 條第 1 及 2 項。</p>
公開口述、公開演出及公開上映權 (Right of Recitation, Performance, and Presentation (19	<ol style="list-style-type: none"> <li>(1) 公開口述權係指，將語文著作透過個人表演的方式公開傳達於聽眾。</li> <li>(2) 公開演出權係指，將音樂著作透過個人表演的方式公開傳達於聽眾，或是將著作公開在舞台上演出。</li> <li>(3) 公開口述和公開演出權係包括透過螢幕、擴音器或其他類似之技術設備式，將公開口述和公開演出之個人表演傳播至演出地點以外的空間，並使</li> </ol>	<p><u>公開口述</u>：語言著作</p> <p><u>公開演出</u>：音樂、戲劇著作</p> <p><u>公開上映</u>：造型藝</p>	

條)	<p>人得以公開感知者。</p> <p>(4) 公開上映權係指，將造形藝術著作、攝影著作、視聽著作或是科學或技術方面的表現作品，透過技術設備使人得以公開感知者。公開上映權並不包括，對此類著作的(無線)廣播或對公眾提供的公開再現(22 條)。</p> <p><b>Article 19(1)</b>The right of recitation is the right of live deliver to the public of a work of language.</p> <p><b>(2)</b>The right of performance is the right of live performance to the public of a musical work or of public performance of a work on the stage.</p> <p><b>(3)</b>The right of recitation and performance encompasses the right to make recitations and performances perceivable to the public by screen, loudspeaker or similar technical device, in a place other than that in which the live rendering takes place.</p> <p><b>(4)</b>The right of presentation is the right to make a work of fine art, a photographic work, a cinematographic work, or illustrations of a scientific or technical character perceivable to the public by means of technical devices. The right of presentation does not include the right to make the broadcast of such works perceivable to the public(Section 22).</p>	術、攝影、視聽或科學或技術方面	
對公眾提供權 Right of making available(19 條 a)	是指以有線或無線的方式向公眾提供著作，使其得於各自選定的時間或地點，接觸利用該著作的權利。	✓所有著作	
公開播送權 Right of Broadcasting(20 條)	<p>係指透過廣播的方式，將著作提供公眾利用，該廣播不論是透過電台或電視台之無線廣播、衛星廣播或有線廣播或其他類似之技術方法，在著作權法的意義就只是，任何一種廣播方式皆應得著作人之同意或授權。</p> <p><b>Article 20</b>The right of broadcasting is the right to make the work accessible to the public by broadcasting, such as radio and television transmission, satellite transmission, cable retransmission or by other similar technical devices.</p>	✓所有著作	包括網路電台 (Webradio)或網路電視 (Web-TV)
歐洲衛星廣播權	(略)	✓所有著作	

European Broadcasts Transmitted by Satellite (20 條 a)			
有線再播送權 Cable Retransmission(20 條 b)	<p>(1)將已廣播之著作，透過有線系統或微波系統，以同步、未經變更且整呈現的方式繼續加以播送，但此一權利只能透過著作權集體管理團體行使。此一規定並不適用於廣播機構就其廣播所享有之權利。</p> <p>(2)如果著作權人將其有線再播送的權利讓與廣播機構、錄音物製作人或電影製作人，則有線業者對其有線再播送仍應支付著作人適當之報酬。著作人不得放棄此項報酬請求權。但此一報酬請求權得事先移轉給著作權集體管理團體，並只能經由集體管理團體來行使。只要著作人就任何有線再播送的讓與都能取得適當報酬者，則本規定就不牴觸廣播機構的費率契約及勞資協議。</p>	✓所有著作	
經由錄音或錄影物之再公開傳播權 Right of Communication by Video or Audio Recordings (21 條)	<p>經由錄音或錄影物之再現權係指，將著作之公開口述或公開演出，透過錄音或錄影物的形式，使人得以公開感知者。第 19 條第 3 項於此有適用。</p> <p><b>Article 21.</b> The right of communication by audio or video recordings is the right to make recitations or performances of a work perceivable to the public by means of video or audio recordings. Section 19(3) shall apply mutatis mutandis.</p>	<p><u>公開口述</u>：語言著作</p> <p><u>公開演出</u>：音樂、戲劇著作</p>	
廣播和對公眾提供之再現權 Right of Communication of Broadcasts(22 條)	<p>廣播之再現權以及對公眾提供之再現權係指，將已廣播和已對公眾提供之著作，透過螢幕、擴音器或其他類似之技術設備，使人得以公開感知者。第 19 條第 3 項於此有適用。</p> <p><b>Article 22.</b> The right of communication of broadcasts is the right to make broadcasts of a work perceivable to the public by means of screen, loudspeaker or similar technical device. Section 19(3) shall apply mutatis mutandis.</p>	✓所有著作	

## 美國著作權法有關無形利用之體系



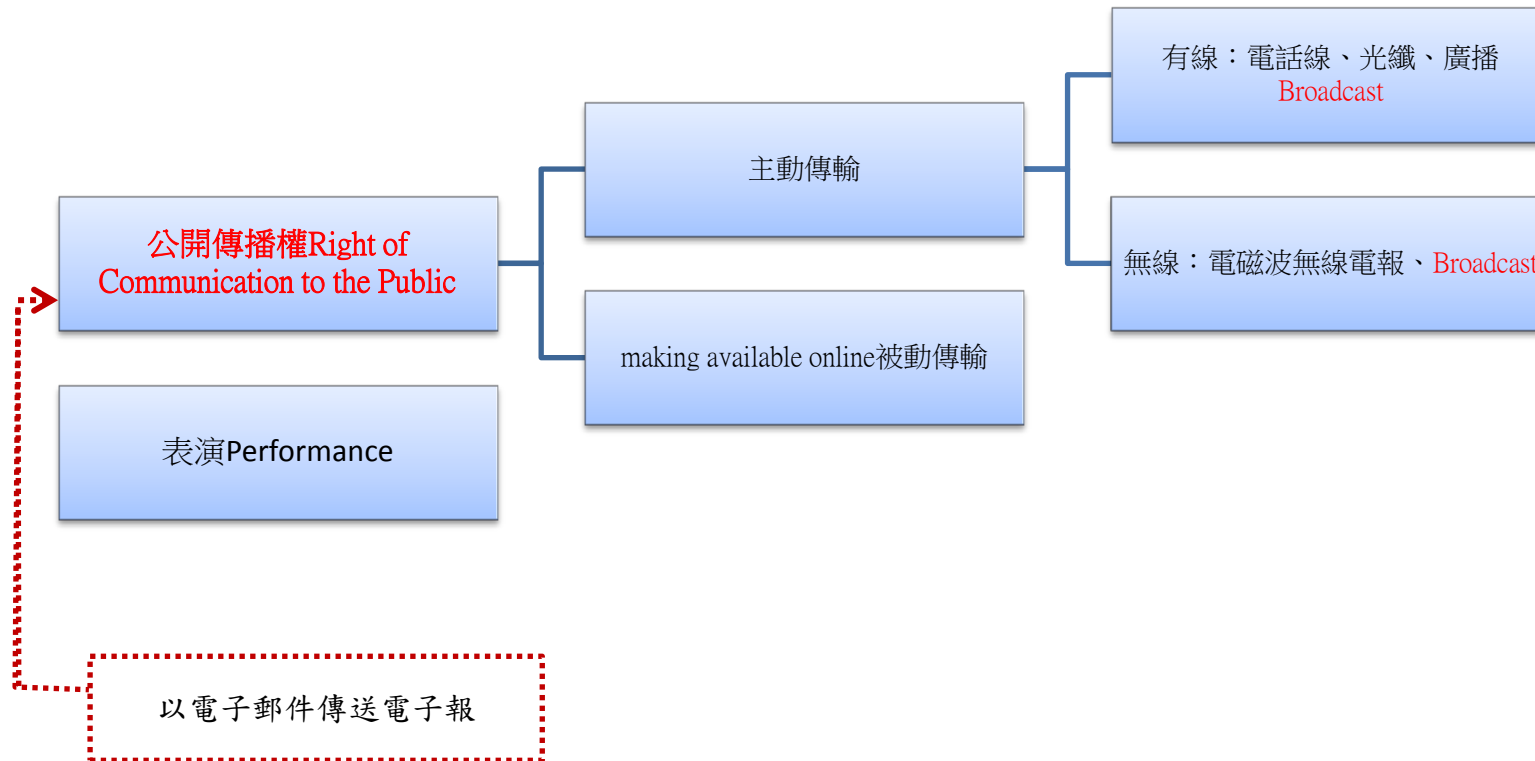
美國著作權法有關無形利用之法條定義

權利/名詞	定義	適用對象	說明
著作之排他權 Exclusive rights in copyrighted works(106 條)	<p>除第 107 條至第 122 條另有規定外，著作權人依本法享有行使或授權下列事項之排他權：</p> <p>(1)重製有著作權之著作為重製物或影音著作；</p> <p>(2)基於其有著作權之著作，改作為衍生著作；</p> <p>(3)以銷售或其他所有權之移轉、或出租、出借等方式，對公眾散布其有著作權之著作之重製物或影音著作；</p> <p>(4)於文學、音樂、戲劇、舞蹈著作、默劇、電影及其他視聽著作之情形，公開演出其有著作權之著作；</p> <p>(5)於文學、音樂、戲劇、舞蹈著作、默劇、及圖畫、圖形或雕塑著作、包括電影或其他視聽著作之個別影像之情形，公開展示其有著作權之著作；以及</p> <p>(6)在錄音著作之情形，利用數位聲音傳輸之方式公開表演有著作權之著作。</p> <p>Article 106 Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:</p> <p>(1) to reproduce the copyrighted work in copies or phonorecords;</p> <p>(2) to prepare derivative works based upon the copyrighted work;</p> <p>(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;</p> <p>(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;</p> <p>(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion</p>	<p>✓重製權、改作、對公眾散布：所有著作；</p> <p>公開表演、公開展示：文學、音樂、戲劇、舞蹈、動畫和其他影音著作</p> <p>數位傳輸表演：只有錄音著作</p>	

	<p>picture or other audiovisual work, to <b>display</b> the copyrighted work publicly; and</p> <p>(6) in the case of sound recordings, to <b>perform</b> the copyrighted work publicly by means of a digital audio transmission.</p>		
<b>公開表演 Public Performance(101 條)</b>	<p>(101 條)著作之「表演」：係指將著作之內容朗誦、發表、演奏、舞蹈，或演出，無論直接或藉任何裝置或方法；或於電影或其他視聽著作之情形，以任何順序放映其影像或使伴隨聲音。</p> <p>Article101.To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.</p>	文學、音樂、戲劇、舞蹈、動畫和其他影音著作	
<b>公開展示 Public Display(101 條)</b>	<p>(101 條)「展示」一著作：係指無論直接或藉由軟片、幻燈片、電視影像，或其他任何裝置或方法所展出之著作重製物；若涉及電影或其他視聽著作，則係指各別非連續性播放(show) 之影像。</p> <p>Article101.To “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.</p>	文學、音樂、戲劇、舞蹈、動畫和其他影音著作	
<b>數位傳輸表演權 Digital Transmission Performance Right)</b>	<p>(106 條第 6 款)在錄音著作之情形，利用數位聲音傳輸之方式公開表演有著作權之著作。</p> <p>Article106(6)in the case of sound recordings, to <b>perform</b> the copyrighted work publicly by means of a digital audio transmission.</p> <p>Article101.「錄音著作 (sound recordings)」：係指將一系列之音樂、演說或其他聲音，予以附著所完成之著作，不論其所具體表現之實體物之性質如何，例如碟片、帶，或其他錄音製品。但不包括伴隨於電影或其他視聽著作之聲音。</p> <p>Article101.「數位傳輸 (digital transmission)」：係指傳輸之全部或一部份經由數</p>	錄音著作	

	<p>位化或非類比式之傳輸格式進行。</p> <p>「播送 (transmit)」：表演或展示，係指藉任何裝置或方法播送該表演或展示，使影像或聲音得以在播送地以外之場所接收。</p>		
--	---	--	--

澳洲著作權法有關無形利用之體系



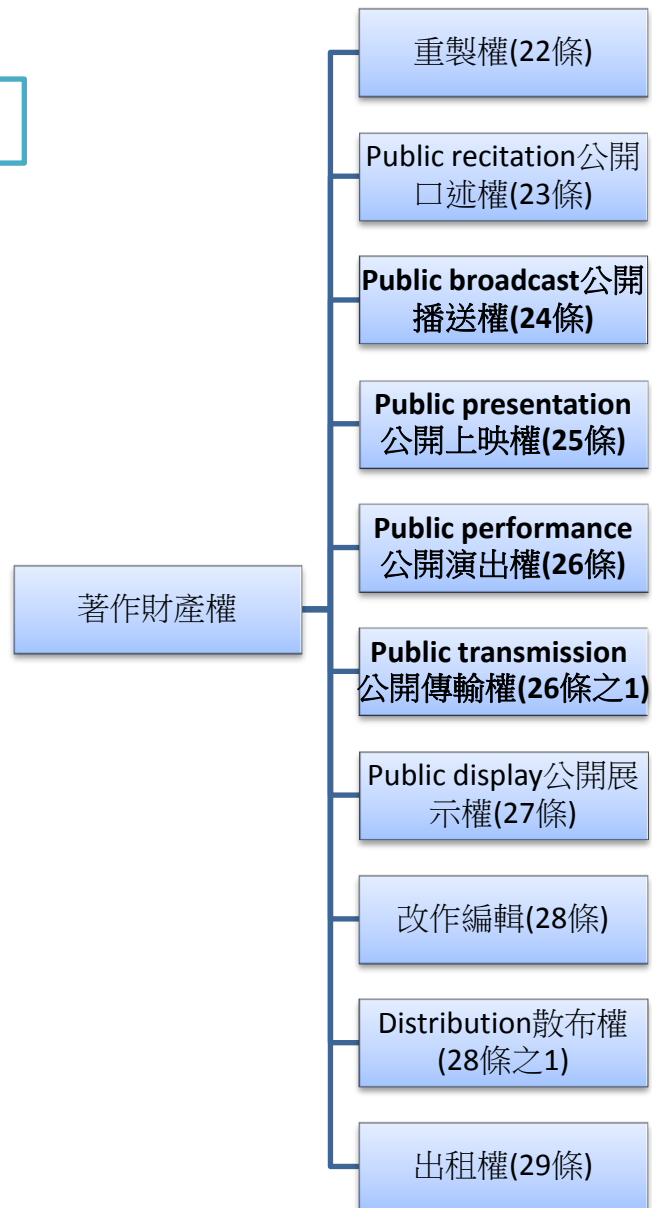
澳洲著作權法有關無形利用之法條定義

權利/名詞	定義	適用對象	說明
公開傳播權 Right of Communication to the Public(第10 條)	<p>「<b>傳播</b>」係指：使著作或其他不是著作的受保護客體(subject-matter)可線上獲得（提供於線上）或電子傳輸（無論是經由有形實體或其他所提供的一個路徑或是路徑的連結）。其包含本法定義之表演或現場表演。</p> <p><b>Article10. communicate</b> means make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject-matter, including a performance or live performance within the meaning of this Act.</p> <p>「<b>對公眾</b>」的定義為：對澳洲內或澳洲外的公眾。</p> <p><b>Article10.to the public</b> means to the public within or outside Australia.</p>	文學、戲劇、音樂、藝術	以電子郵件傳送電子報屬之
播送 (broadcast)(10 條)	<p>「<b>播送</b>」為在 1992 年的播送服務法定義下的對公眾傳達播送的行為。須注意的是，在澳洲法下的播送服務並不包含：</p> <p>(a)只提供數據或文字的服務、</p> <p>(b)經要求而且為點對點基礎之提供節目（包含撥接）之服務</p> <p><b>broadcast</b> means a communication to the public delivered by a broadcasting service within the meaning of the Broadcasting Services Act 1992. For the purposes of the application of this definition to a service provided under a satellite BSA licence, assume that there is no conditional access system that relates to the service.</p> <p><i>Note:A broadcasting service does not include the following:</i></p> <p><i>(a) a service (including a teletext service) that provides only data or only text (with or without associated images); or</i></p> <p><i>(b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service.</i></p>		<p>澳洲 2000 年修法時將播送行為由原僅限於(wireless)的傳輸予以擴張，使其亦包含了 Cable 等有線傳輸，並使播送權成為新增之公開傳播權的一個下位概念，並刪除原有的 right to</p>

			transmit to subscribers of a diffusion service.
表演 Performance(27條、248A)	<p><b>Section 27</b> 「表演」應被理解為關於任何形式的視覺或聽覺表現，無論此表現是用接收設備或是放映電影或是錄音或其他任何方法所為。此外，其認為公開傳播著作或其他不是著作的受保護客體不構成表演、使視覺影像被看到或使聲音被聽到。</p> <p>(1) Subject to this section, a reference in this Act to performance shall:</p> <p>(a) be read as including a reference to any mode of visual or aural presentation, whether the presentation is by the use of reception equipment, by the exhibition of a cinematograph film, by the use of a record or by any other means;</p> <p>(b) in relation to a lecture, address, speech or sermon—be read as including a reference to delivery; and a reference in this Act to performing a work or an adaptation of a work has a corresponding meaning.</p> <p>(2) For the purposes of this Act, the communication of a work or other subject-matter to the public does not constitute:</p> <p>(a) performance; or</p> <p>(b) causing visual images to be seen or sounds to be heard.</p> <p><b>Section 248A</b> 認為表演是指：</p> <p>(a) 戲劇著作或該著作之部分之表演（包括改進），包括使用玩偶之表演，或</p> <p>(b) 音樂著作或該著作之部分之表演（包括改進）；或</p> <p>(c) 文學著作或該著作之部分之朗讀、吟誦或咏唱；</p> <p>(d) 舞蹈的表演；或</p>		

<p>(e)馬戲動作或各種動作或任何類似表現或節目之表演；或</p> <p>(f)民俗技藝之表演；</p> <p>之下列之現場表演：</p> <p>(g)於澳洲所為之表演，無論是否在觀面前；或</p> <p>(h)由一個或一個以上符合資格之人(即使有一個或一個以上不符合資格條件)所為之表演，不論是否於觀眾面前。</p> <p><b>performance</b> means:</p> <p>(a) a performance (including an improvisation) of a dramatic work, or part of such a work, including such a performance given with the use of puppets; or</p> <p>(b) a performance (including an improvisation) of a musical work or part of such a work; or</p> <p>(c) the reading, recitation or delivery of a literary work, or part of such a work, or the recitation or delivery of an improvised literary work; or</p> <p>(d) a performance of a dance; or</p> <p>(e) a performance of a circus act or a variety act or any similar presentation or show; or</p> <p>(f) a performance of an expression of folklore;</p> <p>being a live performance:</p> <p>(g) that is given in Australia, whether in the presence of an audience or otherwise; or</p> <p>(h) that is given by one or more qualified persons (even if it is also given by one or more persons who are not qualified persons), whether in the presence of an audience or otherwise.</p>		
--	--	--

台灣著作權法有關無形利用之體系



台灣著作權法有關無形利用之法條定義

權利/名詞	現行定義	擬修正定義 <sup>2</sup>	現行適用範圍
公開播送(3 條 1 項 7 款)	指基於公眾直接收聽或收視為目的，以有線電、無線電或其他器材之廣播系統傳送訊息之方法，藉聲音或影像，向公眾傳達著作內容。由原播送人以外之人，以有線電、無線電或其他器材之廣播系統傳送訊息之方法，將原播送之聲音或影像向公眾傳達者， <u>亦屬之</u> 。	公開播送：指以下行為： （一）基於公眾直接收聽或收視為目的，以有線電、無線電或其他器材之傳送訊息之方法， <del>藉聲音或影像</del> ，向公眾傳達著作內容。 （二）由原播送人以外之人，以有線電、無線電或其他器材之傳送訊息之方法，將原播送所傳達之著作內容之聲音或影像向公眾傳達者。 （三）以擴音器或其他類似器材，將原播送所傳達之著作內容或與原播送同步傳輸之聲音或影像向公眾傳達者。	✓所有著作
公開演出(3 條 1 項 9 款)	指以演技、舞蹈、歌唱、彈奏樂器或其他方法向現場之公眾傳達著作內容。以擴音器或其他器材，將原播送之聲音或影像向公眾傳達者，亦屬之。	指以演技、舞蹈、歌唱、彈奏樂器或其他方法向現場之公眾傳達著作內容。 <del>以擴音器或其他器材，將原播送之聲音或影像向公眾傳達者，亦屬之。</del>	語文、音樂、戲劇、舞蹈(錄音著作報酬請求權)
公開傳輸(3 條 1 項 10 款)	指以有線電、無線電之網路或其他通訊方法，藉聲音或影像向公眾提供或傳達著作內容， <u>包括使公眾得於其各自選定之時間或地點</u> ，以上述方法接收著作內容。	指以有線電、無線電或其他通訊傳送訊息之方法， <del>藉聲音或影像</del> 向公眾傳達著作內容，使公眾得於其各自選定之時間 <u>及地點</u> ， <u>選擇</u> 以上述方法接收著作內容。	✓所有著作

<sup>2</sup> 99 年第 6 次修法諮詢會議提出之修正文字。