



# PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2011/12

## MEDIA

### MEDIA JAPAN SPECIAL SAMPLE EDITION

The law in key jurisdictions worldwide

Essential legal questions answered  
in 23 key jurisdictions

**SPECIAL  
EDITION**



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\*Additional jurisdictions (Brazil, Canada and Italy) will shortly become available online.

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If you are interested in contributing to future editions of this Guide or to the current online version ([www.practicallaw.com/media-mjg](http://www.practicallaw.com/media-mjg)) please contact Antony Dine (Publisher).

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# Media

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# Editorial

The Media multi-jurisdictional guide has been produced in collaboration with DLA Piper.

The Media multi-jurisdictional guide includes country-specific Q&As on media law in jurisdictions around the world. The Q&A guide gives a structured overview of the key practical issues concerning media law. It covers the following sectors: Film; TV (broadcast and internet); Publishing; Video games; Music; and Sport. In each section it considers various matters, such as a general overview of the sector, tax reliefs and state funding, regulation and classification, legal protection and contractual structures, and litigation.

In addition, answers to questions can be compared across a number of jurisdictions to assist in the management of cross-border transactions (see Country Q&A tool ([www.practicallaw.com/7-506-7303](http://www.practicallaw.com/7-506-7303))).

Finally, the guide includes a comparative table listing whether tax reliefs are available for film-making, TV programme making, making video games, and the music industry, for each of the jurisdictions mentioned in the guide.

This guide exists because of the excellent work of the contributors. PLC would like to thank the offices of DLA Piper, including: *DLA Piper Norway, DLA Piper Australia, DLA Piper France, DLA Piper Germany, Horváth & Partners DLA Piper, DLA Piper Nederland NV, DLA Piper Prague LLP, DLA Piper Wiater sp. k, DLA Piper Dinu SCA, DLA Piper (Russia), DLA Piper Spain, DLA Nordic, DLA Piper UK LLP, DLA Piper LLP (US), DLA Piper Weiss-Tessbach Rechtsanwälte, DLA Piper LLC* and the following other firms who have contributed Country Q&As to the Guide: *Anderson Mori & Tomotsune, Arthur Cox, Barun Law, Estudio Randle, J Sagar Associates, Schellenberg Wittmer and YükselKarkınKüçük Avukatlık Ortaklığı*.

# Japan

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Anderson Mori & Tomotsune

## FILM

### *Sector overview and tax reliefs*

#### 1. Provide an overview of the film sector in your jurisdiction, including:

- Major companies.
- Recent trends.
- Main trade bodies/associations.

#### Major companies

**Domestic players.** The major domestic players within the film sector comprise the following:

- Production companies.
- Distribution companies.
- Cinema companies.

The leading industry players are Toho, Shochiku and Toei (Big 3). The Big 3 are production companies but they also lead the distribution and cinema businesses through departments and subsidiaries.

**Foreign players.** The major foreign players are either subsidiaries of major Hollywood companies or independent companies. The departments and subsidiaries of the Big 3 also play a significant role in distributing foreign movies on behalf of foreign studios other than major Hollywood studios.

#### Recent trends

In relation to the cinema industry, domestic movies have attracted more viewers than their overseas competitors. In 2010, box office takings for domestic movies were JPY118 billion (53.6% of all takings) (as at 1 September 2011, US\$1 was about JPY77).

In relation to legal developments, the Act on Prevention of Unauthorised Recording of Films was enacted in 2007 to combat piracy. Further, the copyright protection period for cinematographic works was extended to 70 years after first publication, while the term of protection for other works has remained at 50 years (see *Question 5, Copyright protection period*).

In relation to technological developments, multi-use or cross-media have become popular. For example, a film will be shown in theatres, then sold as a DVD, and later shown on TV, and novels, drama CDs, films and TV animation may all be based on one original piece.

Information communications technology, such as digitalisation, has also been a recent technological development.

#### Main trade bodies/associations

The Motion Picture Producers Association of Japan, Inc. is the main trade body. It consists of the Big 3 and Kadokawa.

The Japan Film Makers Association is another major trade body. It consists of small- and medium-sized production companies.

#### 2. What are the applicable tax reliefs and other forms of state funding for film-making?

There is no applicable tax relief for film-making in Japan. In addition, there is no state funding for film-making, such as is provided in some other countries. However, there are some general subsidy systems for promoting culture and arts that may be applicable, for example:

- Japan Arts Council may finance film-making.
- Ministry of Economy, Trade and Industry (METI) may sponsor the making of video content.

### *Regulation and classification*

#### 3. Provide an overview of:

- The main legislation regulating the film industry in your jurisdiction.
- Film co-production treaties between your jurisdiction and other jurisdictions.
- National regulatory authorities.

#### Main legislation

Although there is no legislation that specifically regulates the film industry, some general laws apply, such as the following laws concerning intellectual property:

- The Act on Promotion of Creation, Protection and Exploitation of Contents.
- The Intellectual Property Basic Act.
- The Copyright Act.

See *Question 5*.

### Film co-production treaties

Japan has a film co-production treaty with Canada, which also applies to TV co-productions (see *Question 10, TV co-production treaties*). The Intellectual Property Strategic Programme published by the Intellectual Property Strategy Headquarters of Japan, calls for treaties with other countries, particularly Asian countries. The Intellectual Property Strategy Headquarters of Japan was established by the Japanese Cabinet under the Intellectual Property Basic Act in order to promote the creation, protection and exploitation of intellectual property in a focused and systematic manner.

### National regulatory authorities

The following are national regulatory authorities, relevant to the film sector:

- Agency for Cultural Affairs, an extra-ministerial bureau of the Ministry of Education, Culture, Sports, Science and Technology (MEXT).
- METI.
- Ministry of Foreign Affairs.
- Ministry of Internal Affairs and Communications (MIC).

The Agency for Cultural Affairs has jurisdiction over the Copyright Act and the Ministry of Foreign Affairs has jurisdiction over the conclusion of treaties, including film co-production treaties.

## 4. What are the requirements for film classification?

The Administration Commission of the Motion Picture Code of Ethics, which is an independent organisation established by the film industry, classifies each film into one of the following ratings:

- G: people of all ages are permitted without parental guidance.
- PG12: parental guidance is recommended for elementary school students or younger.
- R15+: only junior high school graduates are permitted.
- R18+: no one under the age of 18 is permitted.

### Legal protection and contractual structures

## 5. How are films legally protected?

### Copyright work

The Copyright Act grants copyright in films as cinematographic works (which includes films, TV programmes, and video games (see *Questions 12 and 23*)).

### Authors

Generally, the author(s) of a cinematographic work are the person(s) who creatively contributed to the making of the work, for example, the general director and artistic director of a film.

If a work is made by an employee in the course of his duties and the business of their employer (such as a director employed by a production company), the authorship of the work may be

attributed to the employer. However, directors are rarely employees, and therefore authorship is not attributed to the company that engaged the director.

### Moral rights and copyright

Authors usually possess both copyright and moral rights over a work. The moral rights include the following:

- Right to make the work public.
- Right to state the author's name.
- Right to maintain integrity.

However, the copyright over a cinematographic work in principle does not belong to authors but to the company (or companies) that:

- Instigated the making of the work.
- Took responsibility for financing it.

Copyright includes the right of distribution, that is, the exclusive right to distribute reproductions of the cinematographic work. (Other types of copyright works do not include this right.)

The copyright to a cinematographic work does not include:

- The copyright of any music that is used in the cinematographic work.
- Neighbouring rights, such as the rights of the performers in the cinematographic work (see *below, Performers' rights*).

The copyright of the music in a film belongs to the composer, lyric writer or arranger of the music (see *Question 29*).

### Performers' rights

These include the rights of performers to:

- Have their performance attributed to them.
- Have the integrity of their performance preserved.
- Make sound or visual recordings of their performance.
- Broadcast and wire-broadcast their performance.
- Make their performance transmittable.
- Transfer ownership of reproductions, such as DVDs, which include their performance.
- Rent reproductions of their performance.

Once the approval of a performer is obtained to make a sound or visual recording of their performance, the recipient of that approval has a licence to use their performance without the need for further approval from the performer. The performer only has one chance to negotiate a licence, although the performer may at that stage negotiate a licence with the recipient to share the profits arising from the secondary use of their performance.

### Copyright protection period

This is now 70 years from the date of first publication for cinematographic works (see *Question 1, Recent trends*).



## 6. What are the common contractual structures for film production?

Making a film usually comprises four phases: development, pre-production, production and post-production.

### Development phase

The following contracts are typically made in the development phase:

- Licence agreement regarding the adaptation of an original work for film (including secondary applications of the film).
- A service agreement with the scriptwriter.
- An agreement with the film producer.
- Financing agreements.

In most cases, financing is conducted through a unique Japanese system called the “production committee”. A production committee is like a partnership. Various members join the production committee, including production companies, television companies, advertising agencies and trading companies, among others. For example, in the case of the acclaimed Japanese animated film *Spirited Away*, there were seven companies on the production committee: Studio Ghibli, Dentsu, Mitsubishi Corporation, Nippon Television Network, Tokuma Shoten Publishing, Walt Disney Company (Japan) (formerly Buena Vista Japan) and Tohokushinsha Film Corporation. The advantages of this system are:

- Dispersal of financial risk.
- Ease of using different forms of media (media-mix, cross-media or multi-use).
- Advantages from synergy (that is, different elements working together to produce a result not achievable by one element alone).
- Low-cost establishment.

There are also many drawbacks, such as sharing ownership of copyright works, as it is necessary to make agreements among all the members of the production committee to exercise copyright (see *Question 5, Moral rights and copyright*). Therefore, a special purpose company is sometimes used as the legal entity for a production committee instead of a partnership, simplifying the approval process.

The production committee system may be subject to the Financial Instrument and Exchange Act (FIEA). As rights based on a production committee agreement may be deemed to be securities, it is necessary to obtain registration and be subject to strict regulations as a financial instruments business operator under the FIEA. Recently, the Financial Services Agency (FSA) amended certain Cabinet Office Ordinances to clarify the cases when the production committee system is subject to regulation under the FIEA. Regulation under the FIEA does not apply if “all members of the production committee engage in all or a part of the invested business” (*Cabinet Office Ordinances*). However, it is currently unclear what type of business would represent “part of the invested business”.

### Pre-production phase

The following contracts are typically made in the pre-production phase:

- Agreements with the director.
- Agreements with the cast and crew.
- Licence agreements with the owners of the copyright of the music used in the film.

### Production and post-production phases

Generally, there are no significant contracts entered into during these phases.

## Litigation

### 7. What are the:

- Main legal issues arising in film production transactions?
- Main areas of litigation?

The main area of litigation regarding film production concerns IP claims, including claims related to the ownership of copyright and copyright infringement. In relation to copyright ownership, the Supreme Court of Japan has ruled that the copyright period for films published in 1953 has now expired despite the new 70-year copyright period that has been introduced (*Supreme Court, Judgment, 18 December 2007*). This is because the new rules in the Copyright Act state that the 70-year period only applies to films that were still protected by copyright in 2004 (see *Question 1, Recent trends*).

Legal issues arising from the joint ownership and licensing of copyright are common. This is particularly true in the case of the production committee system, where several parties are involved in the management of copyright (see *Question 6, Development phase*).

## TV (BROADCAST AND INTERNET)

### Sector overview and tax reliefs

### 8. Provide an overview of the broadcast and internet TV (or video on demand sectors) in your jurisdiction, including:

- Major companies.
- Recent trends.
- Main trade bodies/associations.

### Major companies

**Broadcasters.** The public service broadcaster in Japan is the Japan Broadcasting Corporation (*Nippon Hōsō Kyōkai*) (NHK). The NHK is mostly funded by monthly subscription fees paid by users, but its budget is still subject to the approval of the Japanese houses of Parliament. The NHK satisfies basic public information needs, although its content largely consists of programmes and films for entertainment.

There are also a large number of free-to-air private broadcasters, which are entirely financed by advertising revenue. Commercial free-to-air television broadcasters have specified regions. There are five key commercial free-to-air broadcasters in Tokyo: Nippon Television Network (NTV), Tokyo Broadcasting System Television (TBS), Fuji Television Network (CX), TV Asahi (AX) and TV TOKYO (TX). Beneath each of these stations are associated regional and local free-to-air stations. The regional and local stations have network agreements with the key stations and co-operate in news, programming and other business activities.

SKY Perfect TV is one of the leading broadcasters in the pay-TV sector.

**Platform operators.** In the pay-TV market, there are many special interest channels (for example, channels for music, sport and film) as well as digital channels. These channels are provided through:

- Broadcasting satellite (BS) networks.
- Communication satellite (CS) networks.
- Cable networks.

Some channels are funded by foreign investments.

#### Recent trends

The following are recent trends in the TV sector:

- **DVDs and overseas sales.** In addition to terrestrial broadcasting of films and animation, stations have recently begun taking advantage of new opportunities to expand revenues and profits by offering content on DVDs and making sales overseas.
- **Product placement.** This is a recent trend which has emerged in the advertising field of the TV industry. Producers agree to advertise products during a TV programme (through actors using the products in the course of the programme). This is a lucrative new way to earn revenue.
- **Technological developments.** Recent trends concern the convergence of the broadcast and internet sectors. There has been massive growth in the use of internet-delivered catch-up services provided by the NHK and key stations. Further, IPTV offered by telecom operators such as NTT and KDDI is likely to become a strong competitor to the existing means of TV distribution.

The Japanese TV industry completed the switch from analogue to digital transmission in July 2011 (aside from a few rural areas). Since then, almost all households have had access to digital terrestrial TV.

#### Main trade bodies/association

There are many associations, including the following:

- The National Association of Commercial Broadcasters in Japan (NAB). It represents the interest of for-profit, over-the-air television and radio broadcasting companies.
- The Japan Cable and Telecommunication Association (JCTA). It represents the interests of cable system operators and cable programme networks.
- The Japan Satellite Broadcasting Association. It represents the interests of BS and CS operators and programme channels.
- The Japan Writer's Association. It represents the interests of over 2,500 writers. It collects royalties, on behalf of writers, generated by the broadcasting of their novels and poems on the NHK and private broadcasters.
- The Writers Guild of Japan (WGJ) and Japan Writers Guild Association. Each association represents the interests of TV scenario writers. They collect royalties generated by the use of those scenarios in TV dramas and TV shows from the NHK and private broadcasters.
- The Directors Guild of Japan. It represents the interests of movie directors. The NHK and private broadcasters negotiate with this association regarding a director's consent to edit a movie, so that it may be properly adapted for broadcasting.
- Japan Association of Music Enterprises (JAME) and Performers' Rights Entrustment. The NHK and private broadcasters apply to these organisations to obtain a performer's consent to incorporate a performance from an old broadcast into a new broadcast.

#### 9. What are the applicable tax reliefs and other forms of state funding for TV programme making?

See *Question 2*.

#### Regulation and classification

#### 10. Provide an overview of:

- **The main legislation regulating the broadcast and internet TV sectors in your jurisdiction.**
- **TV co-production treaties between your jurisdiction and other jurisdictions.**
- **National regulatory authorities.**

#### Main legislation

Japanese regulation of the broadcast and internet TV sector was completely reformed in 2010. At first, the government planned to establish a new organisation like the FCC, but this plan was later abandoned. The eight laws concerning broadcasting and communications have been integrated into four laws. Currently, the primary legislation governing the TV sector is as follows:

- Broadcast Act (Act No. 132 of 1950).
- Telecommunications Business Act (Act No. 86 of 1984).
- Radio Act (Act No. 131 of 1950).
- Wire Telecommunications Act (Act No. 96 of 1953).

#### TV co-production treaties

See *Question 3, Film co-production treaties*.

#### National regulatory authorities

The MIC is the national broadcasting and telecommunications regulatory agency. The Broadcasting Ethics & Programme



Improvement Organisation (BPO) is a self-regulatory organisation established by the NHK and NAB. If the BPO identifies ethical issues in a TV programme, a broadcaster is required to report such matters to the BPO and BPO will disclose such matters to the public.

### 11. What are the requirements for TV programme classification?

There is no formal TV programme classification system in Japan, such as the system that exists for theatrical films (*see Question 4*). However, a few satellite operators and channels adopt parental channel systems. In addition, most private broadcasters have self-regulatory guidelines on sexual and violent content and sometimes refrain from broadcasting such content.

#### Legal protection and contractual structures

### 12. How are TV programmes legally protected?

#### Copyright works

TV programmes receive copyright protection as cinematographic works under the Copyright Act (*see Question 5*). In addition, the Copyright Act also protects the broadcast of the TV programme itself as a broadcast.

**Broadcasts.** Broadcasting organisations and cable-broadcasting organisations own the neighbouring rights of a broadcast, including the rights to do the following:

- Reproduce.
- Re-broadcast.
- Cable-broadcast.
- Make a broadcast transmittable.

**Cinematographic works.** The same rules relating to authorship apply as in relation to films (*see Question 5, Authors*). If a broadcasted programme is not intended for secondary use, the rights attributable to the broadcaster include the right to broadcast, wire-broadcast and reproduce the cinematographic work. The rights attributable to directors and artistic directors include the right to display and distribute reproductions of the cinematographic work to any party other than the broadcasters.

A TV drama programme comprises:

- A derivative work from a drama scenario.
- An original cinematographic work as a broadcasted programme.

If a scenario writer is an employee of a broadcaster, the broadcaster will be the author of the scenario. If not, the broadcaster must obtain the scenario writer's approval to broadcast a TV drama programme and make secondary uses, including packaging it into DVDs and distributing it on the internet. In addition, a scenario writer owns moral rights.

If the scenario is based on an existing novel, that TV drama programme is also a derivative work of the existing novel. In that case, a broadcaster must obtain the approval of the writer of the

novel. Broadcasters enter into agreements regarding broadcasting with the WGJ and the Japan Writers Guild Association.

#### Performers' rights

In relation to the rights of a performer on a TV drama, see *Question 5, Performers' rights*.

### 13. What are the common contractual structures for TV programme production?

A key broadcaster usually has in-company production divisions and also outsources productions. A broadcaster normally enters into a production agreement with a production company under which the production company undertakes to produce a programme for a fixed fee, and in return, the production company assigns its copyright in the programme to the broadcaster.

Sometimes a broadcaster and a production company co-own the copyright.

These agreements must comply with the Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors. According to this Act, a broadcaster must deliver an agreement in writing to a production company, which must specify to whom the IP rights of a TV programme are attributable and the production fee. The broadcaster must pay a production company within 60 days of receiving a TV programme work from a production company.

#### Litigation

### 14. What are the:

- **Main legal issues arising in TV programme production transactions?**
- **Main areas of litigation?**

#### Main legal issues

The main legal issues are as follows:

- **IP rights.** The ownership of copyright and other IP rights relating to works is sometimes unclear since many Japanese TV stations and production companies conduct their businesses without clear agreements regarding IP ownership.

A TV programme is not protected under Japanese legislation as a special form of IP. The current position is that protection must be sought through the protection of the particular elements of the TV programme, such as trade marks, cinematographic works, and so on.

- **Restrictions on foreign investment.** Under the Broadcast Act and the Radio Act, there are some ownership restrictions on foreign investment and director qualification restrictions for foreign nationals on certain broadcast stations.

#### Main areas of litigation

The main source of litigation in the TV industry concerns disputes over the rights to concepts and plots for TV programmes. Japanese TV industry players have recently been successful in disputes with online TV service providers.

## PUBLISHING

### Sector overview and collecting societies

#### 15. Provide an overview of the publishing industry in your jurisdiction, including:

- Major companies.
- Recent trends.
- Main trade bodies/associations.

#### Major companies

**Newspapers.** In Japan, daily newspapers, published by Yomiuri, Asahi, Mainichi, Nikkei and Sankei, are called “nationwide newspapers”. These companies have strong ties with the following key broadcasting stations:

- Yomiuri: NTV.
- Asahi: AX.
- Mainichi: TBS.
- Nikkei: TX.
- Sankei: CX.

See *Question 8, Major companies*.

**Book/magazine publishers.** In Japan, there are the following four or five major classes of publishing:

- Information publishing.
- General publishing (including manga (Japanese comics and print cartoons) and literary works).
- Educational and professional publishing.
- Business publishing.
- Map publishing.

Some of the major publishers are Recruit, Kadokawa, Kodansha, Shogakukan, Shueisha, Benesse, Gakken, Gyosei, Nikkei BP and Zenrin. Unlike in some other jurisdictions, because books are sold on a commission basis through publishing agencies, each publisher typically publishes a small number of books (see *below, Recent trends* and *Question 18*).

#### Recent trends

The following are recent trends in the publishing sector:

- **E-publication.** With the growth of the internet, many companies have made repeated, unsuccessful efforts to sell publications through the internet. The main reason why e-publishing has not become popular in Japan is that e-books do not sell at a discount to physical books; in fact, physical books are cheaper than e-books. This situation is attributable to the industry structure and the resale price maintenance system (this provides, among others, that book publishers may maintain retail price (see *Question 17, Main legislation*). As a result, “self-catering” (that is, the scanning of physical books by their owners themselves or through scanning services, then distributing the scanned version online) is becoming popular (see *Question 19*).

In Japan, books are sold on a commission basis through publishing agencies. Publishers have strong ties with publishing agencies and booksellers under the resale price maintenance system, which allows publishers to set the sale price of books. In the past, publishers have been unwilling to provide new publications to e-book sellers because e-book sellers have refused to accept the sale prices set by publishers. In November 2010, the Japan Fair Trade Commission (JFTC) made an announcement via its website that e-book sellers are exempt from the resale price system and publishers cannot dictate sale prices to them. Therefore, publishers may continue not providing new publications to e-book sellers.

In most cases, authors have copyright over their works and therefore can enter into e-book agreements with internet-based booksellers, such as Amazon, without passing through a publisher. This situation led publishers to establish the Electronic Book Publishers Association of Japan (EBPAJ) in the first quarter of 2010. Through the EBPAJ, publishers have lobbied for Japanese legislators to create a form of copyright protecting the layout of a book that is created by a publisher. This proposed form of copyright would belong to the publisher and be separate to the copyright in the underlying work, which is owned by the author. Publishers call this proposed form of copyright “plate right” and say it is analogous to the copyright music producers have in phonograms, which they create (see *Question 29, Recorded music*). Contract templates provided by the EBPAJ require the author to acknowledge the publisher’s ownership of plate right.

- **Volume of publishing.** The rise of the internet has caused:
  - a decline in newspaper and book sales; and
  - an increase in pirated publication (although this has not conclusively been proven to be linked to the rise of the internet).

In addition, it is thought that an increase in the number of bookstores which handle second-hand or stolen books has led to a decrease in sales of newly printed books.

- **New trends.** In Japan, there are many publications based on web content, such as blog entries, cellular phone novels and internet forums. Book rental is also popular in Japan. In particular, an e-book rental business has recently been introduced. Finally, manga cafes are very common.

#### Main trade bodies/associations

There are many trade bodies in the publishing sector, the main ones being the following:

- Japan Book Publishers Association.
- Textbook Publishers Association of Japan.
- Japan Publication Wholesalers Association.
- Japan Magazine Publishers Association.
- Japan Federation of Bookstores Association (*Nihon Shoten Shogyo Kumiai Rengokai*).

The EBPAJ was recently established by leading publishers (see *above, Recent trends*).

In the newspaper sector, Nihon Shinbun Kyokai is the main trade body.

#### 16. What are the main collecting societies in your jurisdiction (if any) and what is their role?

The Japan Reprographic Rights Center (JRRC) is the main collecting society in Japan. Trade bodies commission the JRRC to grant licences to users for reprography of publications owned by their members.

In relation to copyright other than reproduction rights, there are many collecting societies, but no main collecting society in particular. Therefore, authors and publishers collect royalties, license the copyrighted works, and so on themselves.

#### Regulation and contractual structures

##### 17. Provide an overview of:

- **The main legislation regulating the publishing industry in your jurisdiction.**
- **National regulatory authorities.**

#### Main legislation

The main laws affecting the industry are as follows:

- Copyright Act (*see Question 5*).
- Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Anti-Monopoly Act). Under the Anti-Monopoly Act, publishers and sellers of the following types of copyright works may (but are not required to) determine and maintain resale prices: books, magazines, records, music tapes and music CDs. Newspaper publishers, in contrast, must maintain resale prices.

#### National regulatory authorities

The following are national regulatory authorities relevant to the publishing sector:

- Agency for Cultural Affairs (*see Question 3, National regulatory authorities*).
- METI.
- JFTC.
- MIC.

(For example, the JFTC has jurisdiction over the Anti-Monopoly Act.)

#### 18. What are the common contractual structures for print and electronic publishing of books?

The main contracts are as follows:

- **Author/publisher contracts.** An author usually enters into an agreement with a publisher. Generally, an author establishes a right of publication in favour of a publisher, but sometimes

only grants a licence to reproduce. Authors do not usually assign the copyright in their work to a publisher. An agreement can include the rights to:

- publish e-books (*see Question 15, Recent trends*); and
- prevent the author from negotiating other agreements related to the work through anyone other than the publisher.
- **Agreements for resale price maintenance.** These are entered into between a publisher and a publishing agency, and between a publishing agency and a bookseller. They enable a publisher to determine the retail price of each book it publishes.
- **Transaction agreements.** These are entered into between a publisher and a publishing agency, and a publishing agency and a bookseller. In Japan, books are sold on a commission basis through publishing agencies (*see Question 15, Recent trends*). Under a transaction agreement with a publishing agency, a publisher takes inventory risk (enabling a bookseller to sell books without incurring the risk of holding books which they are unable to sell). Because it retains inventory risk a publisher tends to publish a small amount of books. As publishing agencies can determine where books are distributed, small booksellers will sometimes not carry certain books, even if they are bestsellers.

#### Litigation

##### 19. What are the:

- **Main legal issues arising in print and electronic publishing?**
- **Main areas of litigation?**

The main areas of litigation across all sectors concern the following:

- Libel.
- Breach of privacy.
- IP disputes.

It is now easy for anyone to search for good but poorly known works through digital technology. As a result, a plagiarist may win a prize for a work they claim to have written without the judges noticing that the work has already been published. Digital technology also helps internet users to search for plagiarists. Some prizes have been withdrawn from plagiarists and the plagiarist's book subsequently taken out of print.

In the field of e-publishing, pirate copying and self-catering are common problems. Self-catering is thought to be one of the reasons e-publishing has not become popular in Japan (*see Question 15, Recent trends*). A user of a work is allowed to reproduce the work for personal, family, or other equivalent use (*see Question 15, Recent trends*). However, in many cases, a scanning service provider rather than the user conducts self-catering. Therefore, publishers and authors have recently begun making complaints about self-catering to scanning service providers. In addition, publishers believe self-catering promotes piracy, as self-catered reproductions do not contain digital rights management protection (DRM).

## VIDEO GAMES

### Sector overview and tax reliefs

#### 20. Provide an overview of the video games industry in your jurisdiction, including:

- Major companies.
- Recent trends.
- Main trade bodies/associations.

#### Major companies

The major companies are as follows:

- Console manufacturers: Nintendo, Sony and Microsoft.
- Large video game publishers: among others, Capcom, Electronic Arts, Konami, Namco Bandai, Sega Sammy, Square Enix and Tecmo & Koei.
- Operators of social game platforms on smartphones and feature phones: DeNA, under the brand names of Mobage and Gree.

In addition, there are also smaller developers who develop video games and enter into distribution agreements with video game publishers.

#### Recent trends

Traditionally, consumers have purchased video games in physical form, but now there is an increasing shift to online services on mobile devices. Many publishers have begun to focus on downloadable content, which allows the life cycle of a video game to be extended by supplements that are incrementally purchased by consumers. Most online video games have moved to a micro-transaction revenue model (for example, charging for additional video game features).

In addition, many publishers are now doing the following:

- Selling video games in various styles (such as special editions).
- Configuring video games for several console types.
- Including character goods, dramas performed by characters, and background music with video games.

Regarding social game platforms, the number of Gree and Mobage members will soon overtake the number of Nintendo DS units sold worldwide (see above, *Major companies*). Many game developers and publishers intend to shift from traditional consoles to social games.

#### Main trade bodies/associations

The Computer Entertainment Suppliers' Society (CESA) represents the video game industry. It promotes the industry (focusing on the home use of personal video games and related services) by holding the Tokyo Game Show and other activities. In addition, CESA takes action against providers of counterfeit content, including peer-to-peer providers, and regularly co-operates with the police in this regard.

The Association of Copyright for Computer Software (ACCS) represents the interests of the computer software industry, including video games, and aims to promote the protection of intellectual property rights of computer software. ACCS supports measures to combat copyright infringement and participates in information exchanges with related organisations in Japan and overseas.

#### 21. What are the applicable tax reliefs and other forms of state funding for making video games?

There is no applicable tax relief or state funding for making video games.

### Classification

#### 22. What are the requirements for video game classification?

The video games industry has voluntarily established the Computer Entertainment Rating Organisation (CERO) as a related organisation of CESA (see *Question 20, Main trade bodies/associations*). It is responsible for the classification of video games on desktop and portable consoles and non-sexual PC games sold in Japan.

CERO provides a classification procedure under which the relevant state authorities issue age-based rating symbols for games. This ensures that a video game is only sold to a child or young person if the content of the game is approved for their age group.

CERO revised the following age categories in 2006:

- A (all ages).
- B (12 years or older).
- C (15 years or older).
- D (17 years or older).
- Z (18 years or older).

Under youth protection regulations issued by local governments, category Z is deemed to contain harmful content. The rating symbol for the relevant age category must be printed clearly on the packaging of the game and on the accompanying disc.

### Legal protection and contractual structures

#### 23. How are video games legally protected?

#### Copyright works

Video games consist of the following elements, which may be protected as copyright works:

- The source and object code of a computer program.
- Picture works (including game character images).
- Musical works.

- Cinematographic works.
- Literary works (including on-screen text).

The Copyright Act only protects the expression, and not the idea. In addition, the data in video games does not constitute a computer program. However, copying significant elements of a computer program infringes the copyright in the source code and object code. Many programs include dummy codes to prevent such copying.

In addition, the Copyright Act protects some data in a video game. For example, the courts have prohibited the sale of tools to change game character parameters in a video game (such as character description, appearance, and so on) because it infringes the moral right to preserve the integrity of a game story (see the *Tokimeki Memorial (Konami) case (Supreme Court, Judgment, 13 February 2001 and the Dead or Alive (Tecmo) case (Tokyo High Court, Judgment, 31 March 2004)*).

### Author

Generally, the creator of a video game is the author of the copyright associated with the video game. However, if the video game is made by employees in the course of their duties and the business of their employer, the copyright of the work may be attributed to the employer. The moral rights will also be owned by the employer, unless agreed otherwise (*Article 15, Copyright Act*) (see *Question 5, Moral and economic rights*).

### Copyright infringement

The most obvious example of copyright infringement is to produce an unauthorised copy of a video game and sell it. However, the copyright in a video game can be infringed in other ways, such as:

- Copying significant elements of the game characters and backgrounds.
- Borrowing a major character from a popular series and using it in other games.

Importing and selling “magi-con” tools, which enable illegal reproduction of video game software on consoles, may be sanctioned by the payment of civil compensation under the Unfair Competition Prevention Act. By the end of 2011, it will attract criminal sanctions as well.

### Patents

Some video games are also protected under the Patent Act. For example, in the year 2000, Konami filed patent infringement lawsuits against rival developers in relation to video games in which a player beats a virtual drum and plays a virtual guitar pursuant to rhythmic instructions.

## 24. What are the common contractual structures for video game development and production?

Video game publishers have in-company development teams. In addition, they outsource game development to smaller developers (see *Question 20, Major companies*). In that case, a video game publisher enters into a development agreement with a developer under which:

- The developer undertakes to develop a video game for a fixed fee.
- In return the developer assigns its copyright in the video game or grants an exclusive licence to the video game publisher.

These agreements must comply with the Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (see *Question 13*).

In addition, the following may be relevant:

- Platform licence agreements: a video game publisher must normally enter into a platform licence agreement with a console manufacturer when creating a video game for a console.
- Production committee agreement: for large media-mix projects using game characters, a game publisher enters into a production committee agreement with other investors, including a record label and a broadcaster. (In relation to the production committee system, see *Question 6, Development phase*.)

## 25. What are the:

- **Main legal issues arising in video game development and production transactions?**
- **Main areas of litigation?**

The main legal issue concerns ownership of video game concepts and video game designs. There has been major litigation between famous video game publishers. In addition, illegal reproduction and illegal downloading are a great concern.

Other legal issues arise in video game development and transactions concerning ownership of IP rights. To the extent that video games incorporate material from a variety of sources, issues can arise over whether the necessary underlying rights have been appropriately licensed or assigned.

In relation to the micro-transaction revenue model, including selling game points and currency for real cash, an issuer of points and currency may be subject to the Payment Service Act (see *Question 20, Recent trends*). Pursuant to the Act, an issuer is obliged to report to the relevant authority on a regular basis and secure assets equal in value to at least one-half of the outstanding amount of issued but not yet consumed game points.

Former employees sometimes develop and distribute video games similar to ones they created during their former employment. Some developers enter into non-competition agreements with employees when they retire. However, an agreement which is too restrictive may be invalid.



## MUSIC

### *Sector overview, collecting societies and tax reliefs*

#### 26. Provide an overview of the recorded and live music industry in your jurisdiction, including:

- Major companies.
- Recent trends.
- Main trade bodies/associations.

#### Major companies

Aside from the artists themselves, the most successful of whom can be significant commercial operations in their own right, the popular music industry has traditionally been dominated by the following entities:

- **Record labels.** Record labels commonly take responsibility for the production, marketing and distribution of recorded music. Record labels can be split into two main groups:
  - the “majors” (the number of which has varied over time but now includes Avex, Columbia, EMI, the Warner Music Group, Sony and the Universal Music Group); and
  - the independent labels, which vary in size and activity, but can be significant players.
- **Publishers.** Music publishers enter agreements with songwriters and composers to manage their works and collect payments when they are used. Music publishers in Japan include the publishing divisions of record labels, such as Columbia, EMI, the Warner Music Group, Sony and the Universal Music Group, as well as the TV industry, movie industry, talent agencies and publicity agencies.
- **Artist agencies.** Artist agencies enter management agreements with artists, and receive royalties and grant licences in relation to the publicity rights of artists.

#### Recent trends

The music industry has seen a shift away from income generated by CD sales to income generated from digital downloads. Sales of digital downloads stopped increasing in 2010.

Although action has been taken against illegal online file sharing, which is considered the main reason for a fall in revenue in the music industry, the fall in revenue has not been stopped. Recording artists now rely on live performances and merchandise for most of their revenue. This has led to new business relationships between artists and record labels.

#### Major trade bodies

The following are the main trade organisations:

- The Recording Industry Association of Japan (RIAJ), which is the association of major labels in Japan. RIAJ takes action against providers of counterfeit content, including peer-to-peer providers, and regularly co-operates with the police in this regard.
- The Music Publishers Association of Japan (MPAJ), which is the sole organisation to represent the music publishing industry of Japan. It also represents record (master) producers

since many of its members produce master recordings in addition to holding publishing rights.

- The Japan Council of Performers' Organisations, which is an association of over 70 organisations for various kinds of performers, including actors and singers, and operates the Centre for Performers' Rights Administration (CPRA).

#### 27. What are the main collecting societies in your jurisdiction (if any) and what is their role?

The Japanese Society for Rights of Authors, Composers and Publishers (JASRAC) is the main music copyright management business organisation. JASRAC enters into trust agreements with lyric authors, composers and music publishers, and collects royalties for live performances, broadcasts, recordings, online distribution and other usages. Since the Copyright Management Business Act was enacted in 2001, private companies have entered into the music copyright management business. Currently, 14 companies, including Japan Rights Clearance (JRC) and e-License, are engaged in this business.

The Society for Administration of Remuneration for Audio Home Recording (SARAH) manages compensation for private audio recording. SARAH receives remuneration from manufactures and importers of recording machines and the following recording media:

- Digital Audio Tape Recorder (DAT).
- Digital compact cassette recorder (DCC).
- Mini-disc recorder (MD).
- Compact disc-recordable (CD-R).
- Compact disc-rewritable (CD-RW).

SARAH distributes its collected funds to:

- JASRAC (36%).
- Japan Council of Performers' Organisations (32%).
- RIAJ (32%).

The Compact Disc & Video Rental Commerce Trade Association of Japan (CDVJ) represents the interests of CD and video rental shops. The CDVJ collects rental fees from each rental shop and distributes performance royalties to the Japan Council of Performers' Organisations.

A broadcaster can broadcast recorded music without any approval, but must pay secondary use fees. The RIAJ receives secondary use fees on behalf of record makers and distributes them to the appropriate record labels, the MPAJ and other independent label associations. The Japan Council of Performers' Organisations receives secondary use fees on behalf of performers and distributes them to associations of musicians and singers.

#### 28. What are the applicable tax reliefs and other forms of state funding for the music industry?

There is no applicable tax relief or state funding for the music industry.



## Legal protection and contractual structures

### 29. How are musical compositions (including lyrics) and recorded music legally protected?

#### Musical compositions

Musical compositions are protected by copyright as musical works and lyrics of songs are protected separately by copyright as literary works. The author of the lyrics and the creator of the musical composition are the owners of their respective copyright works.

#### Recorded music

Phonograms are protected separately by copyright and in addition to the copyright in the music and lyrics. A person who first fixes the sounds contained in a phonogram (master disk) owns the property rights of the master disk and the neighbouring copyrights. There are no moral rights in a master disk.

#### Moral rights

The Copyright Act confers certain moral rights on the creators of musical or literary works. Moral rights cannot be transferred. To use music in TV commercials, most music must be altered, which may infringe moral rights. A music copyright management business company will not grant approval for TV commercial use without the consent of the writer or composer to that alteration.

### 30. What are the common contractual structures for the exploitation of rights in musical compositions and recorded music?

#### Music publishing business

The following arrangements are usually entered into:

- Lyric writers and composers assign the copyright of lyrics and compositions to a music publishing company.
- The music publishing company entrusts the copyright management to a copyright management business company, such as JASRAC (see *Question 26*).
- The copyright management business company grants licences to end-users, including broadcasters.
- Royalties are paid from end-users to writers and composers through a:
  - music publishing company; and
  - copyright management business company.

#### Record business

The following arrangements are usually entered into:

- A performer, including singers and studio musicians, enters into talent management agreements with agencies. In a talent management agreement, a performer assigns neighbouring copyrights and rights for secondary use.
- An agency enters into an exclusive performer agreement with a phonogram maker and assigns neighbouring copyrights and rights for secondary use.
- A phonogram maker enters into a master disk assignment/licence agreement with a record label and assigns all rights related to the master disk, including:
  - property rights of the master disk; and
  - neighbouring copyrights of a performer and a phonogram maker.

- A record label pays master disk royalties to a phonogram maker.
- A phonogram maker pays performer royalties to an agency, which then pays performer royalties to a performer after making a deduction for its own revenue.

A master disk can be used for movies, TV commercials, *pachinko* machines (a very popular Japanese gaming device which resembles a vertical pinball regime) and video game.

#### Digital distribution

In relation to the digital distribution business, a phonogram maker enters into a distribution agreement with a distribution business company.

## Litigation

### 31. What are the:

- Main legal issues arising in the contracts for the exploitation of rights in musical compositions and recorded music?
- Main areas of litigation?

#### Main legal issues

Some writers and composers have complained that allocations by copyright management business companies do not accurately reflect the number of uses of their work.

#### Main areas of litigation

The main causes of litigation include imitating and altering lyrics and compositions, and illegal downloads.

## SPORT

### Sector overview

### 32. Provide an overview of the sports sector in your jurisdiction, including:

- Main sporting bodies.
- Recent trends.
- Main trade bodies/associations.

#### Main sporting bodies/associations

The two major sports in Japan are football (soccer) and baseball, although various other professional and amateur sports are also popular:

- **Football.** The Japan Football Association (JFA) is the national body for both professional and amateur football. The JFA is an incorporated foundation established in 1921. A professional football league (J. League) was founded in 1991. The J. League is administered by a corporate body, the Japan Professional Football League, which is controlled by the JFA.

- **Baseball.** There is no comprehensive, national body which administers all baseball competitions. Professional competitions are administered by a corporate body called the Nippon Professional Baseball Organisation (NPB) while amateur competitions (for example, high school, college or company competitions) are administered by various different bodies.
- **Other sports.** There are two umbrella bodies regulating amateur sports: the Japanese Olympic Committee (JOC) and the Japan Sports Association (JASA). The associations that administer specific sports are members of both the JOC and JASA, and include the:
  - Japan Basketball Association (JBA);
  - Japan Volleyball Association (JVA);
  - Japan Tennis Association (JTA);
  - Japan Golf Association (JGA);
  - All Japan Judo Federation (AJJF);
  - Japan Swimming Federation (JASF);
  - Japan Skating Federation (JSF); and
  - Ski Association of Japan (SAJ).

#### Recent trends

The following are recent trends in the sport sector:

- **Japanese athletes competing abroad.** The number of Japanese athletes competing abroad has recently increased. For example, as of September 2011, the following number of Japanese football players compete in the first division of top-tier leagues in Europe:
  - nine in Germany;
  - four in The Netherlands;
  - two in Italy;
  - one in England;
  - one in Spain; and
  - one in France.

Many Japanese football players also compete in other professional competitions.
- **Athletes' rights.** Traditionally, the rights of athletes have not been strongly emphasised while clubs or associations have freely exploited their image and reputation. Recently, however, athletes have become aware of and sensitive to their rights (*see Question 36*).

#### Regulation and contractual structures

##### 33. Provide an overview of:

- **The main legislation regulating the sports sector in your jurisdiction.**
- **National regulatory authorities.**

#### Main legislation

There is no specific law for sports in Japan. However, certain general laws may apply to the sports sector. For example, the

Civil Code and the Companies Act apply to the business aspects of sports, but there are no specific regulations for sports under these Acts.

Legal matters in the sport sectors (for example, matters related to organisations, competitions, clubs and individual athletes) are usually regulated under each sport's internal rules established by the administrative body of the sport.

The following issues are of significant importance for sport:

- **Restrictions on foreign investment.** There are some ownership restrictions on foreign investment in club sports under the internal rules of the relevant administrative body. For example, the owner of a club in the J. League or NPB must basically be a Japanese stock company of which the majority of shareholders are Japanese (*Articles 19 and 19-2, J. League Rules and Articles 27 and 28, NPB Agreement*).
- **Restrictions on gambling.** Gambling, even among a small private group, is generally prohibited and subject to criminal punishment (*Articles 185 to 187, Criminal Code*). The toto lottery is an exception. It permits betting on J. League matches under the Sports Promotion Lottery Act. However, there are no other legal sports betting services, other than publicly operated sports and betting services for horse, motorboat, bicycle and motorcycle racing.

#### National regulatory authorities

The MEXT is responsible for sports, but not solely devoted to sports. The Japan Anti-Doping Agency (JADA) is an incorporated foundation that manages anti-doping issues in Japan.

#### 34. What are the common contractual structures for agreements between broadcasters and sports rights owners?

##### Nature of rights

In general, a sports match is not considered a copyright work or performance under the Copyright Act (*see Question 5*). Therefore, broadcast rights for sporting events are not recognised by statute and are only generated by contract. An event organiser can only control broadcasting in a practical manner by restricting access to the event site (that is, through only allowing the authorised broadcasters to bring broadcasting equipment into the site).

##### Ownership

The ownership of broadcast rights is often stipulated under the internal rules of the body administering each sport, for example:

- The broadcast rights for football matches of the J. League belong to the J. League (*Article 127, J. League Rules*).
- The broadcast rights for baseball matches of the NPB competitions belong to the host club for each match of the regular season (*Article 44, NPB Agreement*).

##### Contractual structures

Generally, the owner of broadcast rights sells or licenses the rights to broadcasters (normally, the major free-to-air TV stations

or pay TV stations), and these broadcasters sometimes sublicense the rights to local broadcasters.

There are two contractual structures:

- The owner of the broadcast rights alone generates a broadcast.
- The owner of the broadcast rights and broadcasters co-operatively generate a broadcast.

### Rights in sporting events

#### 35. How are rights in sporting events acquired and owned?

To hold a sporting event, the organiser usually enters into agreements with a variety of parties, including the following:

- Broadcast agreements with broadcasters (see *Question 34, Contractual structures*).
- Facility-use agreements with facility owners (some facilities are owned by public entities and others by private entities).
- Participation agreements with participating teams or athletes.
- Financing agreements with sponsors.

An advertisement agency is often engaged to manage the marketing aspects of the event and to co-ordinate the relationships among the parties.

### Litigation

#### 36. What are the:

- **Main legal issues arising from the acquisition and ownership of rights in sporting events?**
- **Main areas of litigation?**

#### Publicity rights

Publicity rights (that is, the rights of athletes to control the commercial use of their name and image) are not set out by statute, but are recognised by court precedents. Cases brought

against a third party for the unauthorised use of an athlete's name or image include:

- *Tokyo District Court Judgment of 2 October 1978* (a case concerning medal products for the baseball player Sadaharu Oh's home run).
- *Tokyo District Court Judgment of 29 February 2000* (a case concerning the football player Hidetoshi Nakata's biography).

Publicity rights of athletes are controlled by clubs or the administrative body of the sport. For example, professional football and baseball clubs have the right to exploit the publicity rights of players who belong to the club (*Article 8, JFA player agreement* and *Article 16, NPB's unified agreement*). Recently, NPB players mounted an unsuccessful court challenge alleging that commercial use, such as use for game software or baseball trading cards, should be excluded from Article 16 of the NPB's unified agreement (see *Tokyo District Court Judgment of 1 August 2006, IP High Court Judgment of 25 February 2008* and *Supreme Court Judgment of 15 June 2010*).

The JOC currently allows athletes of amateur Olympic sports, to choose whether to:

- Control their publicity themselves.
- Become a symbol athlete, whose publicity is controlled by the JOC.

#### Security and accidents

The security of players and spectators is an important legal issue. Recently, a baseball spectator, who was injured by a stray ball, brought an unsuccessful court claim against the owner of the stadium due to an alleged lack of security. The court rejected the claim (see *Sendai District Court Judgment of 24 Feb 2011 (Rakuten foul ball case)*).

#### Others

Other legal issues include labour law and anti-trust law matters.

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**Qualified.** Japan, 2001

**Areas of practice.** M&A; sport, entertainment, corporate transactions.

#### Recent transactions

- Yuichiro Nukada is a partner in Anderson Mori & Tomotsune.
- Representing Arsenal Football Club in its acquisition of the Japanese player, Ryo Miyaichi.
- Advising J. League's football clubs in transactions involving international player transfers.
- Has worked on a number of investments by foreign companies into Japan, including takeovers, share acquisition, joint ventures (JVs), general corporate matters.



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**Qualified.** Japan, 2001

**Areas of practice.** Internet law; e-Money; computer law; intellectual property law.

#### Recent transactions

- Advising a large US TV broadcasting corporation in a big copyright infringement case.
- Representing several large video and online game developers and manufacturers in international disputes including copyright infringement cases.
- Advising potential foreign investors in the broadcast and telecommunications sectors.
- Regularly advising on regulatory and commercial aspects of several international new distribution platforms and internet ventures.
- Assisting a famous writer to exclude unauthorised use of fictional characters on the internet.



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**Qualified.** Japan, 2009

**Areas of practice.** Intellectual property law; sport; corporate transactions.



“  
If a law firm or  
lawyer did not appear  
in <sup>PLC</sup>Which lawyer?,  
I would be concerned  
as to why they  
weren't listed.”

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