

# Fact-finding survey on Animation Industry (Overview) ( Tentative Translation )

January 23, 2009  
Japan Fair Trade Commission

## I. Purpose and Method of the Survey

- The animation industry structure has multiple tiers where planning and production of animation work is entrusted from one production to another among many small-scale entrepreneurs. A trading problem seems difficult to be revealed even if any such problem occurs. From the viewpoints of the Antimonopoly Act (Abuse of dominant bargaining position) and the Subcontract Act, the JFTC researched the situations of trades and trade practices.
- JFTC sent questionnaires to 533 productions (Number of valid responses: 114).
- JFTC gathered information from 44 companies and 4 associations including production companies, TV stations, ad agencies, DVD vendors and related associations.

## II. The Summary of the Survey

### 1. Overview of the animation industry

- Over 60% of productions answering the questionnaire were small-scale entrepreneurs with capital of 10 million yen or less.
- Principal contractor production re-entrusts production work to subcontractors. Two thirds of the productions answering the questionnaire were re-entrusted with production of animation work from other productions.

### 2. Trading Problems and Issues

- Over 40% of productions answered that they had experienced being forced by ordering company to accept low production costs without sufficient consultation.
- There is a large difference of recognition between ordering company and entrusted contractor production in whether they had sufficient consultations on trade conditions.

=> The ordering company should make further efforts for sufficient consultation on trade conditions before ordering to improve them.

- Less than 20% of productions answered that they had always received orders in writing when re-entrusted from other productions.
- Over 80% of productions answered that delivery of written orders would be necessary or preferable.
- Compared with productions that had always received delivery of written orders, more of those without such documents answered that they had experienced disadvantages such as order cancellation, change of order, reworking and payment reduction.

=> The majority of productions desire written orders. In addition, it is important to ensure delivery of written orders to prevent actions that unfairly disadvantage entrusted productions.

- Unless the production invests in the production committee, the copyright does not in most cases belong to the production. Even in the conventional system where the TV station places the order to the production, 50% of the copyright of their works is solely held by the TV station.
- Principal contractor productions prominently expressed dissatisfaction about the copyright situation as described above and distribution of profits obtained from secondary use.

=> At present, it is not always clear in specific cases who owns the copyright under the Copyright Act. It is indispensable for the ordering company to sufficiently discuss with the entrusted productions (1) who own copyright and (2) consideration for any transfer of copyright.

Note that the system of intellectual properties including the copyright is expected to promote creation of intellectual properties and competition of use. Concerning the establishment of copyright and who own the copyright, it is important to see whether the animation creators' creativity for animation work is stimulated, whether the incentive to new high-quality animation works is provided and whether the work will be positively used secondary.

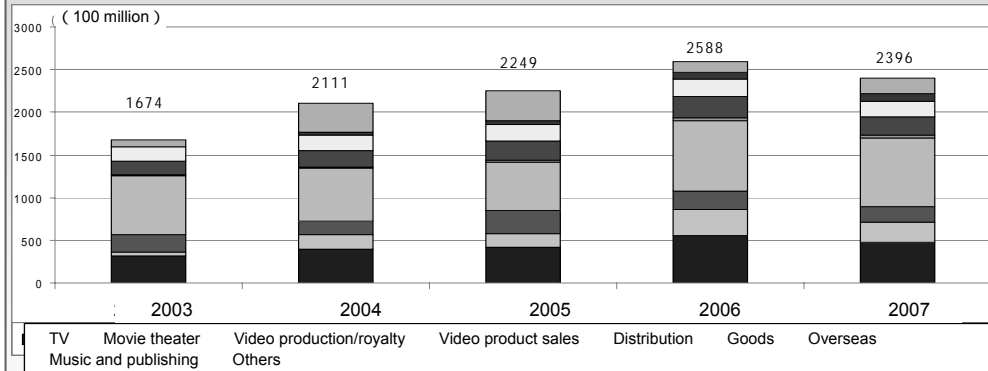
3. The Japan Fair Trade Commission will, based on the results of this survey, request the industries concerned to check for any problem under the Antimonopoly Act or the Subcontract Act and to always have sufficient discussion on trade conditions and delivery of written documents when placing an order. The JFTC will continuously pay attention to the actual trade situation and, if the JFTC finds any specific fact suspected to be in violation of the Antimonopoly Act or the Subcontract Act, it will investigate and take strict action against any fact in violation of laws or regulations.

# Overview of Survey Results (1)

## - Overview of Animation Industry and Animation Production Entrusting Contracts -

### ○ Overview of Animation Industry

- > Animation industry market in Japan: ¥239,6billion in 2007.
- > Diversified media Video product sales and video production royalty represent 40% of total sales.



Source: "Survey of Association Member Sales in 2007" (May 2008) by The Association of Japanese Animations

- > Most animation productions are of medium/small scales.
- > Principal contractor re-entrusts production of works to subcontractors. Two thirds of productions which answered the questionnaire are re-entrusted with animation production from other productions.

### Capitals and Employees of Answering Productions

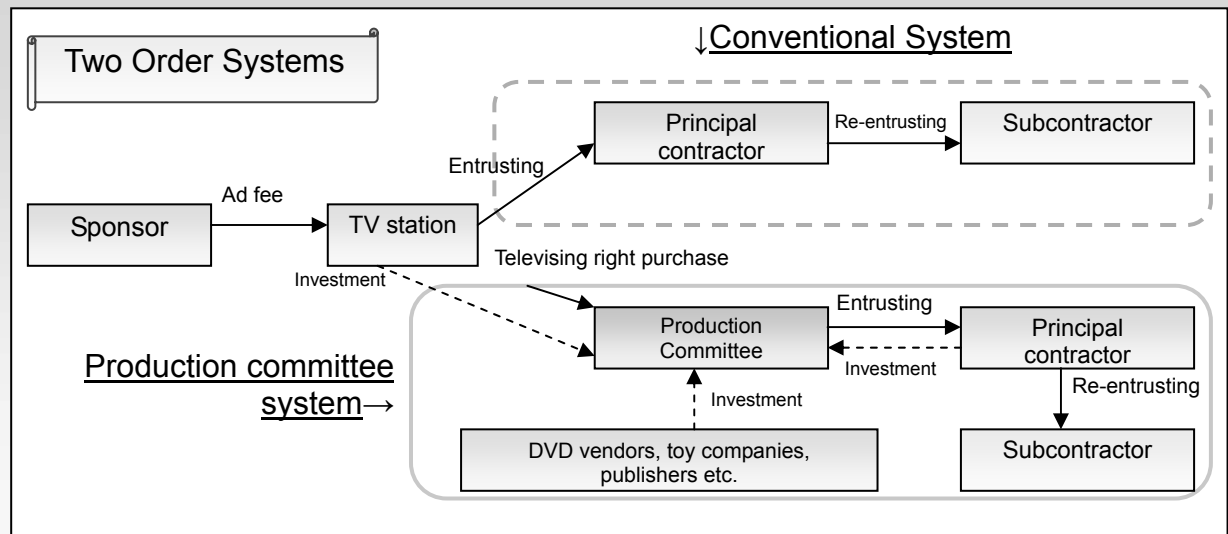
Capital	Answers
Capital: ¥10,000,000 or less	71 (62.8%)
Capital: ¥10,000,000 (excl.) to ¥50,000,000	20 (17.7%)
Capital: Over ¥50,000,000	22 (19.5%)

Employees	Answers
10 or less employees	34 (30.1%)
10 (excl.) to 100 employees	72 (63.7%)
Over 100 employees	7 (6.2%)

### ○ Overview of Animation Production Entrusting Contracts

> Animation production is ordered by: (1) TV station directly to principal contractor (Conventional system) or (2) Production committee organized by those concerned to principal contractor (Committee system). Committee system (2) predominates at present.

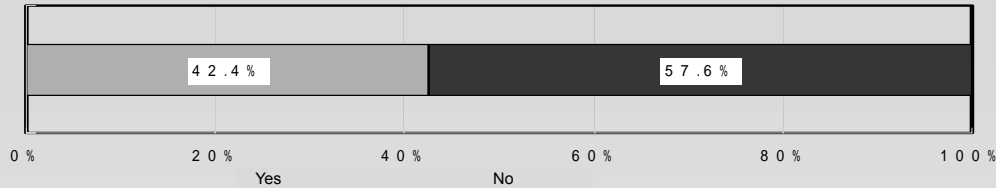
> TV station is often at a dominant bargaining position over principal contractor and principal contractor is often at such position over subcontractor productions respectively.



## Overview of Survey Results (2) - Consultation about Trade Conditions -

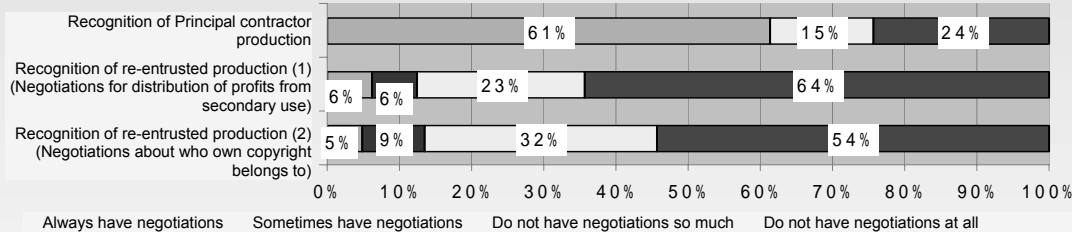
### ○ Consultation about Trade Conditions

- ✓ Over 40% of entrusted productions answered that they had experienced forcing of remarkably low production costs without sufficient consultation.

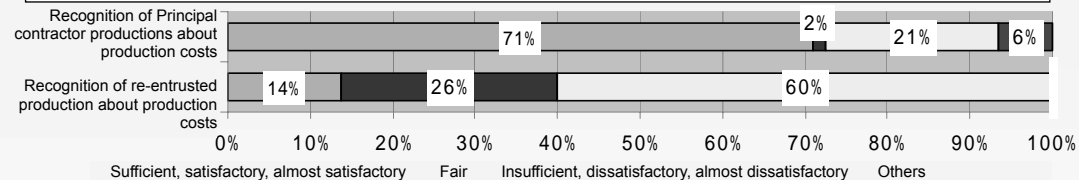


- ✓ There is a large difference in recognition between ordering companies and entrusted productions about sufficiency of negotiations on trade conditions.

Comparison of Recognition between Principal contractor productions and Re-entrusted Productions about Consultation on Trade Conditions



Comparison of Recognition between Principal contractor productions and Re-entrusted Productions about Production Costs



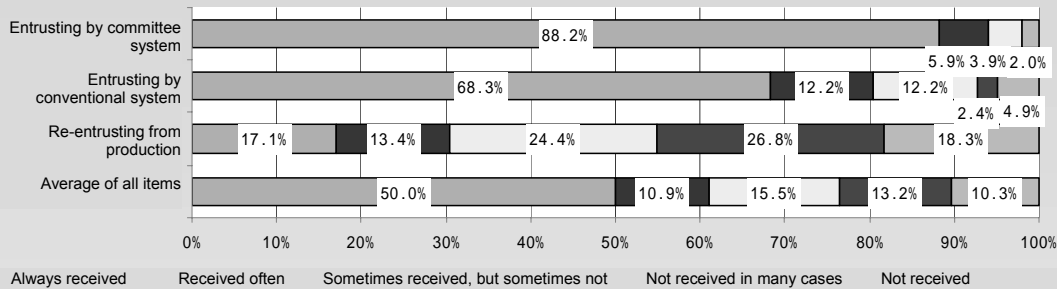
> Whether low production costs are considered to be abuse of dominant bargaining position or other problems under the Subcontract Act shall be determined in a comprehensive manner with focusing on the method deciding consideration (whether sufficient consultation was conducted with the entrusted productions etc.). Therefore, at decision of the production costs when ordering animation production, it is important for the ordering company to sufficiently consider the situations of the entrusted production and have sufficient consultation.

> Ordering company's sufficient consultation with the entrusted production contributes to improvement of trade conditions. However, there is a large difference between the ordering company and the entrusted production in recognition about whether sufficient consultation was conducted. The ordering company should further make efforts to have sufficient consultation when negotiating the trade conditions with the entrusted production.

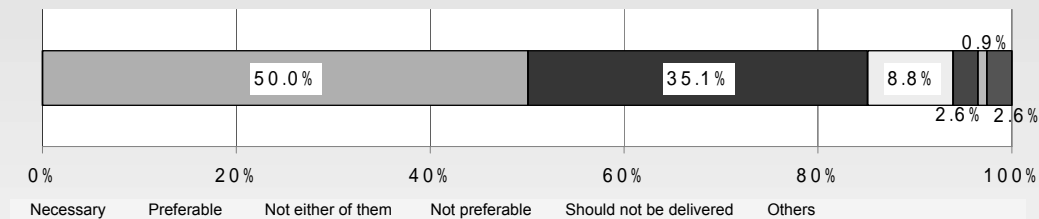
## Overview of Survey Results (3) - Delivery of Written Orders -

### o Delivery of written orders

- ✓ In particular, written orders are not delivered for many re-entrusting contracts among productions (17.1% answered "We always receive documents").



Majority of productions answered that delivery of written orders was necessary.



- ✓ Compared with productions which answered that they always received written orders, other productions experienced order cancellation, change of order, reworking, reduction of payment or other unfavorable actions in more cases. This difference is statistically significant.

> It is quite important to deliver written orders in advance in order to prevent unjust disadvantage for the entrusted production by vague agreement conditions or forcing unjustly disadvantageous conditions afterwards without deciding trade conditions at the time of ordering.

> For trades to which the Subcontract Act is applied, in particular, the ordering company is obliged to deliver a written order at the time of ordering. Even if it is impossible to describe all necessary contents in the written order in advance due to the characteristics of animation production entrusting, the matters which can be described in the initial document shall be securely described and a written order or the like including supplementary document needs to be delivered to the subcontractor by the date of delivery at the latest.

## Overview of Survey Results (4) – Dealings after Order Placing -

### ○ Order cancellation, change of order, reworking and reduction of payment

- ✓ After ordering animation production, the ordering party in some cases cancels the order, changes the order or demands reworking or reduces the predetermined payment without compensating for the costs incurred by that time or additional costs though there is no reason attributable to the entrusted production.

Answers describing experience of order cancellation, change or order, reworking or payment reduction without compensation for the costs though there is no reason attributable to the subcontractor or with these costs fully borne by the subcontractor though the ordering party partly has the responsibility (multiple answer )

	Cancellation	Order Change	Reworking	Reduced payment
Entrusting by production committee system	6	12	15	4
Entrusting by conventional system	5	13	8	2
Re-entrusting from production	11	21	24	10
Total	22	46	47	16

- ✓ For change of order and reworking, prominent reasons were intention of the original author or director and circumstances at the TV station. Reduced payment was mainly because of budget or financial situations of the production committee or principal contractor productions.

> If an ordering company cancels orders, changes an order, demands reworking or reduces the predetermined price with causing unjust disadvantage for the entrusted production though there is no reason attributable to the entrusted production, abuse of dominant bargaining position or other problems under the Subcontract Act easily occur. In case where order contents are inevitably changed or added due to intention of the original author or director, or circumstances at the TV station, disadvantage is easily caused at the entrusted production if the ordering company does not bear the costs incurred by that time or additional costs.

> For dealings to which the Subcontract Act is applied, in particular, it is necessary to note that any reduction of payment is a violation regardless of reason, method or amount of reduction or whether the entrusted production agrees or not unless there is any reason attributable to the subcontractor.

## Overview of Survey Results (5) - Copyright Vesting and Secondary Use -

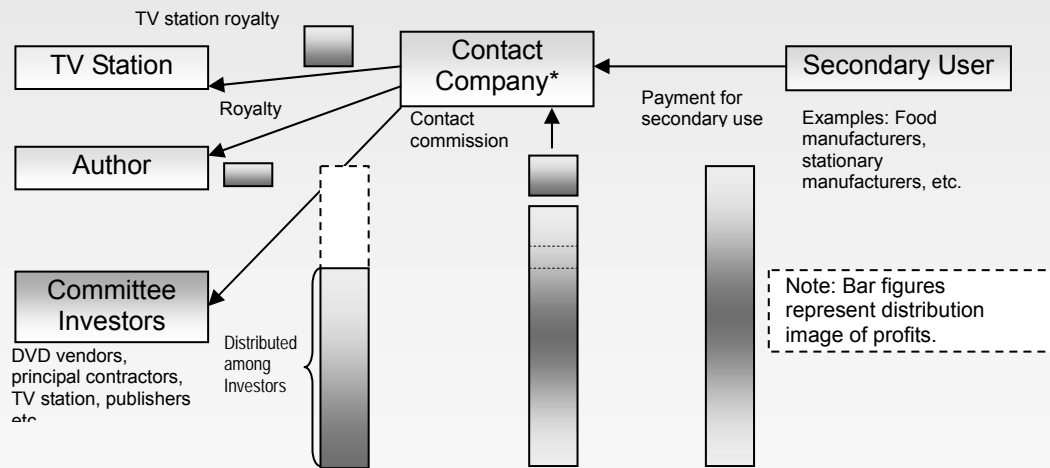
### o **Copyright Vesting**

- ✓ Conventional system: 50% are owned solely by TV station and 25% are shared.
- ✓ Committee system: Copyright does not belong to principal contractors unless they make investment.
- ✓ 30 to 40% of principal contractors are dissatisfied with such situations.

### o **Distribution of secondary use profits**

- ✓ Conventional system: Over 50% of principal contractors cannot obtain profits.
- ✓ Committee system: About 40% of principal contractors can obtain profits regardless whether they make investment. 30% of principal contractors are dissatisfied with such situations.
- ✓ It was pointed out that TV station demands to be the main contact company without consultation, that the contact commission and “TV station royalty” are expensive, and that promotion of secondary use are not active.

#### Distribution of Profits from Secondary Use (Major Examples)



Contact company means an entrepreneur which, representing or on behalf of the copyright holder, licenses secondary use and receives royalty. Usually, an investor of the production committee or TV station serves as the contact company.

> The ordering company and the entrusted production shall have discussion to sufficiently examine which party has the “Initiative and responsibility” and the rights under the Copyright Act. Based on such discussion, it is indispensable to sufficiently have further discussion about who own the copyright and consideration for any transfer of rights. It is important at the discussion to see whether the animation creators’ creativity for animation work is stimulated, whether the incentive to new high-quality animation works is provided and whether the works will be secondarily used.

> If an ordering company at the dominant bargaining position unjustly uses its position to become the main contact company for contact, it would possibly be abuse of superior bargaining position. It is necessary to clarify in advance the main contact company

> If an ordering company at superior bargaining position demands for contact commission or ‘TV station royalty’ without consultation, it easily causes unjust disadvantage for the entrusted production and abuse of dominant bargaining position