Report on Fact-Finding Survey on Transactions for the Production of TV Programs (Overview)

July 29, 2015
Japan Fair Trade Commission

CHAPTER I: SURVEY PURPOSE AND METHOD

1. Survey Purpose

The Japan Fair Trade Commission ("JFTC") has implemented strict and effective law enforcement against practices that may cause unfair disadvantages to business operators and worked on to prevent violations based on the Regulations of the Abuse of Superior Bargaining Position under the Antimonopoly Act ("Regulations") and the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors ("Subcontract Act").[1] As part of the efforts to prevent violations of these acts, the JFTC has surveyed areas of trade where cases are observed that could be seen as being in conflict with the Regulations or the Subcontract Act, so as to identify how trade practices are actually implemented in these areas.

TV program production companies are said to have been facing a harsh trading environment in recent years, as implied by a reduction in production budgets as a result of the decreased advertising revenues of TV stations due to the global financial crisis, the growth of internet advertising and other factors.

Based on these circumstances, the JFTC decided to conduct a survey on TV program production transactions ("Survey") to identify whether or not there are practices that could be seen as being in conflict with the Regulations or the Subcontract Act.

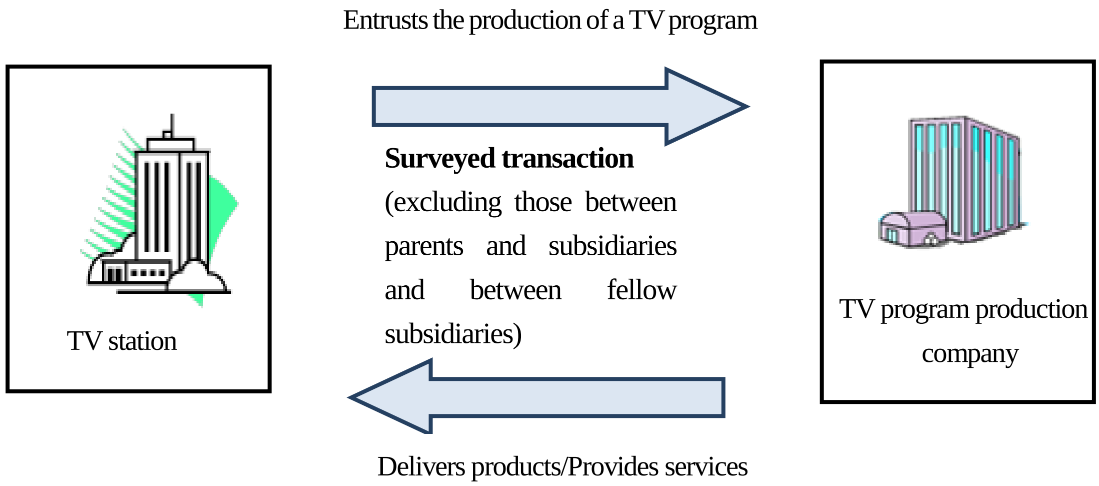
2. Survey Method

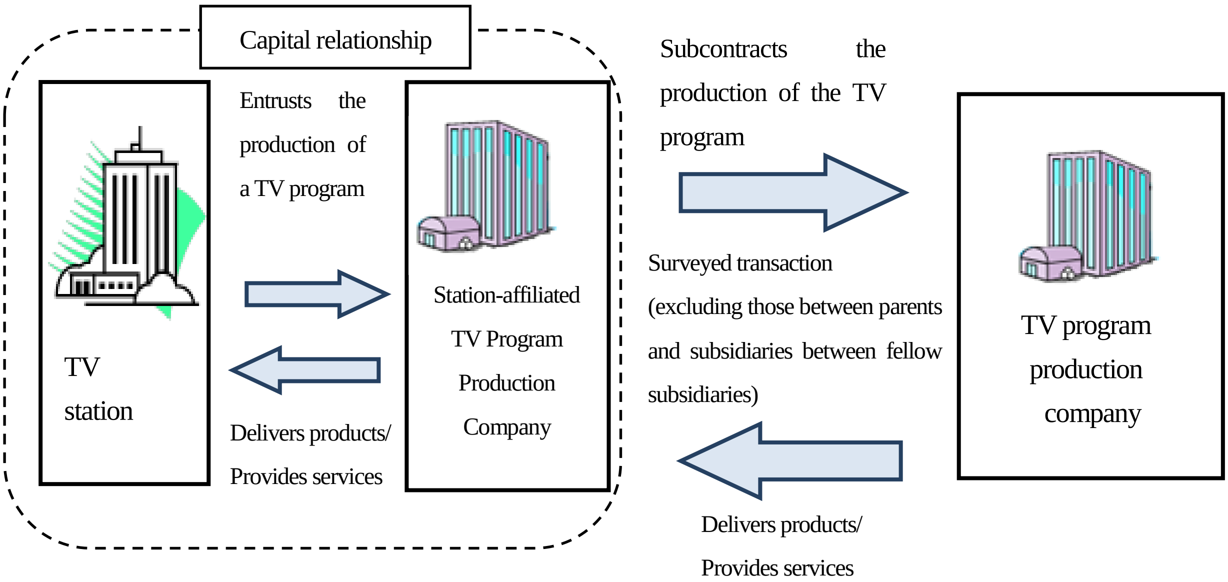
(1) Written survey

The Survey covered transactions related to the production of TV programs between TV stations and TV program production companies (excluding the subsidiaries or fellow subsidiaries of TV stations).

The Survey also covered transactions involving three parties, i.e. TV stations, TV program production companies that have capital relationships with TV stations (including those under the control of the same shareholder as TV stations, e.g. those belonging to the same enterprise group as TV stations; hereinafter, "Station-affiliated TV Program Production Companies") and other TV program production companies, in which transactions, a Station-affiliated TV Program Production Company subcontracts the production of a TV program entrusted by the related TV station to a TV program production company (excluding those that are the subsidiaries or fellow subsidiaries of that Station-affiliated TV Program Production Company) (see the figure below).

[1] The JFTC has provided business operators engaged in broadcast program production with seminars on the Subcontract Act since FY2013.





In the written survey, a questionnaire was sent to 500 TV stations and 76 Station-affiliated TV Program Production Companies (hereinafter collectively, "TV Stations, etc."), as well as to 800 TV program production companies (excluding the subsidiaries or fellow subsidiaries of TV stations or Station-affiliated TV Program Production Companies. The same applies hereinafter).

The number of questionnaires sent and the number of respondents are shown below:

Type of business surveyed	No. of questionnaires sent (A)	No. of respondents (B)(B/A)
TV stations	500	379 (75.8%)
Station-affiliated TV Program Production Companies	76	54 (71.1%)
TV program production companies	800	280 (35.0%)

Among the respondents to the written survey, 254 TV stations, 29 Station-affiliated TV Program Production Companies and 109 TV program production companies replied that they were involved in transactions for the production of TV programs. The results of the Survey were compiled based on the responses from these TV stations and Station-affiliated TV Program Production Companies (totaling

283) regarding all transactions with their counterparty TV program production companies, as well as the responses from these TV program production companies (totaling 109) regarding their transactions for the production of TV programs with TV Stations, etc. with higher annual transaction volumes (i.e. top five counterparties, excluding their parent or fellow subsidiary companies; hereinafter, "Major Client TV Stations, etc.").

(2) Hearing Survey

Among the respondents to the written survey, a hearing survey was conducted with 2 TV stations, 28 TV program production companies and three relevant trade associations.

3. Survey Coverage Period, etc

(1) Date questionnaires sent: February 16, 2015

(2) Response deadline: March 16, 2015

(3) Coverage period: January 1, 2014 to December 31, 2014

CHAPTER II: OVERVIEW OF THE INDUSTRY

1. Operations Related to the Production of TV Programs

Major operations related to TV program production are as follows:

(1) Performance/Management of program production

Operations to organize the staff for program production and perform/manage program production under the leadership of the producer, who is responsible for planning programs and managing production costs, and the director, who is responsible for directing programs

(2) Operations related to art direction

Operations related to large and small props, costumes, etc. necessary for program production

(3) Operations related to engineering

Operations to provide equipment and places necessary for program production, including cameras, audio equipment, lighting, VTRs, studios and outdoor broadcasting vans and operation of such equipment

(4) Post production operation

Operations to rent equipment and places on an hourly basis for video and audio recording and editing, together with specialist staff who operate the equipment

Transactions for the operations related to art direction, the operations related to engineering or the post production operations only were excluded from the scope of the Survey.

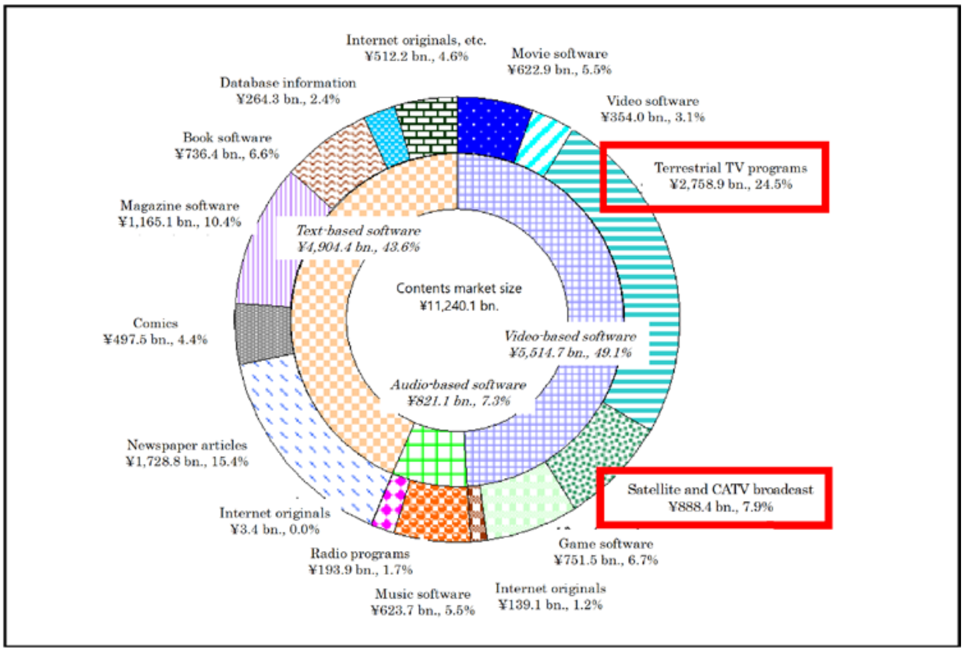
2. Market Size

According to the "Report on Survey Research Concerning the Actual Status of Production and Distribution of Media Software" (September 2014) by the Institute for Information and Communications Policy of the Ministry of Internal Affairs and Communications, the size of the Japanese contents market in 2012 was 11,240.1 billion yen, which consisted of 2,758.9 billion yen for terrestrial TV programs[2] and

[2] The amount represents the total of the primary distribution market size (which is the total of the revenues from the broadcasting business and from viewer fees obtained by terrestrial TV stations) and the multi-use market size (which was calculated by first estimating the ratios in which terrestrial TV programs were subject to secondary use for satellite broadcast, CATV and VTRs and then multiplying the business income of satellite TV stations and CATV stations by the ratios thus estimated).

888.4 billion yen for satellite and CATV programs.[3] Also according to the same report, the total production cost for terrestrial TV programs was 1,734.8 billion yen, for satellite TV programs it was 142.5 billion yen and for CATV programs it was 16.8 billion yen in 2012.

Size of the Japanese Contents Market in 2012



3. Overview of Enterprises Broadcasting TV Programs and Enterprises Producing TV Programs

(1) Enterprises broadcasting TV programs

Enterprises broadcasting TV programs include the Japan Broadcasting Corporation and terrestrial commercial broadcasters, who broadcast programs by terrestrial waves (hereinafter collectively, "Terrestrial Broadcasters"), satellite broadcasters, who broadcast programs via a satellite, and wire television broadcasters, who broadcast programs via cables (hereinafter collectively, "Cable TV Broadcasters"). The numbers of commercial broadcasters are shown below.

Transition in the Number of Commercial Broadcasters[4] (Units: persons)

		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Terrestrial commercial broadcasters		127	127	127	127	127
Satellite broadcasters		113	113	108	92	72
Cable TV Broadcasters	Engaged in independent broadcasting and rebroadcasting	540	526	556	545	539
	Engaged in rebroadcasting only	536	565	386	256	253

3 The amount represents the total of the primary distribution market size for satellite TV programs, the multi-use market size, and the primary distribution market size for CATV TV programs.

4 Source: The number of terrestrial commercial broadcasters and satellite broadcasters is based on the 2014 White Paper on Telecommunications (Ministry of Internal Affairs and Communications), and the number of Cable TV Broadcasters is based on the Current Status of Cable TV (FY2000 to FY2013) (Bureau of Statistics, Ministry of Internal Affairs and Communications).

a. Japan Broadcasting Corporation

The Japan Broadcasting Corporation (hereinafter collectively, NIPOON HOSO KYOKAI, "NHK") is a government affiliated corporation founded in accordance with the provisions of the Broadcast Act. NHK is engaged in public broadcasting. According to the Broadcast Act, the purpose of NHK is "to transmit domestic basic broadcasting through good, rich broadcast programs, which may be received far and wide throughout Japan, for the purpose of public welfare." (Article 15 of the Act) and so on.

b. Terrestrial commercial broadcasters

The five TV stations in Tokyo, which are called "key stations" (i.e. Nippon Television Network Corporation, Tokyo Broadcasting System Television, Inc., Fuji Television Network, Inc., TV Asahi Corporation and TV TOKYO Corporation) each has established a broadcast network (which is simply called "Network"), and most local TV stations in Japan belong to one of these Networks.[5] The programs produced/purchased and broadcast by the key stations, etc. are often provided to and broadcast by local stations through these Networks. The business of local TV stations is thus largely dependent on the TV programs provided by the Networks.

c. Satellite broadcasters

There are two types of Satellite Broadcaster: those engaged in BS broadcast via a broadcast satellite and those engaged in CS broadcast via a communications satellite. Each Satellite Broadcaster broadcasts TV programs by relaying the signals of the TV programs via a broadcast or communications satellite and transmitting them to individual households.

Some Satellite Broadcasters are member companies of the group formed by a key station (which is a Terrestrial Commercial Broadcaster) and are engaged in free-of-charge broadcasting. Others are broadcasters engaged in broadcasting pay TV programs through specialized TV channels, such as SKY Perfect Broadcasting Corporation, and so on.

d. Cable TV Broadcasters

Cable TV Broadcasters broadcast TV programs by distributing the programs to individual households through optical fiber or coaxial cables.

While a few Cable TV Broadcasters, e.g. Jupiter Telecommunications Co., Ltd. (J: COM), are active in business areas throughout Japan, most of them do business in specific areas only. There are also local public organizations and third-sector companies funded by local public organizations.

e. Others

In addition to the broadcasters described in a. through d., there exist enterprises engaged in new forms of broadcasting, such as broadcasting for smartphones and for the Internet.[6]

(2) Enterprises producing TV programs

Enterprises producing TV programs consist of TV stations, Station-affiliated TV Program Production Companies and TV program production companies.

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5 Source: Japan Commercial Broadcasting Almanac 2014 (November 2014) [The Japan Commercial Broadcasters Association]
As of the end of March 2014, the numbers of enterprises affiliated with different Networks were 30 for the Nippon Television Network, 28 for the TBS Network, 28 for the Fuji TV Network, 26 for the TV Asahi Network and 6 for the TV TOKYO Network.
The number of TV stations not belonging to any network (independent stations) was 13.

6 Broadcasting for the Internet is not included in the scope of broadcasting under the Broadcast Act.

There are three types of TV program production companies. The first type of TV program production company produces their own TV programs. The second type of TV program production company does not own machines or editing equipment, but retains producers, directors and staff and carries out and manages the production of programs only. The third type of company dispatches its employees to TV Stations, etc. and has them perform operations related to TV program production under the control and command of the TV Stations, etc.

4. Major Forms of Transactions between TV Stations, etc. and TV Program Production Companies

Major forms of transactions between TV Stations, etc. and TV program production companies are described below.

The transaction forms may be called different names in different enterprises.

(1) *Kan-pake* (abbreviation of “complete (*kanzen*) package”)

In this form of transaction, a TV program production company is entrusted with the production of the whole of a TV program by a TV Station, etc. and delivers the TV program ready for broadcasting to the TV Station, etc.

For example, a transaction in which a TV program production company is entrusted with the production of a two-hour-long drama by a TV Station and delivers the drama ready for broadcasting is called “*kan-pake*.”

(2) Partial *kan-pake*

In this form of transaction, a TV program production company is entrusted with the production of part of a TV program by a TV Station, etc. and delivers a section of the TV program ready for broadcasting to the TV Station, etc.

For example, a transaction in which a TV program production company is entrusted with the production of a five-minute section covering gourmet information for a one-hour-long information program by a TV Station and delivers that section ready for broadcasting is called “partial *kan-pake*.”

(3) Production collaboration

In this form of transaction, a TV program production company is entrusted by a TV Station, etc. with direction or other operations associated with a TV program to be produced by the TV Station, etc., and performs those operations.

For example, a transaction in which a TV program production company is entrusted by a TV Station with directing a one-hour variety program to be produced by the TV station and performs that operation is called “production collaboration.”

(4) Staffing

In this form of transaction, a TV program production company dispatches personnel to a TV Station, etc., and has them perform operations under the control and command of the TV Station, etc.

For example, a transaction in which a TV program production company dispatches personnel to a TV Station, and has them operate as assistant directors under the control and command of the TV Station is called “staffing.”

5. Basic Concept of the Ownership of Copyrights to TV Programs

TV programs are basically protected as “cinematographic works”[7] under the Copyright Act. In the Act, the author of a cinematographic work is defined as “a person who, by taking charge of producing, directing, filming, art direction, etc., has creatively contributed to the creation of such cinematographic work as a whole.”[8] In addition, regarding the copyright to a cinematographic work, the Act stipulates as follows: “The copyright to a cinematographic work shall belong to the maker of said cinematographic work, provided that the authors of the cinematographic work have undertaken to participate in the making of the same.”[9]

While the author of the novel, script, music, etc. that was used as the original for producing a cinematographic work is not considered as the author of the cinematographic work itself, the copyright of his/her original work is protected under the Copyright Act.

The “maker of a cinematographic work” is defined as “the person who takes the initiative in, and responsibility for, the making of a cinematographic work.”[10] This concept may sometimes conflict with the decision on who—the TV Station, etc. or the TV program production company—should be considered as the maker of the cinematographic work. While this question is to be judged on a case-by-case basis by taking the actual situation in each case into account, it is generally considered as follows; that is, the TV program production company is the person who has taken the initiative in, and responsibility for, the making of the TV program and thus has the ownership thereof, of the whole of the TV program in the case of a “*kan-pake*” transaction, and of the relevant part of the TV program in the case of “partial *kan-pake.*”[11] In the case of transactions involving production collaboration, a TV program production company may be granted ownership depending on the degree of contribution to the TV program production.

6. Secondary Use of TV Programs and Window Operation

TV programs may be subject to reuse (secondary use) for other than initial broadcast. Forms of reuse of TV programs vary widely, including “use for rebroadcasting,” “making into video form (including DVDs, Blu-ray discs and CD-ROMs),” “use of contents, such as the materials and format of the program,” “distribution via the Internet,” “sale of programs to other TV stations” and “sale of programs to overseas enterprises.”

The operations performed when a TV program is subject to secondary use are collectively referred to as “window operations,” and include serving as a window for negotiation and execution of a contract with the counterparty to the transaction and allocating revenues among the relevant copyright holders. In general, enterprises that have served as a window first collect fees for acting as a window and then allocate revenues among the relevant copyright holders.

When a TV program is subject to secondary use, it is necessary to obtain permission for the secondary use from not only the holders of the copyrights in the TV program itself, but also the holders of the copyrights in the original novel, script, or music of the TV program.

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7 Article 2, Paragraph 3 of the Copyright Act

8 Article 16 of the Copyright Act

9 Article 29 of the Copyright Act

10 Article 2 (1) (x) of the Copyright Act

11 The Guidelines on Improvement of Transactions for Production of Broadcast Contents [3rd Edition] (March 2014 [Ministry of Internal Affairs and Communications]) stipulate that a “program whose production is entrusted completely” means a TV program that has been made by a production company under its own initiative who takes responsibility for making it, and for which the planning, shooting, recording, production and editing have been wholly undertaken by the production company, and that has been delivered to the broadcaster as a TV program meeting all the technical requirements and ready for broadcasting. The Guidelines also stipulate that TV programs called “*kan-pake*” or “complete package programs” among commercial broadcasters generally fall in the category of “programs whose production is entrusted completely.” According to the Guidelines, the ownership of a TV program produced in this form should, in principle, be granted to the production company to whom these operations were entrusted.”

CHAPTER III: SUMMARY AND EVALUATION OF SURVEY RESULTS

1. Overview of TV Stations, etc. and TV Program Production Companies

(1) Amount of capital

While most of the TV Stations, etc. are enterprises capitalized at over 50 million yen (87.9%), most of the TV program production companies are capitalized at 50 million yen or less (91.7%). Many of the TV Stations, etc. and the TV program production companies that responded to the Survey are enterprises that can be subject to the Subcontract Act.

(2) Annual sales

The annual sales of most of the TV Stations, etc. are over 1 billion yen (83.6%), while annual sales of the TV program production companies are 500 million yen or less (72.2%).

(3) Number of client TV Stations, etc. of TV program production companies

TV program production companies with three client TV Stations, etc. or less represent 42.1% of the total, and those with one client TV Station, etc. represent 15.9% of the total.

(4) Degree of dependence on transactions

TV program production companies whose degree of dependence on their top client TV Station, etc. in terms of annual trade volume is over 30% represent 45.4% of the total. For 27.8% TV program production companies, their top client TV Station, etc. accounts for over 50% of their annual trade volume.

As described above, TV program production companies are smaller in size than TV Stations, etc. and tend to depend on trade with specific client TV Stations, etc.

2. Transactions between TV Stations, etc. and TV Program Production Companies

(1) Form of transactions

Major forms of transactions between TV program production companies and their Major Client TV Stations, etc. are “kan-pake” (71.7%), “production collaboration” (16.5%), “staffing” (7.7%) and “partial kan-pake” (4.2%).

(2) Ratios by different genres of TV programs

Looking at the ratios by different genres of TV programs subject to transactions between TV program production companies and their Major Client TV Stations, etc., “news, reports and information” represent the highest of all genres (47.2%), followed by “variety” (24.3%).

(3) Terms of transactions

Most TV Stations, etc. (over 95%) replied that when they entrust the production of a TV program, they prescribe the major trading terms, such as the content of the order, the amount of payment and the payment due date.

While many TV Stations, etc. (71.9%) prescribed in advance the “scope of copyright assignment and clearance,” the ratios of TV Stations, etc. who prescribed other trade terms in advance are lower than this ratio, with 33.5% for “fee for the transfer of copyright,” 28.8% for “matters related to window operations for secondary use” and 20.3% for “matters related to allocation of revenues from secondary use.”

(4) Payment system

Most TV Stations, etc. (95.4%) have determined their payment systems, typically in which the calculation closing date is at the end of each month and the payment date is at the end of the following month (i.e. the period from the closing date to the payment date is one month or less).

For the calculation of closing standards related to the payment of prices, many TV Stations, etc. have specified the “date of delivery” for *kan-pake*, partial *kan-pake* and production collaboration (68.2%) and the “date of dispatch” for staffing (88.9%). However, a certain percentage of TV Stations, etc. have specified the “date of broadcast” (27.9% for *kan-pake*, partial *kan-pake* and production collaboration and 11.1% for staffing).

(5) Delivery of written documents

While many TV Stations, etc. deliver written documents including terms of transactions, etc. (84.1%), a certain percentage of TV Stations, etc. replied that they “do not deliver” or “did not deliver in some cases” (15.9%).

(6) TV program production companies subjected to practices that could be seen as being in conflict with the Regulations

All the TV program production companies that were forced to accept unfair disadvantages, such as “transactions causing difficulties in securing profitability (beating down of prices)” and “free-of-charge transfer, etc. of copyright,” replied that they did so “out of concern over the possible effect that a refusal could have on future transactions” or “due to suggestion by the TV Station, etc. that a refusal could have an effect on future transactions.” Such practices on the part of TV Stations, etc., which would result in forcing TV program production companies to comply with requests for unfair penalties out of concern over the possible effect on the continuation of transactions with TV Stations, etc., could be seen as being in conflict with the Regulations.

Table 1 shows TV program production companies subjected to practices that could be seen as being in conflict with the Regulations. Forty-three TV program production companies (39.4%) replied that they were subjected to at least one practice that could be seen as being in conflict with the Regulations.

Looking at the survey results by type of practice, the most number, 22 (or 20.2%), of TV program production companies mentioned “transactions causing difficulties in securing profitability (beating down of prices),” followed by 14 (or 12.8%) TV program production companies that mentioned “free-of-charge transfer, etc. of copyright.”

Table 1. TV program production companies subjected to practices that may be seen as being in conflict with the Regulations

Type of practice	No. of TV program production companies subjected to practices that could be seen as being in conflict with the Regulations	Ratio to the total No. of TV program production companies
Transaction causing difficulties in securing profitability (beating down of prices)	22	20.2% (22/109)
Redoing	13	11.9% (13/109)
Changes to the content of order	7	6.4% (7/109)
Works, etc. not included in the order	9	8.3% (9/109)
Cancellation of part of the order	1	0.9% (1/109)
Request for purchase/use of a product/service	8	7.3% (8/109)
Request for provision of money	1	0.9% (1/109)
Request for provision of services	1	0.9% (1/109)
Delay in payment	5	4.6% (5/109)
Reduction in prices	8	7.3% (8/109)
Free-of-charge transfer, etc. of copyright	14	12.8% (14/109)
Failure to allocate proceeds from secondary use, etc.	11	10.1% (11/109)
Total[12]	43	39.4% (43/109)

(7) TV Stations, etc. who committed practices that could be seen as being in conflict with the Regulations

In contrast to the 43 TV program production companies in (6) above, the number of client TV Stations, etc. who committed practices that could be seen as being in conflict with the Regulations is 97, and their business categories are shown in Table 2. The business category "terrestrial broadcasters" contains the highest number (86) of client TV Stations, etc. who committed practices that could be seen as being in conflict with the Regulations.

[12] Since some TV program production companies were subjected to more than one type of practice that could be seen as being in conflict with the Regulations, the numbers of TV program production companies by different types of practices totaled 100. However, the number of TV program production companies obtained after excluding duplicates totals 43.

Table 2. TV Stations, etc. who committed practices that could be seen as being in conflict with the Regulations

Business categories of TV Stations, etc.	Total numbers of client TV Stations, etc. who committed practices that could be seen as being in conflict with the Regulations
Terrestrial broadcasters	86
Satellite broadcasters	9
Cable TV Broadcasters	2
Total	97

(8) Correlation with capital, etc. of TV program production companies

a. Correlation with capital

Table 3 shows the capital of the 43 TV program production companies in (6) above. As shown in this table, TV program production companies with smaller capitalization tend to be more likely to be subjected to practices that could be seen as being in conflict with the Regulations.

Table 3. Correlation with capital

Capital of TV program production companies	Up to 10 million yen	From 10 million yen up to 50 million yen	Over 50 million yen	Total
No. of TV program production companies subjected to practices that could be seen as being in conflict with the Regulations	27	13	3	43
Total number of TV program production companies	65	35	9	109
Ratio	41.5%	37.1%	33.3%	39.4%
	27/65	13/35	3/9	43/109

b. Correlation with degree of dependence on transactions

The 43 TV program production companies in (6) above have been subjected to practices that could be seen as being in conflict with the Regulations in transactions with a total of 97 client TV Stations, etc. For 94 out of the 97 client TV Stations, etc., the degrees of dependence of TV program production companies on transactions have been identified. Table 4 shows the degrees of dependence on transactions for these 94 TV Stations, etc. As shown in the table, TV program production companies with higher degrees of dependence tend to be more likely to be subjected to practices that could be seen as being in conflict with the Regulations.

Table 4. Correlation with the degree of dependence on transactions

Degree of dependence on transactions	10% or less	From 10% up to 30%	From 30% up to 50%	Over 50%	Total
No. of transactions in which TV program production companies were subjected to practices that could be seen as being in conflict with the Regulations	53	22	7	12	94
No. of transactions for which the degree of dependence has been identified	187	69	20	28	304
Ratio	28.3%	31.9%	35.0%	42.9%	30.9%
	53/187	22/69	7/20	12/28	94/304

(9) Treatment of Consumption Tax

In this survey, the JFTC asked TV program production companies whether they could add an amount equal to the increase in the consumption tax rate in April 2014 to the prices of the transactions for TV program production with their Major Client TV Stations, etc. Among 105 TV program production companies that provided responses to the question, 101 (96.2%) replied that they could add all of the amount, 3 (2.9%) replied that they could add part of the amount, and 1 (1.0%) replied that it could add none of the amount.

A question concerning price negotiations with Major Client TV Stations, etc. after the increase in the consumption tax rate in April 2014 was asked to the 18 TV program production companies who remained after excluding enterprises that replied that they "consider bare prices only." The question was whether or not their requests for use of a tax-exclusive pricing system, if any, were accepted by their Major Client TV Stations, etc. Sixteen out of the 18 TV program production companies replied to this question, with three of them giving the answer "Yes" (18.8%) and 13 giving the answer "No" (81.3%).

CHAPTER 4: ACTIONS OF THE JFTC

The Survey has revealed that practices that could be seen as being in conflict with the Regulation of the Abuse of Superior Bargaining Position were conducted by TV Stations, etc. in some parts of the transactions for the production of TV programs. The JFTC should thus closely monitor the situation to prevent TV Stations, etc. from continuing practices that could be seen as being in conflict with the Regulation against TV program production companies.

Looking at the results of the Survey with the focus on the ratios of TV program production companies subjected to different types of practices that could be seen as being in conflict with the Regulation, characteristics observed are that practices related to the treatment of copyright, i.e. "free-of-charge transfer, etc. of copyright" (12.8%) and "failure to allocate proceeds from secondary use, etc." (10.1%), showed higher ratios, in addition to "transactions causing difficulties in securing profitability (beating down of prices)" and "redoing." It is considered that this comes against a background in which matters surrounding the treatment of copyright are not made clear by TV Stations, etc., as evidenced by the following results. That is, while 71.9% of the TV Stations, etc. who replied to the questions on contracts regarding the treatment of copyright prescribed the "scope of copyright assignment and clearance" in advance, the ratios are lower for “fee for the transfer of copyright” (33.5%), “matters related to window operations for secondary use” (28.8%) and “matters related to allocation of revenues from secondary use” (20.3%). In this respect, the Guidelines Concerning Abuse of Dominant Bargaining Position in Service Transactions under the Antimonopoly Act [13](hereinafter collectively, “Service Transactions Guidelines”) stipulate: “It is necessary to clarify the terms of transaction including clear indication that the contracting party presents the payment estimate containing the said proceeds for the transferring the rights or others of the contracted party. From the viewpoint of preventing violations, it is desirable to specify a fee for the transfer of rights when the entrustor presents an entrustment fee, wherever practicable.” Thus, it is necessary for TV Stations, etc. to clarify the treatment of copyright to the maximum extent possible in advance through consultation with the TV program production companies. On the other hand, it can be seen that TV program production companies are placed in a harsh trading environment, as suggested by the replies given by TV program production companies to the effect that even requesting TV Stations, etc. to enter into discussions concerning the treatment of copyright is difficult. These replies include: “We have never initiated actions on our side because we might face pressure if we ask to discuss the ownership of copyright,” and “We are not satisfied with the fact that no fee is paid for the transfer of copyright. However, due to a suggestion made by TV Stations, etc. and out of our own concerns over the possible effect on future transactions, we cannot afford not to accept the demands of the TV Stations, etc. when other companies do.” The JFTC needs to make it widely known that the practice of TV Stations, etc. in prescribing trading terms advantageous to themselves unilaterally or preventing TV program production companies from requesting discussions by suggesting that this could have a possible effect on future transactions or other similar practices could be seen as being in conflict with the Regulations.

Furthermore, such practices, if conducted between TV Stations, etc. and TV program production companies to which the Subcontract Act applies in terms of capital category, could be seen as being in conflict with not only the Regulations but also the Subcontract Act. According to the results of the Survey, approximately 80% of transactions between 43 TV program production companies that were subjected to practices that could be seen as being in conflict with the Regulations and a total of 97 client TV Stations, etc. that committed such practices could be subject to the Subcontract Act, based on their capital categories. In particular, regarding the treatment of copyright, it should be noted that, where the transfer of a copyright is not included in an order for a transaction, and if a TV Station, etc. requests a TV program production company to transfer the copyright owned by the TV program production company to the TV Station, etc. free of charge, such act could constitute the practice of causing a subcontractor to provide unfair economic gains. Similarly, where the transfer of a copyright is included in an order for a transaction, and if a TV Station, etc. unilaterally sets a significantly low fee for the transfer of the copyright, such act could constitute the practice of beating down prices. These practices could be seen as being in conflict with the Subcontract Act.

Therefore, the JFTC has decided to make public the results of the survey from the viewpoint of preventing violations and ensuring fair transactions, and take the following measures:

1 (1) Provide TV Stations, etc. with seminars to explain the results of the Survey and the contents of the Regulations and the Subcontract Act, including the concept of the treatment of copyright under the Service Transactions Guidelines; and

[13] See the Guidelines Concerning Abuse of Dominant Bargaining Position in Service Transactions under the Antimonopoly Act (March 17, 1998) 2,7 (1).

(2) Report the survey results to the trade associations of TV Stations, etc. and request the associations to take voluntary action to make transactions fair, including ensuring that the contents of the Regulations and the Subcontract Act are communicated to their members, so that TV Stations, etc. will individually take voluntary action to eliminate problems in transactions for the production of TV programs.

2. The JFTC will continue to monitor actual transactions for the production of TV programs so that it can identify practices that could be seen as being in conflict with the Regulations or the Subcontract Act. If any practices violate these laws, the JFTC will take strict law enforcement measures.