

Characters and Merchandising Rights

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Introduction

If you take a walk in any town in Japan, you will find that goods featuring popular characters from animations, games, and so on, are sold at many places, and that they are very popular with Japanese people. If you guess this is a scene found only in Akihabara, you would not be correct. You can find this kind of scene in shopping malls, convenience stores, supermarkets, and department stores all across the country. While this kind of phenomenon may no longer only occur in Japan, it is also true that Japanese people have long been fond of keeping handy miniature objects such as *netsuke* (traditional accessories used to fasten small pouches hung from the sashes of Japanese *kimono*), seasonal festival dolls, and *bonsai* plants. This aspect of Japanese culture may have possibly changed its form to later emerge as these “character goods,” as many of today’s parents in contemporary Japan were brought up watching Japanese animation TV programs that started in the 1960s. It seems that Japanese society definitely has a spiritual foundation that welcomes these types of character goods.

From our perspective as users enjoying the content of novels, movies, animations, games, and so forth, such content provides us with a world that we cannot experience on a day to day basis, thereby somehow enriching our lives. In this virtual world, we can have adventures, solve secrets, use magic, operate robots and aircraft, battle against monstrous beasts or zombies, nurture friendships, fall in love, and think about the meaning of life. As the financial economy has dramatically expanded in scale through the creation of credit by banks, this type of content-based industry similarly enhances our lives by providing us with a far broader virtual world that is separate from our daily lives. Thus, it is exactly these character goods that serve as the point of interface between this virtual world and our daily lives. With their character goods kept handy, users can feel a connection with their favorite virtual world and also show their taste to other people through character-related products.

At the same time, content-holders must plan and produce such character goods and keep their business on track. In other words, for a content-holder, the character goods market is by no means a virtual one, but is a very real means of business. For content-holders in such fields as animation and games in particular—where a large amount of money is invested in production—merchandising rights to control character goods are by no means used to earn “secondary” income. Revenues from

merchandising rights for character goods are very important in terms of recouping production costs, along with broadcast right fees for TV programs, box-office revenue from movies, and revenue generated from DVD sales and rentals.

Under the Japanese legal system, no “merchandising rights” actually exist as independently-defined rights. Instead, merchandising rights may be regarded as “virtual rights” that function based on a combination of rights under two or more acts, as appropriate, in the markets mentioned above. This document, which is based on a number of specific cases, summarizes and explains the types of statutory rights that support merchandising rights, as well as the types of goods for which merchandising rights have developed. The various modes of rights management adopted in such cases are also discussed.

Chapter 1 Rights Composing Merchandising Rights

(1) Overview

(a) No rights called “merchandising rights” in place

As may be understood from the title of this pamphlet, “Characters and Merchandising Rights,” the terms “characters rights” and “merchandising rights” are routinely used in association with the business of merchandising characters. However, there is actually no act in place in Japan that provides for merchandising rights, unlike the Copyright Act and the Patent Act, which provide for copyrights and patent rights, respectively. Even if there is no legal provision that explicitly prescribes such rights, there are a few cases where exclusive rights have been granted based on accumulated court precedents, on condition, for example, that specific business practices have been established. However, to date, there has been neither a court precedent that authorizes the existence of merchandising rights, nor any strong trend as an influential theory promoting the establishment of such rights. In addition, the same also applies to character rights. In this context, at least as of now, these terms are limited to types of “industry terms” for the sake of the content-business, as explained in detail in the following chapters, and are not necessarily substantial in terms of their legal implications.

It is said that the term “merchandising rights” was first used in Japan in an agreement concluded in the 1960s between a certain broadcasting station in Tokyo and others including toy manufacturers. This agreement concerned the characters in programs broadcast by the station. Now that almost half a century has passed since then, it is common practice as part of important corporate legal affairs for content-holders in Japan to conclude an agreement regarding, for example, merchandising characters with toy manufacturers, etc. In addition, as an example of an achievement involving many years of company efforts to combat counterfeit goods, the general public—when seeing goods using a certain character—often now wish to ensure that these goods are actually the ones licensed by the content-holder. However, as stated above, merchandising rights are yet to be legally provided for, and the existence of such rights has not been authorized in court precedents. This is based on the difficulty of determining specific details of the rights, because the scope of merchandising is diverse, and the legal characteristics are therefore varied.

(b) Power to attract customers (customer-attraction power)

Typical objects of merchandising rights are characters from comics and animations. Companies use characters from popular comics and animations on their goods, whose sales are expected to increase due to high demand for such characters on the part of fans.

My three-year-old son adores *Anpanman*, the leading character in a famous animation work in Japan. The living room of my house is full of *Anpanman* toys, which my son coaxes his parents and his grandparents to buy for him, and which we end up doing not only because of his begging, but also for the pure joy of seeing his smiling face! Even though toys featuring *Anpanman* normally do not differ from similar toys without the character in terms of basic functions, whether or not a picture of *Anpanman* is visible on the goods leads to a significant difference in demand. We refer to this sort of phenomenon as “the customer-attraction power of *Anpanman*.”

It is this customer-attraction power that is the real essence of the objects of merchandising rights.

According to one general dictionary, the term “merchandising” means “toys, clothes, and other products relating to a popular movie, sports team, singers, etc.”. More precisely, however, “merchandising” in the context of merchandising rights refers to “applications of an object possessing customer-attraction power to goods, etc.”. Objects with customer-attraction power typically consist of the leading characters in comics or animations that are expressed using a two-dimensional drawing, such as the aforementioned *Anpanman*, or *Miffy* by Dick Bruna. Other characters having a strong customer-attraction power include those of the monstrous beast *GODZILLA*, who starred in a Japanese special-effect movie, and the villain *Darth Vader*, who appeared in the live-action (defined as costumed actors playing roles rather than animation, etc.) film *Star Wars* from the Lucasfilm corporation.

Some characters can exhibit their customer-attraction power simply by invoking their name, with no image of their appearance being necessary. The letters “M-i-c-k-e-y M-o-u-s-e” would be one typical example. This is also the case for the leading character in certain novels, such as *Sherlock Holmes* by Arthur Conan Doyle. The leading characters in novels are indicated only by letters, with no illustrations. The indication of “Sherlock Holmes” by letters alone can exhibit such customer-attraction power for fanatical fans of the novel, known as “Sherlockians.”

Recently in Japan, people's attention has been drawn to a railway station where a living cat is the stationmaster. A cat working as a stationmaster is, needless to say, a kind of humor, which has been deliberately incorporated into the strategy of Wakayama Electric Railway Company to promote the use of the company's services. This cat, known as "Tama," exhibits its customer-attraction power through its cuteness, which has actually resulted in an increase of the number of people using Wakayama Electric Railway. "Tama" is not fictitious, but is a real being. Though railways are services rather than goods, this is another example of a kind of "merchandising."

In addition, real human beings also exhibit customer-attraction power. The use of the facial portrait of a famous athlete to advertise sporting goods will undoubtedly attract those children who adore the athlete. Furthermore, even a brand logo—the concept of which is nowhere close to that of a character—can be within the scope of merchandising. In markets, for example, it is a common practice to use the cool logo of a popular brand of clothing accessories for commodity goods in order to create demand. In cases where the brand holder does not manufacture the goods, the brand logo attached to the commodity goods does not play its original role as a "source indicator"; but instead merely serves to increase customer-attraction power. In another category of merchandising, there are many railway buffs in Japan who ardently love railways, whom we call "Tecchan (Mr./Ms. Railroad)". For such persons, the name of a railway vehicle or even its logo design exhibits strong customer-attraction power.

Merchandising rights are intended to protect these types of customer-attraction power. However, the objects possessing such power that are to be merchandised, as well as the way to use such objects, are highly diversified. Such objects encompass "fictitious characters" and "real animals and human beings", in addition to "letters and graphics." The means to effectively attract customers continues to be developed on a daily basis, including displaying the object on goods, making goods themselves form the shape of the object, and displaying the object on goods used to provide services (e.g. railroad vehicles in the case of railway services). In addition to diverse objects and the forms to utilize them, the number of variations is continuously increasing. Under such circumstances, it is extremely difficult to uniformly explain the details of rights to be granted to a "merchandising right holder." This leads to the difficulty of defining a set of details covered by merchandising rights.

(c) Rights included within merchandising rights

Merchandising an object that has customer-attraction power is done in the expectation of increasing demand. Since everyone would like to use such an object, persons who intend to use the customer-attraction power free of charge to make profits, or so-called “free riders,” will always emerge.

Even though there is really no such thing as merchandising rights, contents holders want to eliminate such free rides to the maximum extent possible. It is an important matter, therefore, to define which kinds of rights are needed in order to eliminate free riders should they appear. To this end, in the case where a picture of a comic character is used by a third party, for example, the free rider can be eliminated according to the law of *copyright*, for the reason that the copyright to the comic character has been infringed. Free riders may also be eliminated according to *design rights*, if a design registration for the character’s three-dimensional doll has been filed in advance. Unauthorized use of the portrait of an athlete is usually dealt with according to *portrait rights* or *publicity rights*—the latter of which is based on court precedent. Since the stationmaster “Tama” mentioned above is not a work, Wakayama Electric Railway does not own the copyright, and since “Tama” is not a human being, no portrait rights exist. In this case, trademark registration of the picture of “Tama” will prohibit a third party from its unauthorized use. This is also the case with brand logos.

According to the literature,^{*1} the oldest merchandising rights court case in Japan seems to be the one pertaining to a dispute in the 1970s concerning the special-effects TV program, *Ultraman*, created by Tsuburaya Productions. “Ultraman” is both the title of the TV program and the name of its hero, who is still a very popular character today. In this case, Tsuburaya Productions, the plaintiff, requested the defendant, who produced and sold the dolls of Ultraman without obtaining authorization, to suspend production and sales. Since there were (needless to say) no merchandising rights, it seems that a claim to suspend production and sales was filed specifically for the infringement of various industrial property rights. These include the copyrights to the picture of Ultraman, the design rights to the doll of Ultraman, and the trademark rights pertaining to the registered trademark, “Ultraman,” registered for toys as designated goods. The claim was

*1 Teruo Doi, “Character Merchandising – Legal Foundation and Practical Contractual Affairs”; Dobunkan Publishing Company, 1989. p. 14.

also pursuant to various provisions of the Unfair Competition Prevention Act, for the reason that users experienced confusion of the source due to unauthorized use of the well-known source indicator “© Tsuburaya Productions.”

As is symbolized by this situation in the oldest court case, the actuality of what are called “merchandising rights” actually represents a package of various rights. Merchandising rights, to a TV animation work, for example, which are described in Chapter 3 in detail, are defined in practice as “rights that allow, based on the copyrights, related rights, and the industrial property pertaining to a TV animation work, the use of the title and the name, shape, and sound of the characters in the animation for various goods or advertisements, services, etc.”

Neither the copyrights alone, nor the trademark alone can control all the merchandising of such characters. Furthermore, as it is recently common for a number of companies to be involved in the development of content, efficiently resolving legal issues associated with merchandising will require reorganizing the ownership of rights encompassing multiple entities, as well as comprehensively managing such rights. The content of what is expressed using the term “merchandising rights” for the convenience of practice is nothing but a packaged bundle of rights to meet such requirements; in other words, a bundle of the whereabouts of a title packaged for the purpose of efficiently eliminating free riders of customer-attraction power from the market.

At the beginning of this chapter, merchandising rights were referred to as not being necessarily substantial in terms of legal implications. More exactly speaking, however, it may be appropriate to interpret merchandising rights as a *“virtual concept of rights created by packaging matters related to merchandising from among those offering protection through various acts including the Copyright Act, the Design Act, the Trademark Act, and the Unfair Competition Prevention Act, for the purpose of handling them as if they were actually unified rights intended to protect customer-attraction power.”*

(2) Content of various rights

Merchandising rights are originally intended to protect a source of “customer-attraction power.” However, no merchandising rights are actually in place, and their actuality is nothing but a package of various rights.

However, the Copyright Act is not an act intended to protect and promote the customer-attraction

power of a work, which is also the case for the Design Act. While the purpose of the Trademark Act is to protect the goodwill of a company that is associated with their trademark, the Trademark Act (at least in Japan) does not include customer-attraction power within the scope of interests protected by the Act. The intention of the Act is nothing more than to prevent confusion over the real source, which is caused by the use of similar trademarks; and to maintain marketing order, thereby maintaining and developing the goodwill of a company. The protection of marks under the Unfair Competition Prevention Act does not necessarily mean that customer-attraction power is totally protected. As seen in these cases, the intended objectives of creating “merchandising rights” by repackaging various other rights are not really consistent with the original purposes of the individual rights being utilized.

This kind of inconsistency leads to an inadequacy in the content of various rights from the standpoint of a “merchandising right holder,” which in turn induces various difficulties in utilizing the rights.

Where specific difficulties lie and how they are dealt with in practice are described in detail in Chapters 2 and 3. In order to facilitate understanding of the difficulties inherent in utilizing such rights, the legal points at issue that lurk in the background are briefly explained here (focusing on those concerning comic and animation characters).

(a) Copyrights

In cases whereby the appearance of objects to be sold may be identified by a picture, such as characters in comics and animations, copyrights play a central role in merchandising rights.

(i) Limitations of copyrights to protect characters

Pictures of characters in comics and animations are usually protected by copyrights. A third party displaying these pictures on its goods or advertising materials for its own services, without obtaining permission from the copyright holder, results in an infringement of the Right of Reproduction (Article 21 of the Copyright Act) and the Right of Adaptation (Article 27 of the same Act). This is not limited to cases where a two-dimensional picture of the character is copied on two-dimensional media, such as T-shirts, but additionally applies to a picture that is made to form a three-dimensional structure, such as a doll or a stuffed toy.

The above does not mean, however, that the characters themselves are directly protected

by the said copyrights. The Supreme Court has also completely denied the “copyrightability” of a character, insofar as it is merely a concept.^{*2}

A “character” is essentially an abstract image. While persons appearing in novels represent a kind of “character,” unless the novel is reproduced as a drama or animation, the specific appearance of, for example, Cao Cao and Liu Bei of Three Kingdom Saga, or Holden Caulfield in *The Catcher in the Rye*, must be imagined in our minds. The abstract image of the character in the novel in our minds is the essence of the character. The Copyright Act is intended to protect specific expression, but not an abstract image in our minds. Therefore, we can reach the conclusion that what is protected by copyrights is nothing but the “picture,” which specifically expresses the character, but not the “character” itself. The Supreme Court also decided, with regard to a character in comics, that “what is called a character is an abstract concept that is regarded as something like the personality of the character sublimated from specific expression of comics, but not the specific expression itself. Therefore, a character itself is not the creative representation of an idea or emotion.”

To be specific, this means, for example, the following:

First, the setting of a character itself (such as the name, appearance, figure, and characteristics) is not protected by the Copyright Act. Therefore, in the case of a novel, for example, writing the sequel using the setting of the character in a previous work does not constitute the infringement of copyrights. (However, in the case of writing the sequel of comics, the picture of the character in the original work is usually simulated, and in that regard it will constitute an infringement of copyrights.)

Next, in order to prohibit a third party from reproducing a character without permission, a copyright holder needs to prove specifically which picture has been reproduced. This is because what is protected is a certain specific picture, not the character itself. However, in cases where a large number of pictures have been drawn over a long period of time, as in the case of serial comics, it is often obvious that the picture is drawn based on pictures of the character drawn in the past—even without identifying which picture has been specifically reproduced. In such a case, the burden of proof on the copyright holder is sometimes relieved to a certain extent, and the fact of infringing copyrights is determined even without proving which picture has been used specifically.^{*3}

*2 Supreme Court, First Decision, July 17, 1997, Collection of Court Decisions of Civil Actions 51.6.2714.

*3 E.g. Tokyo District Court, Decision, May 26, 1976, Collection of Court Decisions of Intangible Property 8.1.219.

(ii) Adaptation and derivative works

The copyright holder “has the exclusive right to translate, arrange musically, or transform, or dramatize, cinematize, or otherwise adapt his/her work (Article 27 of the same Act).” In other words, the copyright holder may prohibit others from conducting not only such acts as simply copying his/her work as is, but also acts to further add new creative expression to his/her original work while also maintaining its creative expression.

At least in the case of a copyright infringement lawsuit, there are no practical benefits to specifically distinguishing in a strict manner the acts that remain within the scope of “reproduction”, with no new additional creation, from the acts that fall under “adaptation” with new additional creative expression. This is because acts belonging to either of these surely constitute the infringement of copyrights.

However, for a “derivative work” (Article 2, paragraph (1), item (xi) of the same Act) created through adaptation, a new copyright to the said derivative work applies in spite of the fact that the said derivative work has been produced by infringing the copyright to the original work. Acts that remain within the scope of “reproduction” do not establish any new copyright to the output. In this context, it becomes necessary to distinguish what falls under “reproduction” from what falls under “adaptation.” In practice, it is very difficult to make this distinction. However, as a general rule, in the case where, for example, a two-dimensional character in comics is made to form a three-dimensional doll, such an act will fall under “reproduction” only in cases whereby it is made via a means commonly used by everyone; whereas if original creativity has been incorporated into the three-dimensional structure, such as posing the character in a manner not found in the original work, such an act will fall under “adaptation”, and the creativity is likely to establish new copyrights to the derivative work.

The rights of adaptation acquired by an author can only prohibit creative expression similar to his/her own work, and cannot prohibit such acts as borrowing an idea. For example, in the case where a certain person is inspired by some comics and creates new comics, if only the setting of the character is borrowed and the picture of the specific character is totally different, the new work is quite different from the original work, and therefore does not infringe the copyright at all.

(iii) Ownership of rights

In principle, copyrights are owned by the author (Article 17 of the same Act), who acquires moral rights such as the right to maintain integrity (Articles 18 to 20 of the same Act), along with the copyrights, such as the right of reproduction (Articles 21 to 28 of the same Act).

The Copyright Act of Japan prescribes two major exceptions to this principle.

One is what is termed a “work made for hire.” Omitting the detailed requirements, the provision prescribes that the “authorship” of a work produced by an employee in the course of his/her duties is generally attributed to the employer (a “juridical person” in most cases) (Article 15 of the same Act). The important point is that the juridical person is not a “copyright holder”, but an “author.” Pursuant to this provision, the employee, who is the original author, can acquire neither copyrights, needless to say, nor the moral rights of an author. The Act may give us a sense of discomfort, because both authorship and the moral rights of the author are attributed to a juridical person. However, since the establishment of moral rights (such as the right for employees to maintain integrity) is likely to have a negative impact on the business activities of a juridical person, the moral rights of the author of this kind of work are established for a juridical person in Japan to avoid the individual acquisition of moral rights by an employee.

The other exception is the provision concerning cinematographic work. First, the authorship of a cinematographic work is only attributed to “those who, by taking charge of producing, directing, filming, art direction, etc., have creatively contributed to the creation of a cinematographic work as a whole” (Article 16 of the same Act). Since a significant number of people are involved in the production of a movie, this provision is intended to limit the range of authors from the perspective of promoting the use and distribution of movies. The copyright to a cinematographic work “belongs to the maker of the said cinematographic work, provided that the authors of the cinematographic work have undertaken to participate in the making of the same” (Article 29, paragraph (1) of the same Act). It is very unlikely that persons who contribute to the creation of a cinematographic work as a whole (the author, for example) have not been commissioned by the maker of the said cinematographic work to participate in its making. Consequently, copyrights to a cinematographic work belong to its maker of the cinematographic work pursuant to the provision of Article 15, paragraph (1) of

the Act if it is a work produced by an employee of the maker of the cinematographic work in the course of his/her duties. The copyright usually belongs to the maker of the cinematographic work pursuant to the provisions of Article 29, paragraph (1), even if it is a work produced by other than its employees. Not only animation films, of course, but also animation works for TV broadcast and special-effect works (live-action works) are handled in the same manner because they fall under “cinematographic works” under the Copyright Act.

(iv) Co-owning copyrights

As mentioned earlier, a number of companies are nowadays often involved in the development of content. Particularly in making an animation work, a production committee system is often adopted whereby the production costs are borne not only by an animation production company, but also by multiple additional companies.

Pursuant to the provisions of the Copyright Act pertaining to the ownership of copyrights previously mentioned, copyrights to an animation work usually belong to an animation production company. In the production committee system, however, companies participating in the production committee co-own copyrights based on the investment agreement.

In the case of a co-owned copyright, “a co-holder of the copyright may not transfer or pledge his/her share without the consent of the other co-holders” (Article 65, paragraph (1) of the same Act). In addition, a joint copyright “may not be exercised without the unanimous agreement of all co-holders” (Paragraph (1) of the same article).

In a case such as a production committee, where multiple entities co-own the copyrights, it is necessary to make suitable arrangements among co-owners under the agreement so that these provisions do not hamper efficient implementation of merchandising rights. Please refer to Chapters 2 and 3 for details of specific methods concerning such arrangements.

Incidentally, copyrights to derivative works, as previously mentioned, cannot be co-owned by the copyright holder of the original work. Copyrights to a derivative work are established only for the author of the derivative work. The copyright holder pertaining to the original work may prohibit the reproduction or the like of the derivative work. This is because the copyright holder may prohibit such reproduction based on copyrights pertaining

to the original work (Article 28 of the same Act), however, and not because of copyrights to the derivative work.

(v) Term of protection

Copyrights continue to subsist until the end of the fifty-year period following the death of the author, in principle, under the Copyright Act of Japan (Article 52, paragraph (1) of the same Act). However, it is prescribed that copyrights to works under the name of a corporate body, such as in the case of works created in the course of duty, continue to subsist until the end of the fifty-year period following the public release of the work, and only in the case of copyrights to a cinematographic work, until the end of the seventy-year period following the making public of the work (Article 54, paragraph (1) of the same Act).

One issue raised in particular with regard to merchandising rights is that the expiration date of copyrights may vary each time in the case of serial comics under the name of a corporate body, because the date of public release varies for each work. In the case among serial comics, where the story is not completed each time but continued, the subsisting term is calculated from the date when the last part is made public (Paragraph (1) of the same article). However, for the type where the story is completed each time, the expiration date of copyrights is deemed to vary each time (Article 56, paragraph (1) of the same Act). Even in cases where the character frequently appears during the serialization, as long as it is basically identical, the term of protection is calculated from the date of the work in which the character first appeared, and it is not extended even if the character appeared in any of the subsequent works.^{*4}

(vi) Title of the work

The title of a work, such as comics, novels, and movies, is not protected by copyrights unless sufficient creativity is incorporated into the title. Therefore, even if a separate comic work is produced with a title identical to that of a precedent comic work, such acts alone do not constitute the infringement of copyrights.

In the same manner, the title of a work is not protected by trademark rights either while there is a different view or theory on this matter. In other words, the trademark registration of the title of a book with “book” as designated goods is not allowed in Japan. This is

^{*4} Supreme Court, First Decision, described earlier.

because the title of a work is not intended to identify the source, and therefore it is not construed to function as a trademark. This interpretation is based on the need to give consideration to the fact that if a number of titles are registered, freedom of expression would be excessively restricted.

(b) Design Act

(i) Limitations of design rights in protecting characters

The Design Act is intended to protect the design of products. In the same manner as the Copyright Act, the Design Act cannot protect an abstract character itself. However, if it is embodied as a form of product, for example, a doll, it is possible to obtain a *Design Registration*, provided that it is new and its creation is not simple (Article 3 of the Design Act). In this case, the design rights holder may prohibit free riders from manufacturing and selling a doll similar in design (Article 23 of the same Act).

However, since the Design Act is intended to protect a design, what matters in determining whether this right has been infringed is whether the two designs compared “are similar in design.” Conversely, “whether they represent the same character” does not matter. Therefore, in the case, for example, where the design of a doll when it is standing is registered, while the doll that a free rider manufactures and sells is sitting, it is questionable whether such acts of the free rider constitute the infringement of design rights—even when both dolls represent the same character. Similarly, with regard to, for example, a character that has grown up from a child into an adult during the serialization of a story, even if the design of the doll simulating the figure in its early childhood is registered, it will be generally difficult for a design registration to protect the design of the doll representing the grown-up adult character.

The range that the registered design protects in Japan is limited to the one where the relevant products are similar to each other. Therefore, even if a T-shirt with the picture of a certain character on it is registered, its design right cannot prohibit a sandal with the picture of the same character on it from being manufactured and sold.

As can be seen from these cases, the protection of a character by design rights is considerably limited.

However, in the case of a character, for example, that is likely to be used as a doll in the field where its pose is stereotyped as a live-action figure (an action hero in an animation work for boys), if the design of imitations is often within a predictable range, then the relevant design registration will be of significance.

(ii) Issue of cumulation of design rights and copyrights

While the Design Act protects the design of products, the design itself is an object that can also be protected by the Copyright Act as a work of applied art. However, if designs of all kinds of products are protected by the Copyright Act, the significance of the design system is diminished. Therefore, in court practice in Japan, the design included in the scope protected by the Design Act is not protected by the Copyright Act, and the Copyright Act protects, as an exception, only a design that can be deemed to be identical to pure art.

This distinction of areas protected by the two Acts has resulted in the several following issues in the character business field.

In the case of characters originally shown in animations and comics, copyrights to their picture are clearly established. Consequently, if a third party manufactures and sells dolls representing a known character, the contents holder can, as described above, prohibit such acts for the reason that the reproduction rights and/or the adaptation rights are being infringed. On the other hand, copyrights are generally not thought to be established for characters not based on the original works, such as animations and comics, but developed originally as a doll figure or the like to be mass-produced. Therefore, even if a third party imitates this, the contents holder cannot prohibit such acts as an infringement of copyrights. This point is substantially argued in theory, and the criteria of the courts also vary. However, since this matter is generally deemed to be as described above, the important point is that characters such as those developed originally for the purpose of applications to industrial products need to be protected by a design registration or by trademark rights, as explained in the following section.

(c) Trademark Act

(i) Limitations of trademark rights to protect characters

Trademark rights may prohibit the use of the registered trademark or a trademark similar thereto within the extent of goods or services designated by the relevant application form or similar thereto (Article 25 and Article 37 item (i) of the Trademark Act).

As mentioned previously, the title of a work, such as a comic, is not protected by copyrights. However, designating such goods as a “toy”, for example, and registering the title of the said comic, will possibly prohibit others from using the title for toys. (As mentioned previously, the registration of the title of a comic with “book” as the designated goods is not allowed, although a trademark registration may be made for other goods.) This is also the case, for example, for the names of characters and so forth. Not only letters, such as a title and a name, but also the picture of characters, may of course be registered.

However, the protection by trademark rights is not really adequate either. Because trademark rights prohibit the unauthorized usage of a trademark, a trademark right holder cannot prohibit the unauthorized use of a title or the name of a character by free riders unless it is used “as a trademark.” Let us assume, for example, that the picture of a character is registered as a trademark in connection with the goods “shirts.” Can the trademark right holder prohibit free riders from selling shirts with the picture of the same character shown at a large size on their front side? There will be a difficult argument on this matter. This is because the character shown at a large size on the front side of shirts is used as a design of the shirts, but not to indicate the source of the goods “shirts.” Therefore, it may not be thought to be used “as a trademark.” In fact, there exists a court case that has resulted in such a decision.*⁵

In addition, a trademark registration is cancelled if the registered trademark is not used, which is a significant problem from the perspective of merchandising rights. Even if a trademark is registered with various goods and services designated for the purpose of eliminating free riders, trademark registration is cancelled in connection with goods or services not used for three years or longer upon the request of a third party (Article 51 of the same Act). For example, even if a free rider is using without permission the name of the

*5 Osaka District Court Decision, February 24, 1976, Collection of Court Decisions 828.69.

character for which the trademark is registered for stationery products, the free rider can cancel the trademark registration in connection with goods “stationery products” upon request if the trademark right holder (or its licensee) has not used the character in connection with goods “stationery products” for three years or more. Once the trademark is cancelled, needless to say, no infringement of trademark rights will be constituted.

(ii) Risk of registration by a third party without notice

Copyrights are essentially acquired by the creator. Also, design rights can be acquired only by the creator or the person to whom the right to acquire the design registration has been transferred from the creator. Therefore, these rights may not be acquired by a third party without the permission of the creator. However, such acts are possible in the case of trademark rights, which pose a significant problem in conducting content-related business.

Even if a third party applies without notice for the title of another person’s work or the name of a character in a trademark registration, an examiner of the Patent Office cannot reject the application as a general rule, although it may be handled otherwise if it pertains to a famous object. This is because the cause of such rejection is not legally specified.

Once a trademark is registered without notice, the invalidation of such registration is difficult, and such a trademark registration is therefore likely to become a large impediment to the promotion of business. If the person who has registered without notice exercises their rights based on trademark rights, a legal principle concerning the abuse of rights may possibly be applied to deny the infringement of those rights.^{*6} However, since a dispute will arise that is very difficult to settle in any event, content-holders need to be constantly vigilant against the application of their character names and the titles of their own comics by a third party.

(iii) Three-dimensional trademarks

The Trademark Act of Japan allows the trademark registration of a three-dimensional trademark (Article 2, paragraph (1) of the same Act). Therefore, it is theoretically possible to register the trademark of a character made to form a three-dimensional structure, such as a doll. Actually, a relatively large number of such trademarks are registered in Europe and the U.S.

*6 Ref. Supreme Court Decision, July 20, 1990, Collection of Court Decisions of Civil Actions 44.5.876.

However, under the implementation of the Trademark Act of Japan, it is very difficult to register the trademark of a three-dimensional shape that represents the form of the goods itself. This is because if the trademark of a three-dimensional shape of goods is registered without careful consideration and protected by the trademark rights renewable semi-permanently, options for the selection of the form of goods in markets will be narrowed, which is thought to be a factor hindering free competition. Therefore, apart from the theoretical possibility, it is almost impossible to register the trademark of a character made to form a three-dimensional structure--with “toy” as the designated goods, for example—unless it is proven that it is exceptionally famous and has acquired distinctiveness.

(d) Unfair Competition Prevention Act

The Unfair Competition Prevention Act of Japan prohibits acts that create confusion with another person’s goods or business by using another person’s well-known mark (Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act). This is a regulation similar to that of the Trademark Act, as explained earlier. In particular, unregistered trademarks are protected by this provision. Unlike the case of the Trademark Act, however, the mark must be a well-known one in order for the mark to be protected, and confusion or the likelihood of confusion among users must exist.

Furthermore, the Unfair Competition Prevention Act prohibits acts of using another person’s well-known mark without permission, even if such acts do not create confusion among users (Article 2 of the same Act). This is because the use of a famous mark by an excessive number of people causes the dilution of goodwill and the customer-attraction power embodied by the mark.

Since merchandising rights are intended to protect a customer-attraction power, the provisions pertaining to a famous mark under the Unfair Competition Prevention Act are actually the closest to the purpose of merchandising rights among the other various rights so far explained. This is because they can prevent a third party that intends to use the customer-attraction power without permission—regardless of whether or not confusion occurs—as long as the picture, name, or the like of the character is famous. However, one

problem is that it is only the “source indicator” that is protected pursuant to this provision. In other words, in order to be protected, the picture or name of a character must be famous “as a source indicator.” For example, a mark like “Mickey Mouse” may be deemed to be famous as the mark indicating a series of “amusement services” provided by “Disneyland,” or the like, because Disneyland has long been popular in Japan. However, since there will be only a few such cases where pictures and names of characters are famous for their role in indicating goods and business, it will be difficult to specifically protect the customer-attraction power of characters pursuant to this provision.

Chapter 2 Character Goods and Merchandising Rights

(1) History of merchandising rights

Japan's first TV animation was *Astro Boy*, produced in 1960. Since the production costs of the animation could not be covered only by the broadcast right fees from the TV station, the shortfall had to be supplemented with income from merchandising rights. Specifically speaking, included in the scope of merchandising rights were figures of metal or plastic made by forming characters into a three-dimensional structure, as well as masks, dishes, stationery products, bags, and food products with the picture of Astro Boy on them.

This indicates that the animation industry in Japan has not been viable without a character business since the dawn of the industry. In light of this, merchandising rights have been deemed to be important since 1960, when TV animations began.

Even today, the production costs of a single thirty-minute TV animation program are said to be around 7 to 10 million yen, while the broadcast right fees (with an agreement that usually includes fees for several rebroadcastings) is 3 to 7 million yen. Consequently, the animation production company has to recoup the difference for each broadcast program from means other than the broadcast right fees, and this shortfall is eventually met by the merchandising right usage fees, sales, rental, and overseas sales of DVDs, publications, and music. All of these depend upon the popularity of the TV animation work, but since the sales and rental of DVDs have significantly decreased due to illegal copying including video-posting Web sites, the income from merchandising right usage fees is becoming of even greater significance in terms of recouping production costs.

The same situation is not limited to TV animations, but is also applicable to live-action works such as the *Ultraman* and *Mask Rider* series. As described later, for these live-action works, an elaborate plan is usually established, including a sales plan for toys that includes items such as the aircraft and the motorcycle that the leading character boards or rides, the belt used to transform itself, and the like.

In cases such as theatrical works, with the main income coming from admission fees instead of the broadcast right fee from a TV station; original video animation works, with the main income from the sales and rental of DVDs; and home video games, with the main income from the sales of software; the income from merchandising rights is deemed to be important in terms of

supplementing the main income (even though not to such an extent as that of TV animations and TV live-action works).

In this context, in a content-business where TV animations and live-action works are produced, merchandising rights play an important role in terms of recouping costs in order to keep the business commercially viable.

(2) Economic significance of merchandising rights

(a) Merchandising rights in the content-business

As mentioned above, in the content-business where works such as TV and theatrical animations are produced and provided for public viewing in order to recoup costs, merchandising rights have great significance as a means to recover the production costs.

Items of expenses		Items of incomes	
Animation production costs (including those for overseas versions)	Production company Production committee Film fund Others	Broadcast right fee (for TV animations)	TV station
		Theater admission fee (for theatrical animations)	Viewer
		Merchandising rights	Licensee
		Videogram sales	Video software company
		Rental	Rental shop
		Distribution over the Internet on fee basis	Viewer
		Overseas sales	Overseas agent
		Publications/Music	Publisher/Record company
		Performance (Musicals, live shows, etc.)	Promoter

(b) Merchandising rights to the mascot logo related to goods

In addition, Japan has an environment where secondary characters and the like are used, for example, for pictures on stationery goods and the mascots for mobile phones, which serve as potential objects of merchandising.

In other words, in contrast with the above case (a), where there is a video work first and merchandising rights are established on the downstream side, the design of the picture on goods or the design of the character used for advertising has become a character included in the scope of merchandising rights. Included in specific examples are *Hello Kitty* of Sanrio and *Tare Panda* of San-X, and those falling under the examples of the latter include *Docomodake* of NTT docomo and *Otosan Dog* of SoftBank.

Furthermore, in some cases, a mascot or logo of a professional baseball team or soccer team has become an object of merchandising rights. Such cases will also fall under this group.

Unlike the cases in (a), where the production of a work is intended to recoup costs, both the establishment of merchandising rights and the income therefrom in these cases are only secondary.

(c) Merchandising rights to industrial products

Recently the above trend is not only limited to works but is also expanding to include railroad vehicles and luxury cars. Those falling under this category include “Shinkansen” and “Ferrari.” In Japan, the objects included in the scope of industrial design are beyond the reach of not only protection by copyrights, but also legal protection by, for example, the Unfair Competition Prevention Act. In some cases, however, those engaged in merchandising proactively conclude an agreement with the provider of these objects, and pay the usage fee for receivables under the agreement. Needless to say, even if these objects are merchandised as toys without concluding any agreement, the person conducting such an act is not sued for infringement of rights. However, a merchandising agreement is often concluded for the purpose of stating that goods are officially licensed and thereby create a feeling of trust for purchasers, as well as providing advantages such as drawings and image data for their merchandising.

Similarly to cases in (b), unlike merchandising rights in the content-business, these types of merchandising rights function not to recoup costs, but only to obtain a secondary income.

(3) Merchandising rights and the “media-mix” strategy

While merchandising rights have thus far been discussed from the perspective of economics, the significance of merchandising rights is not limited to this aspect. Another significance of character goods being distributed in the market is advertising the character via goods distributed in the market, and making a broader range of users aware of the character.

Now that the production committee system is often adopted, the development of goods utilizing merchandising rights is no longer on the downstream side of the creation of characters, but is promoted by adopting opinions on merchandising from the companies participating in the production committee as early as the creation stage of the character. In other words, merchandising is planned along with the creation of the character, for example, via timing whereby the character appears in the drama, or when the toys of the character are to be sold, or when the story is written so that character items appear during summer holidays or Christmas sales.

Also, depending on the content, a home video game and a TV animation are sometimes developed in tandem. In some cases, a strategy is adopted whereby the penetration of the content into society is promoted using multiple media so that the development of comics and the spread of card games can be promoted at the same time. *Pocket Monsters* and *Yugioh* are among typical examples. This is what is called a “media-mix” strategy, whereby the same content encompasses multiple forms of media, such as animations, comics, home video games, character goods, music, and musicals. Among these, the penetration using character goods plays an important role. That is, the exposure of the character to the market, for example, on the shelves of retail stores and in commercials on TV screens, allows the character to become recognized in society, in addition to animations broadcast or shown in theaters. In this sense, merchandising the object will fulfill not only an economic function, but also that of advertising, thereby permeating the object throughout society.

(4) Position of merchandising rights in the content-business

The following discusses the mechanism of merchandising rights (the case of (2) (a) above) in the contents business, with animations as an example.

First, there are usually four concerned parties in the content-business: namely, from the upstream side, creators (animation production companies), contents holders (at present, mainly the

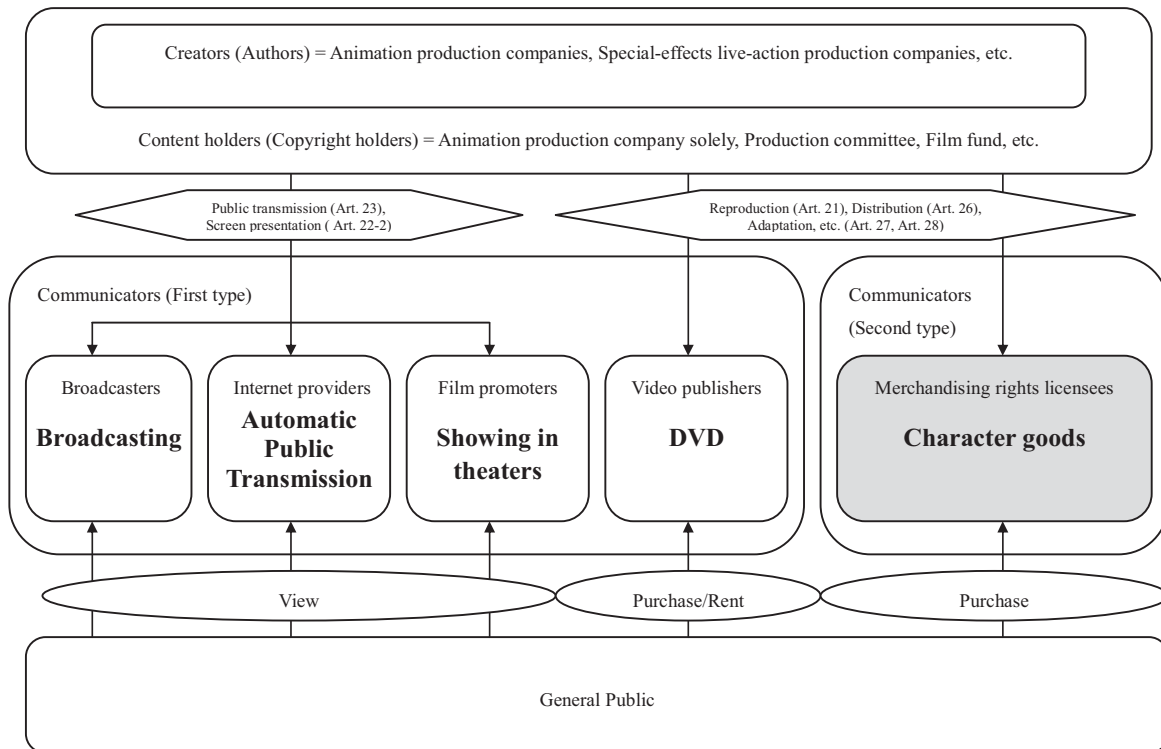
production committee), communicators (broadcasting stations, theaters, video publishing companies, etc.) and us, the general public. In other words, the content-business in animations is a concept consisting of the following two types of activities: economic activities where creators produce video works, or animations; and other economic activities whereby content-holders manage copyrights etc., and communicate the said animations via communicators on the downstream side to the general public at the farthest downstream point.

The animation is produced by a creator, or an animation production company. Subsequently, the copyrights are owned solely by the animation production company in some cases. In almost all cases, however, the copyrights are now transferred to a production committee since the production costs cannot be borne only by the animation production company due to the increase in the production costs and the pursuing of a more efficient use of the animation work through a division of economic activities. The production committee is a group consisting of investors, including the animation company, who usually become the content-holders. In the case of an animation movie, a film fund system is sometimes adopted whereby a Special Purpose Company (SPC) or a Special Purpose Vehicle (SPV) is established for form's sake, and the animation work is controlled with this company as the content-holder.

Next, the animation work is communicated to us (the general public) by communicators, using various means such as broadcasting, automatic public transmission (distribution over the Internet), showings in theaters, and the sales and rental of DVDs. Legally, broadcasting and automatic public transmission (distribution over the Internet) are controlled by rights of public transmission (Article 23 of the Copyright Act); showings in theaters are controlled by rights of screen presentation (Article 22-2 of the Copyright); and the sales and rental of videograms, such as DVDs, are controlled by rights of reproduction (Article 21 of the Copyright Act) and rights of distribution (Article 26 of the Copyright Act). In communicating the animation work, contents holders receive income from broadcast right fees, theater admission fees, DVD sales, DVD rentals, and Internet distribution charges.

If communicators like these, who are engaged in communicating and distributing the work, are termed "first type" mainstream communicators in the content-business, the merchandising business is their tributary. It is the merchandising rights business that cuts the appearance of characters, logo marks, etc. out of the video work, and distributes them as tangible goods. Licensees of merchandising rights conducting such business are termed "second type" communicators.

Figure1: Merchandising Rights in the Content-Business



(5) Works, objects, and products within the scope of merchandising rights in the content-business

The following works are potentially within the scope of merchandising rights in the content-business:

(a) Works

(i) Animation works

Depending on their production form, animation works are classified into the following categories: TV animation work, theatrical animation work, original animation (OA) work, and others. TV animations are works broadcast on TV at a specified time, usually at a rate of once per week. They are often broadcast in a span of two series (half a year) or four series (one year), with 13 episodes in one series.

The number of episodes in a TV animation produced in Japan reached 300 episodes/year in 2006. Since then, though the number of episodes produced has decreased, the number has been maintained at more than 250 episodes/year, and the size of the merchandising market is gradually increasing.

	2004	2005	2006	2007
Number of titles of TV animations	approx. 220	approx. 230	approx. 300	approx. 290.
Market size of merchandising rights (incl. theatrical animations and OVA) (billion yen)	461.7	504.9	530.5	584.4

(Source: Statistics from the Association of Japanese Animations)

Theatrical animation works are produced with theater box-office revenues originally intended to be used as a means to recoup costs. Except for a series of works by STUDIO GHIBLI and a few other such works, many of the theatrical animation works produced are spin-offs from popular TV animation programs. Those falling under this category include *Theatrical Edition: Pocket Monsters*, *Theatrical Edition: Doraemon*, and *New Theatrical Edition: NEON GENESIS EVANGELION*. High picture quality is required since these are viewed on a large screen, and the running time is long. Therefore, their production costs are generally high compared with TV animation works. Consequently, a cost recovery plan needs to be carefully developed.

Original animation works are often planned and produced independently by an animation production company, with no TV stations or sponsors involved. The costs are recouped through the rental and sales of videograms such as DVDs. Similarly to cases of theatrical animation work, many of them are spin-offs from popular TV animation works.

(ii) Live-action (costumed actors) works

On a par with animation works, live-action works are in one of those groups of works for which merchandising rights function among content businesses. Typical examples are the *Mask Rider Series* and *Sentai Hero Series* produced by Toei Company, Ltd., the *Ultraman Series* produced by Tsuburaya Productions, and the *Choshinsei Series* produced by KONAMI.

These live-action works have much in common with animation works, in that fictitious characters with a unique appearance play remarkable roles. Usually, a production company produces a work based on meetings with a TV station, from whom broadcast right fees are received as part of the production costs, and with the balance recouped using other income means. This is the same mechanism as that of TV animation works. In the field of merchandising rights, characters and items appearing in the work are merchandised as figures and toys, thereby playing a major role as a recouping means.

(iii) Video game works

There are various categories of video games, such as action games, sports games, racing games, puzzle games, and role-playing games. Among them, in the case of those games in which stories develop, the characters and items appearing in the games can be objects of merchandising similar to the cases of movies. As you may notice if you recall *Mario Brothers* or *Donkey Kong*, games that can be an object of merchandising are not necessarily limited to role playing games in which stories develop according to an entertaining scenario; they can even be action games.

Other examples of the games that became objects of merchandising are *FINAL FANTASY*, *MONSTER HUNTER*, and *Dragon Quest*.

(b) Objects

Objects that are merchandised in individual works are classified into the following categories:

(i) Characters

Characters that play a special role and develop themes in each work can be objects of merchandising. Since each viewer projects himself/herself into that work and discovers a favorite character, not only the leading character but also side players can become objects of merchandising.



(ii) Items

Fictitious robots, aircraft, motorcycles, and weapons, as well as items used for transformation etc., occupy an important position as objects for merchandising. Many of these items are made to appear in the respective works with an established plan to merchandise them. They are then merchandised as toys and displayed at shops when the work is broadcast on TV. These are items necessary for children for their “hero pretending” play. Recently, however, there are increasing cases where adults who experienced such play as children now buy these items as interior decorative items. The first and foremost success story in this category concerns a group of robots that appeared in the *Mobile Suit Gundam Series*. So-called *Gun-Pra* (plastic models of Gundam), which were merchandised as assembly-type plastic models, were such a big hit in the early 1980s that it became a social phenomenon in Japan (with a staggering 389 million pieces shipped through March 2008, according to Wikipedia).



(iii) Costumes

Costumes of characters in the story are objects of merchandising independently from the respective characters. In many cases, such costumes used to be sewn and produced by fans of animation works. There are now some manufacturers, however, that are dedicated to manufacturing and selling such costumes, which are already one form of merchandising.

(iv) Logo marks

Logo marks of fictitious organizations and groups can also be objects of merchandising. Logo marks are limited objects because their name recognition is low, and their exposure to the public is small when compared with characters, items, and costumes. However, if the name of works is well-known to people, or the setting of the fictitious organizations or groups

is elaborately produced, their logo marks may independently be objects of merchandising. Those still included widely as objects of merchandising today include the *Zeon Army Medal of Mobile Suit Gundam Series*, and the *NERV Mark of NEON GENESIS EVANGELION*.



(v) Scenes

In the case of a work in which a story develops, some scene itself from such a story in the work can be an object of merchandising. In this case, there is a difference from merchandising stand-alone characters in that a memorable scene from the work is merchandised as it is. In some cases, the image of the scene is not simply displayed on goods. Rather, the scene is made to form a three-dimensional structure and then merchandized. This is known as a “vignette.”



(c) Products

Lastly, this section discusses the products for which those objects mentioned above are used. Since animation works and live-action products used to be produced for programs viewed by children, such products were limited to toys, stationery goods, snacks, and the like, often purchased by children. However, with a wider range of people increasingly viewing these works, the scope of utilizing merchandising rights is expanding to goods and services for which character goods used to be out of the scope, involving the service industry and including game machines (such as Japanese pinball (*pachinko*), which cannot be used by those under 18 years old due to the significant gambling factor), and credit cards.

(i) Figures and toys

Figures and toys will be the most fundamental products for which merchandising rights are utilized. Some toy manufacturers, such as BANDAI and TAKARA, have long been sponsors of animation and live-action works, and have merchandised figures and toys related to such works.

(ii) Utility products

Similarly to toys, stationery goods including notebooks, plastic page separators, pencils, and rubber erasers have become products for which merchandising rights are frequently utilized. Educational institutions such as elementary schools and junior high schools prohibit pupils from bringing in such goods as comic books and video games, but this is not usually the case for stationery goods with pictures of characters displayed on them. Pupils often use stationery goods with a character displayed on them as a means to demonstrate their likings and individuality, making the stationery goods field one wherein merchandising rights have long been utilized.

In addition, with more generations of people increasingly viewing the previously mentioned works in recent years, the scope of merchandising rights has increased to include household electrical items such as music players and earphones, outdoor goods such as backpacks, and dishes such as mugs and plates.

(iii) Clothing and shoes

Both clothes and shoes are goods for which merchandising rights have long been utilized. Goods, such as children's pajamas, T-shirts, caps, and sneakers have long been objects of

merchandising rights. Furthermore, in recent years, T-shirts and hats with characters on them designed for the older generation have also recently begun to be included. In addition, as described above, clothes merchandise based on costumes of characters have established their field as items necessary for so-called “cosplay” (costume play).

(iv) Food products

Similarly to items including clothing, characters are now displayed not only on snack packages for children, but also on bottles of drinks, packages of snacks and ramen, and even containers for Japanese sake, as merchandising rights become increasingly utilized in broader areas.



(v) Card games

In addition to successful cases where card games were developed as part of a media-mix strategy, such as *Monsters* (The Pokémon Company) and *Yugioh* (KONAMI Co., Ltd.), *Weiß Schwarz* (Bushiroad Inc.) are among the recent examples where existing animation characters have been incorporated in games. This is a new field compared with that of products such as figures and toys. However, in line with the increase in the population of game players and the establishment of a trading market for cards with a premium, card games now increasingly account for a major part of products utilizing merchandising rights.



(vi) Game machines (*Pachinko* and *Pachinko Slot*)

Japan's unique culture includes games facilities such as *Pachinko* and *Pachinko Slot* parlors. Due to the gambling factor, these facilities can be used only by those aged 18 or older, whereas animation characters are now increasingly being used in these facilities. Instead of simply using their pictures, a newly produced video of those characters may be played on the LCD screen mounted to the game machines alongside the progress of the game, so that customers can play the game while also enjoying the works that they used to be familiar with in their childhood. The meaning of merchandising rights utilized in this field is significant in that the market for merchandising rights, previously limited to products for children, has expanded into fields where children are actually forbidden.

In addition, since the market size of these game facilities is huge, manufacturers of equipment for such facilities may possibly occupy an important position as providers of production funds for animation and other works in the future, perhaps replacing broadcasters whose revenues from sponsors have decreased due to the economic downturn. Conversely, due to the nature of these games, there are some cases where some contents holders and authors hesitate to agree to licensing, or even proactively refuse the use of works or characters through concerns about degrading the reputation of their works.

(vii) Service industries (Restaurant business, banks, etc.)

Merchandising rights are utilized in some cases even for services different from those

concerning the tangible products in (i) to (vi) above. Typical examples are the campaign run by McDonald's for a limited time in which toys such as *Pocket Monsters*, *Doraemon*, etc. were presented with kids' menus; credit card company-issued credit cards with a character displayed on them; and bank deposit books with a character stamped on them. Compared with cases of tangible products, where the license fees are calculated based on the production quantity and unit price, license fees are calculated in accordance with the period of use of merchandising rights in the case of the service industry where products are neither manufactured nor sold. In contrast with characters displayed on goods, since characters used in services play a role of the advertising staff of the company, or its services, licensing fees are usually more expensive than those for products.

(viii) Video games

Production of a video game based on an animation work or a live-action work is also within the scope of licensing merchandising rights. Since a video game is eventually a product newly created in the form of an adaptation of a character, or often from a story in an animation work, not only rights of reproduction (Article 21 of the Copyright Act) are involved. In addition, rights of adaptation (Article 27 of the Copyright Act) are also licensed, in contrast with products in (i) to (vii) above, for which the appearance of the characters etc. are simply used. Also, in video games, since the "Game Over" message in the middle of the game (and "Multi-endings," which occur depending of the performance of the players) need to be prepared, the games are destined to differ from the original work in their content. Therefore, it is necessary to manage and process rights with the author in order to maintain integrity (Article 20 of the Copyright Act), which forms a part of the moral rights of the author.

(6) Merchandising rights in the content-business from the perspective of the Copyright Act

(a) Issue of the nature as "work"

In the case of a work produced as an object of the content-business, the story and its characters have creativity, and the result is consequently an undoubted "work."

If some parts of the work (such as characters and costumes) are taken out and made to be objects of merchandising rights, however, they may go beyond the protective umbrella of the Copyright Act due to the hurdle of the nature as a work. The Copyright Act of Japan defines a work as “a production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic, or musical domain” (Article 2, paragraph (1), item (i) of the Copyright Act). Since creativity based on thoughts and sentiments is required, if an item to be covered by merchandising rights falls under commodity goods, a question therefore arises about its nature as an actual work.

For example, costumes are clothes, or commodity goods, and their creativity beyond the scope of the mere functions of commodity goods is required in order for clothes to be acknowledged as a work. If a costume has a peculiar form—however functionally meaningless—such as a “plug suit” appearing in “NEON GENESIS EVANGELION,” it can undoubtedly be called a work. The uniform of a “junior high school in TOKYO-3” will not fulfill the protection requirements of copyrights requiring creativity, however, solely because it can be identified as a costume appearing in the work. In particular, the substantiation of costumes historically started with individuals’ creation for the purpose of “cosplay” (costume play) for hero/heroine pretend play, while costumes were once in the gray area in terms of whether they could be included in the scope of merchandising rights.

However, at present, through the joint application of both the Trademark Act and the Unfair Competition Prevention Act, costumes—as long as they are goods with the name of the work displayed on them—are beginning to be acknowledged as objects of merchandising rights.

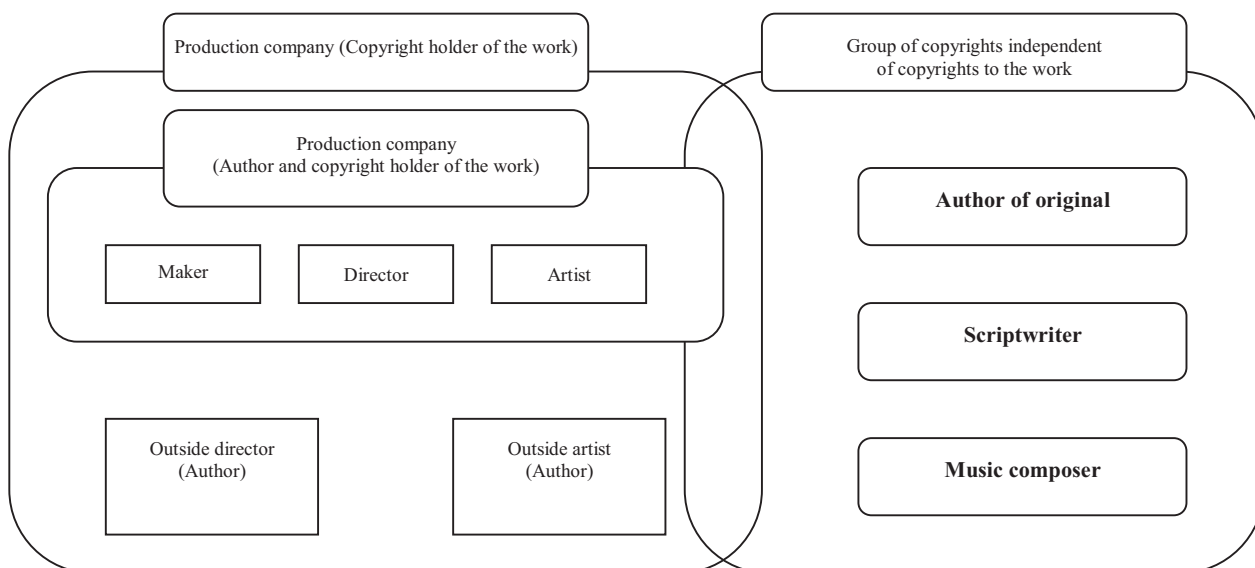
(b) Principle of ownership of rights to a work

When works are produced, many of them are made in the course of duties (Article 15 of the Copyright Act), and their authors are the production companies of animation works or live-action works. At the same time, these production companies, as the makers of cinematographic works, also become the copyright holders. In cases where independent directors (or illustrators of original pictures not actually belonging to the production company) participate in the production, they become among those to whom the authorship is attributed (Article 16 of the Copyright Act). However, even in the case of such a work, the copyright

holder of the work is the maker of the cinematographic work pursuant to the provisions covering the copyright holder of a cinematographic work (Article 29 of the Copyright Act).

However, if there is an original work, such as a comic or novel, its copyrights, copyrights to the music used in it, and copyrights to its script are not integrated with the copyrights to the work, and rights management and processing concerning those copyholders are required to use the work.

Figure2: Graph showing the relationship of rights

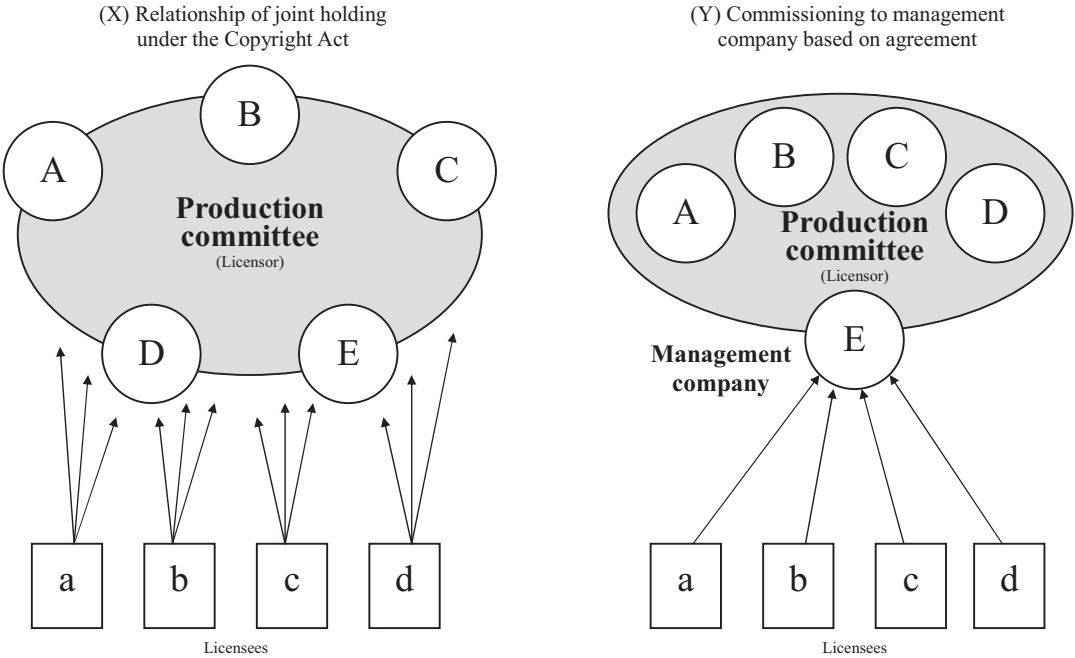


(c) Production committee

Nowadays, the production committee system is often adopted for the content-business. A production committee is utilized not only for animation work but also for movies in general, whereby not only an animation production company but also multiple companies bear the production costs. A production committee usually comprises publishing companies, broadcasting stations, toy manufacturers, video software companies, advertising agencies, and others as investing companies, in addition to the production company that actually produces the work. In merchandising various items, this production committee acts as a licensor, and is the entity that grants licenses for merchandising such items.

Copyrights to the work are essentially acquired by the production company, as mentioned above. Needless to say, however, participating companies have their respective shares according to their investment ratio, and the work is eventually jointly owned under the Copyright Act. With regard to joint copyrights, since the Copyright Act of Japan prescribes that “joint copyrights may not be exercised without the unanimous agreement of all co-holders” (Article 65, paragraph (2) of the Copyright Act), the consent of all the companies participating in the production committee is required for licensing for merchandising under the act even though the production committee is a licensor. However, this type of rights coordination is complicated and hinders prompt economic activities. Therefore, in practice, based on the agreement on the establishment of the production committee, a merchandising rights management company is appointed and each participating company commissions the management company to manage copyrights, while merchandising is licensed to a licensee with this unified management company as the contact.

Figure3: Production Committee



(7) Entry of the general public and merchandising rights

So far, merchandising rights have been discussed in terms of the content-business. At present, however, it is common practice for individuals to produce figures of characters and items based on works or to sew costumes and enjoy them for “cosplay.”

These acts are lawful under the Copyright Act of Japan (Article 30 of the Copyright Act) as “reproduction” for private use—as long as individuals enjoy themselves as their own production activities and exchange products completed among their friends. However, such activities as distributing them to the wider public (other than a few specified people) constitute an infringement of the rights of reproduction (Article 21 of the Copyright Act), rights of ownership transfer (Article 26-2 of the Copyright Act), and rights of adaptation of (Article 27 of the Copyright Act).

In Japan, we even have three-dimensional work events, which are legally held through the management and processing of rights with right holders. Among them are the “Wonder Festival,” “Chara Hobby C3,” and “Treasure Festa.” “Wonder Festival,” a pioneering event of its kind, has been held twice a year since 1992, in which individuals can make three-dimensional figures of comics and animations and sell them. In this event, a system called “one-day copyright” is adopted, whereby merchandising rights, including copyrights, are licensed from contents holders of animation works and others only for the day on which the event is held. While not all content-holders actually license such rights, many content-holders support this event and license these “one-day copyrights.” This event is very well attended, regularly hosting over 40,000 participants.

(Event site and “Wonder Festival” catalog)



Chapter 3 Practical Handling of Merchandising Rights

This chapter provides an outline of the management and implementation work of merchandising rights from the standpoint of the contact responsible for merchandising rights, concerning TV animation works based mainly on comics as their original works.

(1) Determination of the contact responsible for merchandising rights

As described in detail in Chapter 2, merchandising rights in the production of TV animation works represent one means of recouping production costs.

The copyright holder (content-holder) of a TV animation work is usually a production committee comprising multiple companies, such as an animation production company, TV station, advertising agency, and video maker. However, in the case of a TV animation work (derivative work) that is based on a comic as the original work, the copyright holder of the comic work (usually its author, such as a comic artist) is included in the content-holders as the original author concerning the derivative work.

The contact responsible for merchandising rights is usually determined based on discussions among the above content-holders. Usually, one of the companies comprising the production committee takes charge as the contact responsible for merchandising rights in return for participating in the production committee (bearing a portion of the production costs).

While merchandising rights for comic works and TV animation works are managed individually as separate rights, the management of merchandising rights to the comic work is usually entrusted to the publishing company from which the copyright holder of the comic work publishes the work. Therefore, the publishing company that manages merchandising rights to the comic work usually manages merchandising rights to the TV animation work for the sake of convenience. Instances where the publishing company does not participate in the production committee are special cases, since then the contact responsible for merchandising rights must be managed by a party outside of the production committee.

(2) Scope of merchandising rights

The practical handling of merchandising rights are defined as “rights for a third party to use the

title of a TV animation work, the name, shape, sound of characters appearing in the TV animation work for various goods, advertising, services, and others based on the rights, neighboring rights, or industrial property rights concerning the TV animation work.” However, in actual management, more details need to be determined.

(a) Relations with the merchandising rights to a comic work

In the case of a TV animation work produced from elements of a comic work, such as the character design and the story, the merchandising rights to the comic work and the TV animation work are differentiated from each other based on the materials used for merchandising. In managing the merchandising rights to a TV animation work, the materials of the comic work (known as “original pictures,” etc.) are not used. For goods of which it is difficult to distinguish the materials used, such as in the case of a three-dimensional structure, for example, figures (with very little difference in the outcome regardless of whether those are based on original pictures or a TV animation work), the copyright holder of the comic work and the copyright holder of the TV animation discuss with each other to determine under which merchandising rights such goods should be handled.

(b) Relations with usage out of the scope of merchandising rights

In the usage of TV animation work, there are some usages, such as those for broadcasting and videograms, that are clearly different from those within the scope of merchandising rights, while there are also other usages that must be determined whether or not they are included in the scope of merchandising rights depending on the details of such usage.

(i) Distribution over the Internet

Distribution of the TV animation work itself is out of the scope of merchandising rights, while distribution of the content created by processing part of a TV animation work—such as wallpaper for a mobile phone screen or a Flash animation—falls within the scope of merchandising rights.

(ii) Performance

Showing a TV animation work itself at a theater or elsewhere is out of the scope of merchandising rights, while events in general—such as a theatrical performance and a concert of a voice actor, based on a TV animation work—fall within the scope of merchandising rights.

(iii) CDs

CDs (or the like) of the theme song of a TV animation that do not use illustrations of the TV animation work on their jacket are out of the scope of merchandising rights, while CDs that use illustrations of the TV animation work on their jacket (CDs may not be related to the TV animation work at all) fall within the scope of merchandising rights.

Recorded CDs of a radio drama based on a TV animation work (regardless of whether illustrations are used on their jacket): fall within the scope of merchandising rights.

(iv) Publications

While publication of a comic work itself is excluded from the perspective of item (a) of this paragraph, publications in the form of a comic work using illustrations of a TV animation work (so-called film books), TV animation work establishment data, and the like are included in the scope of merchandising rights.

(c) Advertising use

In addition to the usage as so-called products, such as toys, stationery goods, clothing, and video games, the usage for advertising without the use of products (such as the use of characters for TV commercials) is also included in the scope of merchandising rights.

(3) Agreement with content-holders

What is required first to provide services as the contact responsible for merchandising rights is to conclude an agreement on entrustment from the content-holders to provide services as the contact responsible for merchandising rights. In the case of TV animation work based on a comic work as its original work, an agreement with the copyright holder of the comic work (author: comic artist, etc.) as well as an agreement with the copyright holders of the TV animation work (production committee of the TV animation work) is concluded.

(a) Content within the scope of the agreement

(i) Agreement with the author of the original work

There are two types of cases: one where the content of both the comic work and the TV animation work (derivative work) based on the comic work is within the scope; and the other where only the content of the TV animation work falls within the scope. In the latter case (where merchandising rights to the comic work are managed by a third party), it is important to properly determine the relationship between the content of the comic work and the TV animation work in detail.

(ii) Agreement with the production committee

The content of the TV animation work is within the scope. In the usage of the TV animation work, since the management and processing of the rights of the director, the script writer, the voice actors, the copyright holder of the music, etc., is required in some cases, the management and processing of rights is also determined based on discussions (associated costs are usually borne on the production committee side).

(b) Scope of merchandising rights

The details described in the previous paragraph “(2) Scope of merchandising rights” are also to be determined.

(c) Term

The term is three years in the shortest case, and the duration of the copyrights to the respective contents in the longest case. While it is desirable that the term of the agreement with the original author is identical to that with the production committee, they do not always accord as a result of negotiations with the other parties concerned.

(d) Details of services

Details of services provided by the contact responsible for merchandising rights are as follows:

*Selecting a licensee

*Concluding an agreement with the licensee

- *Arranging and managing materials required to utilize the merchandising rights
- *Controlling the quality of licensed goods
- *Collecting the merchandising rights usage fee
- *Distributing the merchandising rights usage fee to the contents holders
- *Precluding a third party from committing unlawful acts in connection with the usage of the merchandising rights

(e) Considerations

Services provided by the contact responsible for merchandising rights are based on the condition that the rights are sublicensed to a third party (licensee). Therefore, the consideration to be paid to the contents holders is, in principle, “(merchandising right usage fee received from the licensee) × n%”. This amount is then distributed to the original copyright holder and the production committee (with an allocation ratio between the respective parties usually of 3 to 7). The balance is the consideration acquired by the contact responsible for merchandising rights (commission for the contact: normally 10% to 30% of the merchandising right usage fee received from the licensee). In some cases, in addition to the commission for the contact department, expenses incurred in connection with services provided by the contact responsible for merchandising rights (in cases, for example, where special expenses have been incurred to preclude unlawful acts) are deducted from the payment to the content-holder.

(4) Determination of management policy

(a) Restrictions imposed by the content-holder side

Apart from the “scope of merchandising rights” prescribed in the agreement, there are restrictions in some cases with the intention and for the convenience of the contents holder side.

Examples:

- *No license granted for the usage for game machines (*Pachinko* and *Pachinko Slot*) during the TV broadcasting period
 - TV station internal regulations: License may be granted in cases other than key terrestrial TV stations
- *No license granted to religious institutions

*No license granted to political organizations

*No license granted to financial institutions (particularly to consumer loan firms)

*No license granted to low-priced goods, such as goods for so-called “100 yen shops”

(b) Policy as the contact responsible for merchandising rights

In addition to the economic perspective of maximizing the merchandising right usage fee, a draft policy is developed from the perspective of maintaining and enhancing the image of the content. The draft policy developed is then finalized with the approval of the content-holders. The policy is updated, as required, depending on the changes and trends in the market even after finalization.

(i) Targets

While mainly focusing on targets (such as age and gender) for the content, merchandising is strategically promoted for other targets in some cases.

(ii) Development schedule

More effective development of merchandising is promoted by controlling the introduction time of goods in accordance with circumstantial conditions, such as broadcasting the content, sales of videograms, or the serialization or sales of the original comics.

(5) Arrangement and management of materials

A licensee produces goods using materials provided from the contact responsible for merchandising rights, in principle. The following are materials often used for merchandising a TV animation work. They are produced by the animation production company, in principle, and arranged and managed by the contact responsible for merchandising rights:

(a) Logo

(b) Key visual

→ Two or three pieces of illustration materials are usually prepared not only for the purpose of merchandizing, but also for advertising when the animation is broadcast on TV.

(c) Character specifications

→ Documents specifying the characters: In addition to the normal front view, pictures with

variations of facial expression and trihedral figures are often included for producing three-dimensional objects. Also falling under these documents are text documents explaining the characteristics of each character, and a comparison table to determine the size of the characters.

(d) Background

→ Background pictures prepared separately from the character specifications.

(e) Scene photos

→ Part of the TV animation extracted as still photos.

(f) Scenario

In some cases, new materials are produced when requested by the licensee.

(g) Drawing new illustrations for the animation

→ An order is placed to the animation production company concerning the characters, poses, and other designated items. In this case, the licensee bears the production costs apart from the merchandising right usage fee. Illustrations newly drawn are managed by the contact responsible for merchandising rights as materials for merchandising usable by other licensees after a certain period of exclusive use (e.g. three months from the date when the goods are first released).

(h) New recordings by voice actors

→ An order is placed with the sound production company (which is responsible for sound recordings in creating an animation apart from the animation production company) concerning the characters, speech, and other designated items, In this case, the licensee bears the production costs apart from the merchandising right usage fee.

Since the use of a TV animation work itself (moving images) and music is out of the scope of merchandising rights, in principle, management and processing by other than the contact responsible for merchandising rights are required separately when the licensee wishes to use them.

(6) Trademark management

When goods using contents are distributed, the trademark is used, in some cases. Therefore, the contact responsible for merchandising rights, which is the contact department for licensing use of

the content, also manages the trademark rights. It is ideal to register in all classifications in which merchandising rights are assumed to be used before starting the use of the merchandising rights. However, this is not always the case for a TV animation work with a comic work as its original, since at the point of time when the title of a comic book is determined, the use of merchandising rights is not assumed; and trademarks with an earlier date of application are therefore not investigated. (See attachment: “Trademark Registration of Titles of Animation Works.”)

(a) Owner’s name

While the owner’s name should be the content-holder from the perspective of ownership of copyrights, the owner’s name should be the contact responsible for merchandising rights, because that department concludes license agreements with licensees. (Ordinary use rights of the trademark rights will be established in the merchandising right license agreement with the licensee.) Therefore, when the agreement with the content-holder expires, the owner is usually assigned as the contents holder, at no charge.

(b) Bearing of costs

The contact responsible for merchandising rights usually bears the costs, which are deducted from the merchandising right usage fee. If the application is made for any reason on the licensee’s side, the licensee bears the costs in some cases. (The owner’s name shall be the contact responsible for merchandising rights in any event.)

(c) Classification

The scope of application is normally as follows, determined based on the management policy of the contact responsible for merchandising rights and in accordance with discussions held with the contents holder:

- *Class 9 (Home video game toys, slot machines, electronic publications, etc.)
- *Class 16 (Various types of papers, printed materials, stationery goods, etc.)
- *Class 18 (Purses, bags, umbrellas, etc.)
- *Class 20 (Cushions, pillows, paper fans, etc.)
- *Class 21 (Pots and pans, water bottles, chopsticks, savings boxes, etc.)
- *Class 24 (Fabrics, cloth accessories, etc.)
- *Class 25 (Clothing, footwear, etc.)
- *Class 28 (Game machines, toys, dolls, etc.)
- *Class 41 (Provision of electronic publications, etc.)

(7) Selection of licensees

In order to avoid competition among licensees, only one company per line of business is selected as a licensee, in principle, based on the policy prescribed in “(4) Determination of management policy.” Criteria for selection include the company’s size, market share, financial status, and proven record in merchandising similar works, as well as the proven results of transactions with the contact responsible for merchandising rights.

(a) Exclusivity and non-exclusivity

Based on the principle of one company per line of business, an exclusive license is basically granted per category (no license is granted to others in the same category). There are some cases, however, where a non-exclusive license is granted within the same category. As for merchandising rights to a TV animation work, a license is granted in some cases on condition that the program of the TV animation work is sponsored by the licensee, and such a case is based on exclusive licensing.

(b) Examples of category classification

Merchandising rights are classified into various categories from the perspective of the line of business of licensees, market size, and so forth. This classification varies depending on market trends and other factors. The classifications commonly used now are as follows:

(i) Toys

The category of “toys” has been, generally speaking, the main category of licensing since the dawn of merchandising rights to date. With the emergence of new categories, however, such as card games, etc., this category now tends to be subdivided. (Examples of licensees: BANDAI, TAKARA TOMY, EPOCH CO., LTD., KONAMI, etc.)

(ii) Home video game software

Software for home video game machines provided by three companies, Nintendo (Nintendo DS/Wii), SCE (PlayStation 2/PlayStation 3/PSP), and Microsoft (XBOX). Nintendo software and SCE software are classified into different categories in some cases. (Examples of licensees: NAMCO BANDAI Games, SEGA, CAPCOM, KONAMI, HUDSON, etc.)

(iii) Games for business purposes

Games for machines installed in game parlors (Examples of licensees: NAMCO BANDAI Games, SEGA, KONAMI, TAITO, etc.)

(iv) Card games

Relatively new category in Japan that started with *Yugioh* and *Pocket Monsters*. Trading cards with game factors are used, which are differentiated from cards with no game factors. (Examples of licensees: KONAMI, TAKARA TOMY, Bushiroad, etc.)

(v) Figures

The term “figures” in general means “dolls.” In the case of merchandising rights, however, it refers to figures with a relatively high unit price targeted at the age group of junior or senior high school students or older. (Examples of licensees: KAIYODO, Good Smile Company, KOTOBUKIYA, etc.)

(vi) Prize goods/ capsule toys

Examples categorized not by the types of goods, but by the market in which the goods are distributed. Prize goods are used exclusively for machines installed in game parlors, such as UFO CATCHER, and capsule toys are literally goods exclusively for capsule toy machines. (Examples of licensees: BANDAI, TAKARA TOMY ARTS, etc.)

Other categories within the scope of merchandising rights include apparel (T-shirts, socks, underwear, etc.), food products (instant noodles, vacuum-packed curries, seasoning for rice, bread), and beverages.

(c) Coordination within a non-exclusive license category

Even in a non-exclusive license category, it is usually necessary to avoid competition among licensees. Examples of specific coordination methods are as follows:

(i) Size

In the case of stuffed toys, figures, plastic models of cars, and others, coordination is made by differentiating the size among licensees within the same category.

(ii) Price range

Coordination is made by differentiating the price range within the same category, such as higher and lower price ranges among licensees.

(iii) Targets

Coordination is achieved by differentiating the main target of goods within the same category, such as goods for infant to low-grade elementary school children and older children, and between boys and girls.

(d) Coordination of categories for use in advertising

Merchandising rights to items other than products may be licensed to licensees within a particular line of business rather than manufacturers. In such case, it is necessary to coordinate categories in accordance with each line of business.

Examples:

*Retailers (convenience stores, supermarkets, department stores, etc.)

*Credit-card companies

*Private preparatory schools

(8) Agreement with licensees

A merchandising rights license agreement on the content is concluded with the licensee selected by the contact responsible for merchandising rights and approved by the content-holder.

(a) Content within the scope

(b) Licensed category

The exclusivity or non-exclusivity of the category to be licensed mentioned in the previous paragraph is determined.

(c) Term

The term is usually one year. It is three years in some cases, however, for goods that are sold over a relatively long period of time, such as game software and CDs.

(d) Consideration (Merchandising rights usage fee)

The consideration is, in principle, calculated as “(suggested retail price of licensed goods) × n% × (quantity manufactured).”

(i) Price of the licensed goods as the basis of calculation

In the case of goods with no suggested retail price, the price needs to be set separately.

E.g. Prize goods: Wholesale price to game parlors

(ii) Percentage

The market rate is 3 to 8%. It is, however, 8 to 15% in the case of content for mobile phones, and the percentage varies depending on the objects licensed. Conversely, in the case of a TV animation work, the percentage is sometimes reduced by 1% or so from the normal rate in return for sponsoring the program.

(iii) Quantity as the grounds of calculation

From the perspective of “rights of reproduction” under the Copyright Act, the quantity manufactured is used in principle; however, “quantity sold” is used (deduction for returned goods is admitted) in some cases (for example, when the business practices concerning the relevant goods are taken into consideration, e.g. food products, CDs, etc.).

(iv) Guaranteed minimum usage fee

Regardless of the actual quantity manufactured (or sold), a guaranteed minimum usage fee is usually set based on the guaranteed minimum manufacturing quantity. Even if the actual quantity manufactured is less than the guaranteed minimum manufacturing quantity, no usage fee is refunded.

(v) Setting the consideration for use in advertising

In the case of the usage of merchandising rights where no goods are manufactured, the consideration is set in accordance with the term of use, the area of use (nationwide or regional limitations, etc.), and the medium used (TV broadcast, magazine, Web site, sales floor, etc.). In this case, a flat fee is usually used for the payment of the consideration.

(9) Quality control

From the perspective of maintaining and enhancing the image of the relevant content, the quality of goods manufactured by the licensee must be controlled. The following are excerpts from examples of provisions covering quality control in agreements between the contact responsible for merchandising rights and the licensee:

*“Licensee shall not handle the contents (the relevant TV animation work) in such a manner that causes an adverse social and educational impact in manufacturing, selling, or advertising the goods. Licensee shall pay attention not to damage the honor, reputation, or dignity and trust of the content holder and shall neither alter the content without good reason, nor handle the contents in a manner that damages the image thereof.”

*“Licensee shall manufacture goods by using the original models, original pictures, and script of the contents supplied by the contact responsible for merchandising rights, or produced by the Licensee and approved by the contact responsible for merchandising rights.”

*“Licensee shall submit a sample of the goods manufactured based in this agreement with one set each of labeling, packaging, containers, etc. thereof, to the contact responsible for merchandising rights. Licensee shall not commence the manufacture and sales of the goods before samples undergo appraisal and receive approval. The contact responsible for merchandising rights may assess the sample of the goods submitted by the Licensee and request the modification thereof within a reasonable scope, at the expense of Licensee.”

“Appraisal by the contact responsible for merchandising rights” includes quality assessment conducted by the content holder via the contact responsible for merchandising rights. Therefore, in the case of a TV animation work with a comic work as its original work, appraisal by both the copyright holder of the comic work and the production committee is required.

(a) Scope of appraisal

In addition to goods, all items that use the content, such as advertising materials, are within the scope of assessment. Appraisal is conducted at each stage of production (for example, rough design, data of the received manuscript, color proofs, and samples in sequence in the case of printed materials).

(b) Criteria of appraisal

Appraisal is basically conducted from the perspective of maintaining integrity with the relevant animation work. In assessment, however, not only is the integrity of colors, shapes, etc. required, but the design quality and the reflection of the original work’s view of the world are also taken into consideration.

(10) Collection and distribution of the merchandising right fee

The contact responsible for merchandising rights collects the merchandising right usage fee from the licensee based on the agreement with the licensee, and distributes the merchandising right usage fee to the contents holders based on the relevant agreement.

(a) Collection of the merchandising right fee

The guaranteed minimum usage fee is collected when the agreement is concluded and the part exceeding the guaranteed minimum usage fee is collected based on the report of the quantity manufactured from the licensee. The terms of collection of the exceeding part of the usage fee is usually monthly, quarterly, half-yearly, etc.

(b) Distribution of the merchandising right fee

In principle, the fee is distributed with the receipt of the merchandising right fee from the licensee as the trigger. The term of distribution of the usage fee is usually monthly, quarterly, half-yearly, etc.

Attachment: Trademark Registration of Titles of Animation Works (examples of registrations in Class 28: Toys)

(1) Owned by the copyright holder of the comic work

Majinga Z (Registration No. 4115179) Dynamic Planning Inc.
Astro Boy (Registration No. 1599372) Tezuka Productions. Co., Ltd.
Black Jack (Registration No. 4099580) Tezuka Productions. Co., Ltd.
Pretty Soldier Sailor Moon (Registration No. 4753705) Princess Naoko Planning
GeGeGe no Kitaro (Registration No. 4197630) Mizuki Production
Himitsu no Akko-chan (Registration No. 3158571) Fujio Productions

(2) Owned by a publishing company/merchandising rights management company

Doraemon (Registration No. 1731933) Shogakukan Production Co., Ltd.
Detective Conan (Registration No. 5033653) Shogakukan Production Co., Ltd.
Nodame Cantabile (Registration No. 4962043) Kodansha Ltd.
YOU'RE UNDER ARREST (Registration No. 4151303) Kodansha Ltd.
GHOST IN THE SHELL (Registration No. 4174365) Kodansha Ltd.
ONE PEACE (Registration No. 4453939) SHUEISHA Inc.
The Prince of Tennis (Registration No. 4562418) SHUEISHA Inc.
Crayon Shin-chan (Registration No. 3075161) Futabasha

(3) Owned by an animation production company

EVANGELION (Registration No. 3324699) GAINAX Co., Ltd.
Candy Candy (Registration No. 3261397) TOEI ANIMATION Co., Ltd.
Futari wa Pretty Cure (Registration No. 4786734) TOEI ANIMATION Co., Ltd.
Rahxephon (Registration No. 4502828) BONES Co., Ltd.
My Neighbor Totoro (Registration No. 4572804) STUDIO GHIBLI, Inc.
Love Adventure to Laputa (Registration No. 4353082) STUDIO GHIBLI, Inc.
Princess Mononoke (Registration No. 4259013) Nibariki Co., Ltd.
Sen to Chihiro no Kamikakushi (Registration No. 4470125) Nibariki Co., Ltd.
Lupin the 3rd (Registration No. 959919) TMS Entertainment, Ltd.

(4) Owned by manufacturer

Pocket Monsters (Registration No. 4141170) Nintendo Co., Ltd. and two other companies
ZOIDS (Registration No. 1781177) TAKARA TOMY COMPANY, LTD.
DRAGON BALL (Registration No. 2121664) BANDAI CO., LTD.

(5) Owned by an advertising agency

GUNDAM (Registration No. 1839632) SOTSU CO., LTD.
DRAGNAR (Registration No. 2106386) SOTSU CO., LTD.
Daitan 3 (Registration No. 3109587) SOTSU CO., LTD.
Xabungle (Registration No. 3219613) SOTSU CO., LTD.

(6) Owned by TV station

Tsubasa Chronicle (Registration No. 4916556) NHK Enterprises Inc.
Ojaru Maru (Registration No. 4417534) NHK Enterprises Inc.

(7) Others (Copyrights assignee)

Space Battleship Yamato (Registration No. 1572829) TOHOKUSHINSHA FILM CORPORATION

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