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## 5. Friends or Enemies? On the Relationship between Authors and Publishers

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### 1. Introduction

I work in the Japanese publishing house Shogakukan's division dealing with copyrights and contracts. I will explain the exact definition of copyrights in this context later, but in short they refer to rights granted to a person who created a work by her/himself without imitating anyone else, and to the work. In order to observe such rights and make proper use of them, it is necessary to clearly stipulate promises made between parties involved in a specific work to avoid problems. This is the purpose of contracts.

Shogakukan issues approximately 6,800 books in total and, in addition, publishes approximately 70 different magazines according to individual publication schedules, e.g. weekly or monthly. In addition to the actual publishing services, we launch strategies for rolling out contents of books and magazines for commercialization of various products on the Internet, and we promote collaboration with TV stations, movie companies, game software companies and animation production companies, and other companies, exploiting the special abilities of each. Such collaboration might, for example, lead to film adaptations, creation of animated shows, commercialization of CD-ROM and DVD packages and creation of various license products.

Shogakukan passes on requests for manuscripts for magazines and books to authors, collects received manuscripts and performs editing tasks. The core of Shogakukan is the division working on the task of creating beautiful books that people pick up, and it is my job to support such activities. Today, I would like to talk about "authors' rights" and "publishers' rights" based on my actual experience. I put the menacing phrase "Friends or Enemies?" in the title, but I firmly believe that it is desirable that authors and publishers co-exist rather than having a relationship of rivalry. I would be happy if this feeling of mine is conveyed to you.

### 2. Significance of Using Works

Before I go on to the main part of my talk, I would like to first define a particular term clearly: "work." Examples of works are literature such as novels and dramas, works of art such as music, dance, painting and sculpture, movies, photos, buildings and many others. In order to be works, however, they must have one thing in common: they must be novel works of expression created through art, academic and/or cultural achievements without imitating other works.

The Japanese copyright law defines work as follows: "'Work' means a production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain;" What do you think about this concept? I think no one here should have any objection to it.

Finished works can only be called works when expressed as "tangible things" that other people can see, hear and so forth, and this is a major factor in making it possible to protect them.

Next, I would like to give a little consideration to the works I listed. People who create new works of literature should of course be recognized socially for their wonderful power of expression and ideas and other intellectual activities. They must also be compensated economically accordingly. These creators are called authors and, as I will explain below, they are protected under the rights called "copyrights." Moreover, something would be wrong if they were not granted the power to control the use of their own creative works by their own judgment under constant conditions.

Now, concerning the use of such works, even if the authors go to such lengths to create their works, they are not recognized by anyone unless their works can be published to the world. They cannot receive compensations either. Publishers exist for this purpose, and so do broadcast companies, record production companies and

advertisement companies. The authors can select the method by which to publicize their works according to their own will. In some cases, it may be impossible to communicate with a large number of people within one's own ability or financial status. In such cases, the authors can select production companies appropriate for the desired publication form. In Japan, if a work is a work of literature, it is published as a book and the sales and advertisement power of the publisher is used to achieve a sales volume of several ten thousand or even several hundred thousand copies. According to this approach, the author earns royalties strictly according to the payment principles based on the contract agreed upon in advance. This is the most efficient way of dealing with works.

### **3. Rights of Authors**

In the previous section, I listed examples of works. The term "authors" refers to the people who create individual works, be they novelists, scriptwriters, songwriters, composers, painters, sculptors, film directors, photographers, architectural designers and so on and on. These people are all involved in creation. A person who created a certain work is guaranteed to have the rights that the creation, which is the crystallization of one's efforts, is not used by others without permission, automatically, from the exact time of its creation; that is, the authors hold the rights over their own creative works. These rights are referred to as "copyrights."

These rights are similar to ownership or right to use a new field granted to a person who cultivated waste land and created the new field. What do you think? If you opened up a new field, wouldn't you wish to have a guarantee to be able to use the land as private property until the generation of your children? In the case of copyrights, the rights over the creative works are guaranteed for the copyright protection period (50 years after the death of an author in case of Japan), and even if the author dies, the spouse or child will inherit the copyrights and become the copyright holder. This means that the profits can be obtained from a literary work until the generation of the author's children.

The rights of authors state that their works may not be used without permission, which means that if a work is used without permission, the author

can file claims for damage in money. Moreover, if one finds a person attempting to use the work without permission, the author can prohibit it no matter who in the world he or she may be, regardless of the reason.

Looking at the issue from the other side, the rights of prohibiting people from using your material can also be considered as the right to allow the use of works. An author can inquire about the conditions of usage and decline if the conditions are not satisfactory. As for payments of royalties, etc., there is an established payment ratio, which has been used for many years in the Japanese publishing industry (10% normally); books are published when both the author and publisher agree on the range.

### **4. Rights of Publishers**

In the previous section, I explained about copyrights. I stated they are rights ensuring that the works are "not used by others without permission" but then what kinds of "use" are guaranteed? In fact, there are many types of usage. Among them, the "reproduction rights" are closely related to "rights of publishers."

"Reproduction rights" prevent copying without permission. From the word "copyright," it can be understood that this right was the first to be stipulated. Copying is not only limited to copying with copying machines, but also transcribing manually, printing, taking photos, audio or picture recording, copying to CD or the hard disk of a computer and so forth. To put it briefly, all types of activities that involve recreating a work in tangible forms are referred to as copying.

Now, concerning the "rights of publishers," as a part of the "reproduction rights," which "prevent copying without permission," "publishing rights" are prescribed based on the idea of reserving the "right not to allow that a work is printed for publication without permission." "Publishing" plays a significant role among the usages of works. For this reason, a part of the "reproduction rights," which belong to the authors, was taken out and modified as "publishing rights" and stipulated. In this way, the author can obtain a smooth utilization of his/her work by allowing the publisher to exercise this right. A contract closed for this purpose is called a "contract

settling publishing rights.”

Fees involved in using works are paid according to such contracts. As I discussed in the previous chapter as well, the rate is normally 10%. That is, 10% of the list price of a book multiplied by the number of issues is paid to the author. In case of Shogakukan, the full sum is paid one month after the release of a book.

What about the case of a picture book where both a painter and a text writer are involved? In such cases, the 10% is divided between the painter and writer. It can be divided into halves, 5% each. Alternatively, it can be divided into 6% and 4% according to the amount of work and involvement in the production. Basically, a contract is a bilateral contract concluded between an author and a publisher. The exact text in a contract is thus the same in such cases. All authors and publishers enter into essentially the same agreement, changing only certain details such as the numerical values specifying royalties for literary work usage to match the actual conditions, etc.

Other contents of a contract include term of the contract, method of reporting the number of issues and agreement upon the number of complimentary copies for the author. Moreover, predefined agreement upon secondary use, which I explain in the next chapter, is specified as well.

### **5. On Secondary Use of Works**

What we call secondary use involves exploitation of a work in various ways in case it is published, recognized by readers and obtain popularity; it can be made into a movie, remade as a program for TV broadcast or similar, or made into contents for mobile terminals. You might say that the work is positioned as the original while conversion to film works, TV shows, games and so forth, can be said to be incidental exploitation.

I will provide a few specific examples, based on actual cases, where secondary use of works became popular in Japan and are used in overseas locations as well.

I collected various examples of secondary use of “Pocket Monster” seen in Thailand because it was not rolled out in Myanmar yet. To begin with, “Pocket Monster” was broadcast on TV through Channel 9. This TV picture work was broadcast in Thailand, with the voice acting dubbed in Thai

and Japanese characters appearing on screen replaced by Thai characters as well. As for the contract, a Taiwanese company named “TOP-INSIGHT” concluded a license contract to broadcast the show officially. Use of pictures of the characters is also permitted for commercialization purposes, for example, on sandals, T-shirts and pajamas.

The next example is “Hamtaro,” which is televised on a CATV station called UBC and Channel 7. For this one, a company in Thailand called “TIGA” closed a contract with Shogakukan. Plush dolls of the characters from the show became so popular that they became in short supply in no time at all.

The third example is a case where a Japanese book is translated and published in another country. This example is also taken from Thailand. A Thai company called “NATION EDUTAINMENT” won the right to translate and publish “Doraemon” in Thai through a contract. The conditions of the contract state that sales should be limited to within Thailand and the number of issues and other information should be reported to the Japanese author appropriately by the determined deadline.

So far, I have cited several examples. In these cases, the companies that obtained the licenses pay fees according to the usage fee payment conditions stated in the license agreements. In cases of works handled by Shogakukan, the authors as well as Shogakukan stand side by side in the contract negotiations, where Shogakukan receives payment and reports of actual figures from overseas companies and handles various negotiations and paperwork. Moreover, if a problem should occur, Shogakukan works on the case with all its might to solve the problem. Shogakukan charges a fee in payment for such labor and all the remaining money is given to authors. That is to say, we publishers are making efforts such that we can function as good partners for authors.

Lastly, I would like to add a discussion of the advantages for local companies in overseas locations to conclude official contracts. We Japanese publishers stand by to provide services related to literary works. If an official contract is

made, we can supply works constantly. With support from local people, the chances of success in commercialization of literary works and other business increase greatly. In such cases, local companies can obtain preferential rights to take central roles in, and even take charge of, the business rolled out.

working hard on acquisition of information, investment activities, building networks and other activities. In order to maintain the trust of the authors as their friends, they cannot spare any efforts.

## **6. Relationship between Authors and Publishers**

Rollout of Japanese comic books and animation in overseas locations starts basically from permitting that publishers, video production companies, etc. in overseas locations may make “use of the original works.” However, it is an overwhelming burden for the authors in terms of both time and labor to engage in all the activities involved in contracts on utilization of works, terms and conditions of contracts and so on, at overseas locations.

In Japan, publishers are often entrusted by the authors to become their agencies and handle various negotiations and meetings with overseas users on their behalf. Moreover, if it becomes necessary to discuss license conditions and usages, the publishers will of course keep in touch with the authors as necessary and carry out business upon obtaining agreement with the authors.

In order to extend the availability of works to all countries in the world, it is mandatory to have know-how about how to make proper use of the rights of authors. I believe that if authors enlist experienced publishers as their agents, the authors free themselves to fly to anywhere they wish.

If, on the other hand, the authors try to keep all the “copyrights” to themselves because they are their rights and regard publishers as enemies, they are required to confront all the odds single-handedly, leading to negligence of their essential creative activities. It is better if the authors devote themselves to writing, painting and creating new works, leaving business to publishers. This is the choice of the majority of authors in Japan.

In order to live up to these expectations, the employees of the publishing houses in Japan are