

Press Laws In Japan

PRESS LAWS IN JAPAN

(Commentary and Abstracts)

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(The Japan Newspaper Publishers & Editors Association)

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— P r e f a c e —

The enhancement of Japan's international stature in recent years has resulted in growing overseas interest in this country's newspaper and broadcasting industries as well.

To respond to this international interest in the Japanese mass media, the Nihon Shinbun Kyokai (NSK) began publishing in 1947 "The Japanese Press", a yearbook in English. Every year for nearly 40 years by now, NSK has endeavored through this yearbook to inform the world about the year's developments in Japanese journalism centering on the newspaper. In May 1978, NSK also began publishing an English-language quarterly "The NSK Bulletin". This publication reports to people in other countries latest developments in Japanese journalism every three months.

Even with these two publications, it is not possible to satisfy 100% the interest displayed in the Japanese press by the enthusiastic scholars of media and journalists in foreign countries. This is indicated by the constant stream of inquiries which the NSK's International Affairs Department receives from foreign scholars of media and journalists.

Among the inquiries which NSK has found more difficult to satisfy than the others are those relating to laws and regulations governing the mass media in Japan. Not many of Japan's laws and regulations are available in English translation. It is extremely difficult to get such translations even from the government departments concerned.

A study group set up by NSK has published a study in Japanese language entitled "Law and Newspapers" 13 years ago which is a compilation of various laws and regulations relating to newspapers. Now, we have compiled in this booklet the English translations of such laws and regulations.

It is often said that the newspaper is a mirror of the society which it serves. And, it can be said that laws and regulations governing the mass media are mirrors which reflect the position of the mass media in that society. Thus, Japan's laws and regulations relating to the mass media do reveal clearly the situation in which the mass media is placed in Japanese society.

If this booklet should serve the readers abroad as reference also in this context, we should indeed be gratified.

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CONSTITUTION

The Japanese Constitution includes the following articles which provides major support to the press freedom of the country.

In Japan's pre-World War II Constitution, although freedom of expression was recognized "within the limits of laws," there were several laws which actually restricted the press freedom. In the new Constitution, Article 21 precludes the enactment of law infringing the press freedom.

Of course, the freedom guaranteed under this article is not absolute and inviolable. There are times when press freedom is restricted in relative balance with considerations for "public welfare."

Constitution

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it dose not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

2. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 82. Trials shall be conducted, and judgment declared publicly.

2. Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

LAWS RELEVANT TO REPORTING AND NEWS GATHERING ACTIVITIES

National Secrets and News Reporting

The Government Officials Law, Self-Defense Forces Law and Local Officials Law use the same language "must not leak secrets which were learned in the course of duty." This applies, of course, to government officials whether still on active duty or retired. Because this pertains to a misconduct associated with an occupational status, the application of the law should be limited to civil servants. However, it is possible that a newspaper reporter could be charged with the crime of instigation or abetting. There has actually been a case in which a newspaper reporter was convicted of instigation. (Supreme Court verdict in the case of the leakage of an official Foreign Ministry cable; May 31, 1978)

Government Officials Law

(Obligation to Protect Secrets)

Article 100. (1) A civil servant must not leak secrets which were learned in the course of duty. He must protect such secrets even after he has retired from office.

(2) In the event a civil servant becomes a witness or an appraiser in accordance with law, in order to disclose secrets related to his work, he must obtain the permission of the head of the government office to which he belongs (in the case of a person who has retired from office, the head of the government office who has jurisdiction over the post from which he retired or a corresponding post).

(3) The permission in the preceding paragraph cannot be refused except in the case it concerns conditions and procedures stipulated by law or ordinance. (Amendment 1965 Law No. 69)

(4) The provisions in the preceding three paragraphs shall not apply to investigations conducted by the National Personnel Authority and to information requested by the National Personnel Authority in connection with a hearing. In the event of an investigation or a hearing conducted under the authority of the National Personnel Authority, no person need to obtain permission from any person to respond to the said Authority's formal demand that he relates or gives evidence on secrets or information whose disclosure is restricted. Any person who refuses to relate or give evidence on information formally demanded by the National Personnel Authority shall be subject to the punishment provided under this law. (Addition 1948 Law No. 222)

(Translated by NSK)

Self-Defense Forces Law

Article 59. Obligation to Preserve Secrecy. Self-Defense personnel shall not divulge any secret which may have come to their knowledge in the performance of their duties. This shall also apply even after the personnel have been separated from service.

2. In the event Self-Defense personnel are required to make a statement concerning any secret in line of their duties as witnesses as prescribed by law, they shall be required to obtain the permission of the Director General. This shall also apply even after the personnel have been separated from service.

3. The permission referred to in the preceding paragraph shall not be refused except as otherwise provided for by law.

Local Officials Law

(Obligation to Protect Secrets)

Article 34 (1) A civil servant must not leak secrets which were learned in the course of duty. He must protect such secrets even after he has retired from office.

(2) In the event a civil servant becomes a witness or an appraiser in accordance with law, in order to disclose secrets related to his work he must obtain the permission of the official who holds the power of appointment over him (in the case of a person who has retired from office, the official who holds the power of appointment over the post from which he retired or equivalent post).

(3) The permission in the preceding paragraph cannot be refused except in the case of special provision by law.

No independent law to protect national secrets from espionage has been existence in Japan after the War, but there are provisions in Criminal Special Law and MSA-Espionage Law to protect the secrets of the U.S. military forces stationed in Japan and of weapons supplied to Japan by the U.S.

Criminal Special Law Article 6 came to being in relation to the implementation of the agreement between Japan and the U.S. military forces on the status, facilities and zones of American forces in Japan. The agreement is based on Japan-U.S. Security Treaty Article 3 and principle of mutual cooperation between Japan and the U.S. military forces.

Special Criminal Code

Article 6 1. Any person who detects or collects security information of the United States armed forces (items listed in the attached table and documents, pictures or other things containing such items, which are not made public; hereinafter the same) for the purpose of using information in such a manner as the use thereof would harm the security of the United States armed forces or by wrongful methods shall be sentenced to penal servitude for not more than ten years.

2. The provision of the preceding paragraph shall apply to a person who discloses to another person such security information of the United States armed forces as cannot ordinarily be detected or collected except by wrongful methods.

3. Attempts of the offenses mentioned in the preceding two paragraphs shall be punished.

Agreement between Japan and the United States of America on Mutual Defence Assistance

Article 3. 1. The governments of the two countries shall adopt mutually agreeable measures in order to prevent the leakage or the danger of leakage of secrets relating to classified articles, services or information supplied from one government to the other in accordance with this Agreement.

2. In order to inform the public of the activities which are based on this Agreement, the governments of the two countries shall adopt appropriate measures which, however, shall not be inconsistent with the protection of secrets.
(Translated by NSK)

MSA — Espionage Law (Espionage Law pertaining to the Agreements between Japan and the United States of America on Mutual Defence Assistance, etc.).

Date of enforcement: July 1, 1954 (1954 Ordinance No. 148)

Amendment: 1955 Law No. 101

(Definition)

Article 1. (1) In this law, "Agreements between Japan and the United States of America on Mutual Defence Assistance, etc." refers to the Mutual Defence Assistance Agreement between Japan and the United States of America, the Ship Charter Agreement between Japan and the United States of America and the Agreement on the Loan of U.S. Navy Vessels to Japan.

(2) In this law, "equipments, etc." refers to ships, aircraft, weapons, ammunition and other equipment and supplies.

(3) In this law, "defence secrets, etc." refers to those matters which are listed below and documents, diagrams and goods related to such matters and which have not yet been publicly disclosed.

1) Those matters listed below relating to equipment, etc. which have been loaned by the Government of the United States of America in accordance with the Agreements between Japan and the United States of America on Mutual Defence Assistance, etc.

- (a) Structure or performance
- (b) Technology relating to manufacture, storage and repair
- (c) Method of use
- (d) Name of items and quantity

2) Information on equipment, etc. provided by the Government of the United States of America in accordance with the Agreement between Japan and the United States of America on Mutual Defence Assistance and relating to matters (a) through (d) listed in the preceding paragraph.

(Measures for Protecting Defence Secrets)

Article 2. The heads of state administrative organs which handle national defense secrets shall, in accordance with ordinances, take measures necessary to protect defence secrets, such as putting markings on defence secrets and notifying the persons concerned.

(Punishment)

Article 3. (1) Any person who falls under any one of the following items shall be punished with imprisonment of not more than ten years.

1) A person who obtained or collected defence secrets through illegal means or for the purpose of supplying such secrets for a use which is harmful to the security of our nation.

2) A person who leaked defence secrets to another party with the purpose of causing harm to the security of our nation.

3) A person whose duties involve the handling of defence secrets and who leaked to another party the defence secrets which he learned or obtained possession of in the course of his duties.

(2) Excluding persons who fall under Paragraphs 2 and 3 above, a person who leaked defence secrets to another party shall be punished with imprisonment of not more than five years.

(3) An attempt to commit the crime in the preceding Paragraph (2) shall be punished.

Article 4. (1) A person whose duties involved the handling of defense secrets and who accidentally leaked to another party the defence secrets which he learned or obtained possession of in the course of his duties shall be punished with imprisonment of not more than two years or a fine of not more than fifty thousand yen.

(2) Excluding persons who fall under the preceding Paragraph (1), a person who accidentally leaked to another party the defence secrets which he learned or obtained possession of in the course of his duties shall be punished with imprisonment of not more than one year or a fine of not more than thirty thousand yen.

Article 5. (1) A person who plotted or conspired in the crime in Article 3 Paragraph (1) shall be punished with imprisonment of not more than five years.

(2) A person who plotted or conspired in the crime in Article 3 Paragraph (2) shall be punished with imprisonment of not more than three years.

(3) A person who instigated or provoked the crime in Article 3 Paragraph (1) shall be subject to the same punishment as stipulated in Article 5 Paragraph (1), and the person who instigated or provoked the crime in Article 3 Paragraph (2) shall be subject to the same punishment as stipulated in Article 5 Paragraph (2).

(4) The stipulation of the preceding paragraph does not preclude the application of regulations on instigation written in the general provisions of the Criminal Law (1907 Law No. 45) in the event the instigated person committed the instigated crime.

(Mitigation of Punishment for Voluntary Surrender to Authorities)

Article 6. In the event a person who committed the crime in Article 3 Paragraph 1 No. (1) or Paragraph 3 or the crime in Article 5 Paragraph 1 or Paragraph 2 should surrender himself voluntarily to the authorities, that person shall be exempted from punishment or his punishment shall be reduced.

(Interpretation and Application of This Law)

Article 7. In its application and enforcement, this law must not be given an expanded interpretation which would unreasonably infringe on the basic human rights of the people. (Translated by NSK)

Non-Disclosure of News Source

The non-disclosure of news source is a long-established practice in Japan.

Legally, the right to refuse testimony on secrets relating to one's work is recognized under the Criminal Proceedings Law and the Civil Proceedings Law.

The Criminal Proceedings Law, however, uses the categorization system and lists the category of persons for whom the right to refuse to divulge professional secrets is recognized, such as doctor, midwife, lawyer, clergy, etc. In a judgement in a criminal case over the non-disclosure of a news source, the Supreme Court ruled on August 6, 1952, that the said article "cannot be applied to a journalist." In a civil case over non-disclosure of news source, the Sapporo High Court ruled in August 31, 1979: "The news source of a newspaper reporter corresponds to the professional secrets described in the Civil Proceedings Law, Article 281 Paragraph 1 No. 3. Although the right to refuse testimony on the news source is subject to limitations in relation to the conduct of a fair trial in civil suit, such limitations

should be decided on the basis of the relative balance between the benefits of conduct a fair trial and the benefits to be achieved by not divulging the news source." Thus, the court upheld the position of the newspaper company involved in the above case.

Some people in the Press insist that the right of a reporter not to disclose his news source should be written into law. However, the majority opinion is that it is better to preserve the present ethical practice because enactment of a law might protect the reporter's right but at the same time open up the possibility of intervention by authoritarian organs.

Criminal Proceedings Law

(Business secrecy and right to refuse testimony)

Article 149. A doctor, dentist, midwife, nurse, lawyer, patent agent, notary public, religious functionary, or any person who is or was in these positions may refuse to give testimony of such facts as have come into his knowledge in the course of his business because of the entrustment and as have related to the secrecy of another person: Provided, that this shall not apply if the person who had made entrustment has consented, if the refusal of testimony is deemed to be the abuse of right intended only for the accused (excluding such cases as the accused is the person who has made entrustment), or if there exist such causes as specified by the rules of the courts.

Civil Proceedings Law

(Ibid)

Article 281. A witness may refuse to testify in the following cases:

- (1) In the cases of Articles 272 to 274 inclusive;
- (2) In case a doctor, dentist, pharmacist, druggist, midwife, lawyer, patent attorney, advocate, notary public or an occupant of a post connected with religion or worship or a person who was once in such profession is questioned regarding the facts which came to his knowledge in the course of performance of his duties and which should be kept secret;
- (3) In case he is questioned with respect to matters relating to a technical or professional secret.

2. The provisions of the preceding paragraph shall not apply to such a case where the witness has been released from his duty to keep secret.

Libel and Defamation Acts

Reporting of incidents, particularly of crimes, is one of the major functions

of news reporting. The perennial big question in connection with crime reporting is to determine to what extent the honor of the person or persons involved should be safeguarded, and how to maintain a balance between the honor of the persons involved and the freedom of press.

Article 230 Paragraph 2 of the Criminal Code grants newspapers immunity from a libel charge when "a fact that concerns the public interest" was reported "for the purpose of promoting the public weal," providing that the report was true to fact. Because newspapers are edited and published to convey to readers matters concerning the public interest and to promote the public weal, these conditions themselves are not disputed. However, the question in this regard concerns the extent to which the truth of the fact can be proven. For many years, the Supreme Court took the position that "as long as there is no proof to establish the truth, a newspaper cannot escape criminal responsibility for defamation of character, even if it had mistakenly believed that the report in question was true to the fact."

However, on June 25, 1969, the Supreme Court handed down the judgement that "even if there is no proof of the truth of the report which is purported to have defamed a character, as long as there is sufficient reason to believe that the report was true to fact, libel cannot be established." The Press welcomed this new ruling as one which recognizes the importance of freedom of press.

Paragraphs 2 and 3 of Article 230 make special provisions regarding criminal suspects, government officials and politicians, thus easing the burden in reporting criminal cases.

Criminal Code

(Defamation)

Article 230. A person who injures the reputation of another by publicly alleging facts, shall, regardless of whether such facts are true or false, be punished with penal servitude or imprisonment for not more than three years or a fine of not more than one thousand yen.

2. No person, who injures the reputation of a dead person, shall be punished unless such injury arises in consequence of a false accusation.

(Proof of fact)

Article 230-2. When the act mentioned in paragraph 1 of the preceding Article is deemed to have been committed in allegation of the facts having relation to the public interest and solely for the purpose of promoting the benefit of the public, it shall not be punished, if, upon inquiry into the facts, the truth thereof is established.

2. In applying the provisions of the preceding paragraph, facts concerning the criminal act committed by a person who has not yet been prosecuted in relation thereto shall be deemed to be facts having relation to the public interest.

3. When the act mentioned in paragraph 11 of the preceding Article has been committed in allegation of the facts concerning a public servant or a candidate for elective public office, it shall not be punished if, upon inquiry into the facts, the truth thereof is established.

In the Civil Code, defamation of character is regarded as one of the "unlawful acts." For the purpose of maintaining the order of the nation, the Criminal Code aims at curbing repetition of similar crimes by punishing the person who has perpetrated a crime. On the other hand, the purpose of the libel clauses in the Civil Code is to compensate for the damage suffered as a result of defamation of character. The Civil Code defines "unlawful acts" as follows, but applies Article 230 of the Criminal Code in judging whether or not defamation of character had been committed.

Civil Code

(Unlawful act -- compensation for damage)

Article 709. A person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom.

Curbing Anti-Subversive Activities

The Anti-Subversive Activities Act includes rules for punishing persons who commit violent subversive acts, insurgent activities as defined in the Penal Code and inviting, instigating assistance to, and inciting aggressive acts from the outside.

Articles referring to activities by the press include besides instigation and incitement, the "crime of propaganda" using documents and graphic material and wireless and cable broadcasting. Furthermore, organizations engaging in violent subversive acts are prohibited from printing and distributing organ newspapers and magazines.

From the very beginning when the enactment of this Act was being considered, the press world strongly criticized it by pointing out that it might be used as a tool for controlling free speech. However, up to now, the Act has never been applied to the press.

Anti-Subversive Activities Act

Chapter 1

Article 95 Every person who has used violence or threats against a public official in the performance of his duties shall be punished with penal servitude or imprisonment not exceeding three years.

The same shall apply to every person who has used violence or threats against a public official with an intention of causing him to make or refrain from making a disposition or of causing him to resign from his post.

2. In this Act the term "instigate" means, with a view to causing any particular act to be performed, to cause a person or persons, by means of any document, drawing, speech or action, to make a resolution to perform such act, or to give a stimulus having such force as shall promote a resolution already in process of making.

Chapter 2

Article 5 1. Whenever the Public Security Examination Commission shall have sufficient ground to find that there is clear danger of an organization which has performed any terroristic subversive activity to perform again in the future any such subversive activity continuously or repeatedly by way of the activity of the organization, the Commission may take any of the following actions to such organization; provided, however, that such action shall not exceed the necessary and reasonable limits for the elimination of such danger:

(1) (omitted)

(2) in the case such terroristic subversive activities has been performed by means of any organ of the organization (any publication continuously issued by the organization to advocate, communicate or propagate the objective, doctrine or policy of the organization), to prohibit for a period fixed not exceeding six months to continue to print such journal or distribute its copies to a number of persons;

(3) (omitted)

Juvenile Crime

Article 61 of the Juvenile Law contains provisions on the "publication of articles and other matter" concerning crimes committed by juveniles.

Because the aim of Article 61 of the Juvenile Law is to protect immature juveniles and to make possible the future regeneration of juveniles who become delinquent, newspapers believe that they should observe the spirit of this law as if they were the "parents" of juveniles. Nihon Shinbun Kyokai holds the view that the reason why the law does not provide for penalties in connection with this article is that the law expects newspapers to exercise voluntary restraints. Therefore newspapers have to be aware all the more keenly of their social responsibilities. In line with this thinking, NSK has drawn up the following basic guideline for newspapers to follow in reporting on crimes committed by juveniles:

"The name and photo of a delinquent juvenile under the age of 20 should not be published in newspapers. However, exceptions will be made in special cases where the protection of society's interests takes priority over the protection of the juvenile concerned, such as (1) when the delinquent juvenile is at large and is clearly expected to commit further vicious crimes such as arson and murder, and (2) when newspapers cooperate in the search for a wanted juvenile criminal. In such cases publication of the name and photo of the delinquent juvenile concerned shall be authorized. The above will be the established practice of the Press."

Juvenile Law

(Prohibition of Publication of Accounts, etc.)

Article 61. With respect to a juvenile who has been instituted on a crime he has committed while a juvenile, such accounts or photographs as to enable other persons to infer that he is the criminal involved in the said crime, from his name,

age, occupation, dwelling place, looks, etc, therein shall not be published in newspapers or other publications.

Publication of Obscene Articles

The Criminal Code contains stipulations restricting the freedom of expression in matters of obscenity, as in matters of character defamation.

Ordinary newspapers deal with the problem of obscenity not from the standpoint of the Criminal Code but from the standpoint of newspaper ethics and are particularly careful in this respect. Therefore, newspapers are almost never involved in a legal case concerning obscenity. Court cases regarding obscenity involve mainly magazines, books, films sold on the market, and video films. However, since the concept of obscenity itself is not clear, the definition of obscenity always becomes a point of dispute in the court.

Supreme Court precedents have defined obscenity as (1) unnecessarily exciting and stimulating sexual desire, (2) offending normal sense of shame about sexual matters, and (3) running counter to virtuous sexual morality. The interpretation of these judgement standards, however, change with the moral concepts of the times.

Criminal Code

(Distribution of obscene literature, etc.)

Article 175. A person, who distributes or sells an obscene writing, picture, or other thing or publicly displays the same, shall be punished with penal servitude for not more than two years or a fine of not more than five thousand yen or minor fine. The same shall apply to a person who possesses the same for the purpose of selling it.

Election Reporting

Election reporting is governed by Article 148 of the Public Officers Election Law.

The Public Office Election Law restricts in various ways the use of documents and/or posters by campaigning candidates. But Article 148 recognizes the freedom of newspapers in reporting and commenting on elections.

As long as newspapers do not publish false data or distort facts or base their comments on false data or distorted facts, they are not legally restricted in reporting the viewpoints of political parties, the character, personal history and political views of candidates, and in supporting or opposing parties and candidates. Even if a newspaper's reports or comments should benefit or disadvantage a specific political party or candidate, they are within the scope of freedom guaranteed by Article 148 and will not lead to any trouble. It is the unanimous view of the Press that the attitude assumed by each newspaper in reporting or commenting on elections is not a matter that concerns the law but a matter that concerns the editorial policy of each newspaper.

The space which newspaper companies allot to political parties or candidates sometimes differ, but this discrimination is based on their evaluation of the news value. There have been cases in which the political party or the candidate given less space brought a suit against the newspaper company concerned on charges of "impairing the fairness of elections." However, there has been no case in which a court of law has supported such charges.

Public Office Election Law

(Freedom of Reporting for Newspapers, Magazines, etc.)

Article 148. 1. Regulations on election campaign restrictions stipulated in this Law, with the exception of Paragraph 3 of Article 138 "Prohibition of the Public Announcement of the Popular Vote" shall not hinder the freedom to print news and comment on elections in newspapers (including equivalent correspondence, etc., the same shall be applied hereinafter) or magazines. However, coverage shall not be permitted to damage the impartiality of the election through any abuse of the freedom of presentation, by giving false information or distorting the news.

2. Those whose activities are selling newspapers or magazines may distribute them by normal methods (i.e. distribution of newspapers or magazines to parties other than contracted subscribers during the period of the election campaign and on the

day of election must be limited to sales against payment) or may display them at the site specified by the National Election Administration Committee of each prefecture.

3. The newspapers or magazines that are applicable under the foregoing two paragraphs shall be those specified below only during the election campaign and on the day of election. However, for newspapers in braille, the provisions in Item 1, (b), including Item 1. (c) and the part relating to Item 1. (b) in Item 2. shall not apply.

(1) Newspapers or magazines complying with the following conditions:

(a) those distributed against payment three or more times per month in case of newspapers and once or more per month in case of magazines.

(b) Those approved as third-class mail matter.

(c) Those meeting the stipulations (a) and (b) above should also meet the condition of being issued continuously for one year (six months for daily newspapers reporting current events) prior to the date of the public announcement or notification of the date of the election.

(2) Newspapers and magazines covered by the conditions stipulated in Item 1, (a) and (b) which are issued by publishers of newspapers and magazines coming under Item 1 above.

(Restriction of Illegal Use, etc. of Newspapers and Magazines)

Article 148-2. 1. For the purpose of being elected or having somebody elected or not elected, no person may influence those in charge of the management or editing of newspapers or magazines to print election news and comments by providing preparing or promising to give them money, articles or other financial incentives, or by proposing or promising to provide entertainment.

2. Those in charge of the management or editing of newspapers or magazines may not receive or demand any of the inducements described in Item 1 above or accept the proposal described in the same Item to print news and comments on the election.

3. For the purpose of being elected or having somebody elected or not elected, no person may print or have printed news and comments on the election by utilizing their special status in managing or editing newspapers or magazines.

(Translated by NSK)

Protection of Copyright

News stories and photographs printed in newspapers can be classified into the following three categories under the Copyright Act.

(1) Material without copyright -- "news reports factually describing miscellaneous events and current developments" (Article 10 Clause 2).

(2) News material such as news reports and academic papers covered by

copyright but which can be freely used or quoted for the purpose of social and public benefit (Article 39).

(3) News material protected by the Copyright Act (general news reports such as news items, commentaries and feature articles, news photographs, designs and other edited material.

Among the above categories, (1) refers to simple, straight news items reporting factual news developments such as movement of personalities, obituaries, fires, traffic accidents, etc.

(2) refers to material which, in principle, should be accorded full protection under the Copyright Act, but which in case of editorial comments, etc. are regarded as being in public interest to give the readers the possibility of reading widely divergent opinions. In such cases, quoting or reprinting such material freely is permitted.

The Nihon Shinbun Kyokai has defined the "commentaries" mentioned above as "editorials" and commentaries which can be regarded as including editorial opinions. Hence, by-lined commentaries and feature articles on current affairs are clearly not included in this category, and different types of "columns", with or without by-lines are also excluded from this category.

For reprinting or quoting all news material outside those described under (1) and (2) above, permission of the newspaper in which the material was originally carried must be obtained.

Newspapers are at the same time "owners of the copyright" and "users of copyright" when reprinting material produced by somebody outside. Provisions defining editing of newspapers are described in Article 32 (quotations) and Article 41 (usage in reporting current events).

Copyright Act

Article 39 An editorial (excluding those having scientific character) concerning political, economic or social current topics made public by printing in a newspaper or magazine may be reprinted in another newspaper or magazine, or be broadcast or wire-broadcast. However, this shall not apply in the case where there is a manifestation prohibiting such utilization.

OWNERSHIP OF NEWSPAPERS

The law relating to the ownership of the stock of a joint stock company which publishes daily newspapers is a Special Law (Law No.212, enforced on June 8, 1951) of the Commercial Code (Company Law). The object of this law is to prevent outside capital from easily purchasing a company which publishes a daily newspaper and to preserve the independence of capital of newspaper companies. A company publishing a daily newspaper may limit, if it so stipulates in its articles of association, the persons who can receive transfer of its stock to those who are connected with the company (restriction of transfer) or to demand that when a stockholder is no longer connected with the company he transfer his stock to the company (restriction of ownership).

According to a survey conducted by the Nihon Shinbun Kyokai, 68 of all joint stock companies publishing daily newspapers have restrictions on transfer of stock written in their articles of association. Of these 19 companies have restrictions on ownership of stock written in their articles of association. The establishment of this special law stems from the fact that in 1950 the Commercial Code was amended to prohibit, as in the company laws of the United States and the United Kingdom, restrictions on the transfer of stock which until then was legally recognized for joint stock companies. The newly introduced prohibition applied to all joint stock companies, newspaper companies not excepted.

Thereupon, the 120 newspaper companies in the country set up the "All-Japan Newspaper Commercial Code Countermeasures Council" and launched a strong movement demanding that a special law be established for newspaper companies. The Diet (national legislature) responded and in 1951 adopted a law recognizing only for joint stock companies and limited responsibility companies which publish daily newspapers the right to restrict the transfer of their stock.

Subsequently, the Company Law was partially amended in 1964 to recognize the right of ordinary joint stock companies also to restrict the transfer of their stock. The Board of Directors of Nihon Shinbun Kyokai took this opportunity and requested the Ministry of Justice in 1965 to amend the special law to incorporate in it a clause to allow joint stock companies publishing daily newspapers to limit ownership of their stock. As a consequence, the current special law passed the Diet in 1966 as the "Law to Amend Part of the Commercial Code."

In the background of the establishment of this law lies the fact that the great majority of Japanese daily newspaper companies are joint stock companies. In fact, of the 106 newspaper companies affiliated with the Nihon Shinbun Kyokai, 101 are joint stock companies. The others are one limited responsibility company, one personal ownership, two corporate juridical persons, and one juridical person having a special status. Another factor is that many of the newspaper companies have the system of intramural stock holding (system under which the company's own employees hold the company's stock). There are 13 newspaper companies in which the employees hold 100% of the issued shares and 38 in which the employees hold more than 50% of the issued shares. On the other hand, not a single newspaper company has gone public with its stock.

Partly because of this special law, newspaper companies in Japan hardly ever issue shares as means to raise capital. In most cases, they meet their capital needs by borrowing from financial institutions. For this reason, the capitalization of Japanese newspaper companies is very small despite their huge circulation, assets and sales. Newspaper companies capitalized at over one billion yen number only three. Companies with capitalization of more than 300 million yen number only 13, including the above three.

Although there have been a few cases of a newspaper company going

bankrupt or being sold because of financial difficulties in Japan, most of the existing newspaper companies are operating on a relatively sound and independent management structure.

Mainly because of this management situation and of the legal protection of the law described above, there are in Japan no chain ownership of newspapers as seen in Western countries.

Law Concerning Restrictions, etc. on the Transfer of Stock and Holdings of Joint Stock Companies and Limited Companies Whose Purpose is the Publication of a Daily Newspaper.

Date of Enforcement: 1 July 1951 (Rider)
Amended: 1966 Law NO. 83; 1971 Law No. 75
(Restrictions, etc. on the Transfer of Stock)

Article 1. A joint stock company whose purpose is the publication of a daily newspaper which is issued under a fixed name and which carries matter pertaining to current events may stipulate in its articles of association that transferors and transferees of the said company's stock would be restricted to persons who are connected with the company's business. In that event, the articles of association may stipulate in addition that the transfer of such stock must be made to a person connected with the said company's business.

(Partially amended by 1966 Law No. 83)

(Stock Subscription Form and Stock Certificate)

Article 2. The stipulations in the articles of association referred to in the preceding Article must be inserted in the stock subscription or application form and stock certificate (including odd-lot stock; similarly in references hereafter).

2. In the event a promoter or a director of the said newspaper company or the representative of a foreign corporation or a deputy as defined in Article 258 Paragraph 2 or Article 270 Paragraph 1 of the Commercial Code (1899 Law No. 48) should fail to insert in the stock subscription or application form and stock certificate the stipulations in the articles of association referred to in the preceding paragraph or should write in an untruth regarding the said stipulations, such person shall be liable to a fine of not more than one million yen.

(Partial amended by 1966 Law No. 83 and 1971 Law No. 75)

(Revision of the Articles of Association)

Article 3. In the event a joint stock company as described in Article 1 should stop the publication of the daily newspaper described in Article 1 or suspend its publication of the daily newspaper described in Article 1 or suspend its publication for one hundred or more days consecutively or plan such a suspension, the said company must immediately revise its articles of association and delete the stipulations described to in Article 1.

(Partially amended by 1966 Law No. 83)

(Registration)

Article 4. In registering the establishment of the joint stock company as described in Article 1, the stipulations of the articles of association as described in Article 1 must also be registered.

(Partially amended by 1966 Law No. 83)

(Application to Limited Company Mutatis Mutandi)

Article 5. Article 1, Article 3 and the preceding Article shall be applied mutatis mutandi to the transfer of the holdings of a limited company whose purpose is the publication of a daily newspaper which is issued under a fixed name and which carries matter pertaining to current events. (Translated by NSK)

Rider

(Date of Enforcement)

1. This law shall go into force as of July 1, 1951

(Transition Regulation)

2. If, at the time of enforcement of this law, a joint stock company as defined in Article 1 or a limited company as defined in Article 5 already has stipulated in its articles of association restrictions on the transfer of stock or holdings and has inserted such stipulations in the stock subscription or application form and stock certificate, and furthermore has formally registered them, such stipulations, entry and registration shall be regarded as having been carried out in accordance with the provisions of this law.

NEWSPAPER ADVERTISEMENT

Newspaper advertisements, like editorial matter, are basically made up of text, photos and/or illustrations. Therefore, with respect to expression, newspaper ads are subject to the same legal restrictions as editorial articles and photos. Article 230 of the Criminal Code (see page 3) or Article 723 of the Civil Code are applicable to a newspaper which carry advertisements with libelous content. Article 233 of the Criminal Code is applicable if a newspaper ad damages the reputation of a corporation or an organization and hurts its business. If an ad is obscene, it is subject to Article 175 of the Criminal Code (Page 5), and if it infringes on copyright, it is subject to Article 113 of the Copyright Law.

Civil Code

(Reputation injured)

Article 723. If a person has injured the reputation of another the Court may, on the application of the latter, make an order requiring the former to take suitable measures for the restoration of the latter's reputation either in lieu of or together with compensation for damages.

Criminal Code

(Damage to credit, obstruction of business)

Article 233. A person, who injures the credit of another or impedes his business by circulating false reports or by fraudulent stratagem, shall be punished with penal servitude for not more than three years or a fine of not more than one thousand yen.

Copyright Law

(Acts deemed to be infringement)

Article 113. The acts mentioned in the following shall be deemed to be acts of infringing the personal right of author, copyright, publication right or other rights related to copyrights:

(1) The acts of publication for the purpose of distributing in the country the produced in the country at the time of importation of the same things, are infringement of the personal right of the author, copyright, publication right or other rights related to copyrights;

(2) The acts of knowingly distributing the things (including the things pertaining to the importation of the preceding items) produced by means of acts infringing the personal right of the author, copyright, publication right or other rights related to copyrights.

2. The acts of utilizing the things (stated in the above (1) and (2)) in the ways injuring the honor or reputation of the author shall be deemed to be acts of infringing the personal right of author.
(Translated by NSK)

Although newspaper ads are similar to editorial matter in terms of expression, in other aspects they are entirely different from editorial matter.

In the case of a newspaper ad, the advertiser buys space in a newspaper and uses it for propagating widely to the public his merchandise, corporate image, or viewpoint.

Therefore, the newspaper ad attaches greatest emphasis on informing the public the outstanding features of the advertiser's merchandise, corporate image or viewpoint. In order to make the appeal stronger, advertisements tend at times to be untruthful or exaggerated. An overwhelming majority of regulatory laws concerning advertisements prohibit exaggerated advertising. Among them, Article 1 of Minor Offenses Act prohibits deceiving or misleading presentation of facts in advertising as follows.

Minor Offenses Act

Article 1. (34) A person who, when selling or distributing objects to the general public, or when furnishing services, makes an advertisement presenting facts in a way which might deceive or mislead people.

Article 2. The punishment of a person who commits an offense provided in the preceding Article may, according to the circumstances, be remitted or detention and minor fine may be imposed together.
(Translated by NSK)

Further, a law which deal most comprehensively with restrictions on advertising is the Law for Preventing Unjustifiable Premium Gifts and Fake Presentation (abbreviated as "Premiums and Presentation Law"; (promulgated in 1962).

This law regulates all forms of "presentation," a term which is used to include not only advertisements but also labels and other small related matters.

Article 4 of this law prohibits as improper presentation (1) presentations that mislead ordinary consumers into believing that the merchandise or the service advertised is far better than it actually is, (2) presentations that mislead ordinary consumers into believing that the merchandise or the service advertised offers greater advantages than it actually does, and (3) all other presentations designated by the Fair Trade Commission (FTC) as improper.

Law for Preventing Unjustifiable Premium Gifts and Misleading Presentations

(Prohibition or Restrictions for Premium Gifts)

Article 4. An entrepreneur shall not make the following presentation with respect to the transaction of the commodities or services supplied thereby:

(1) Any presentation by which the contents, such as the quality or standard, of the commodities or services will be misunderstood by the general customer to be remarkably better than the actual one or than that of other entrepreneurs who are in competition with the said entrepreneur, and which is likely to attract customers unjustifiably and to impede fair competition;

(2) Any presentation by which the terms of transaction, such as the price of the commodities or services will be misunderstood by the general customer to be remarkably more favorable than the actual terms of transaction or than the terms offered by other entrepreneurs who are in competition with the said entrepreneur, and which is likely to attract customers unjustifiably and to impede fair competition;

(3) In addition to those mentioned in the preceding two items, any presentation as designated by the Fair Trade Commission, by which any matter relating to the transaction of commodities or services is likely to be misunderstood by the general customer, and which is likely to attract customers unjustifiably and to impede fair competition.

(Translated by NSK)

An example of a representation designated as improper by the FTC mentioned under (3) above, is a "decoy ad." The "decoy ad" is used most frequently by real estate operators. It advertises properties for sale at a ridiculously low price, although in fact such properties do not exist or are extremely limited in number. The intention of the ad is to draw customers with the decoy attraction

and to sell them other more expensive property. The FTC prohibits as improper presentation the decoy ads not only of real estate dealers but also of other businesses.

Article 10 of this law stipulates that, with the approval of FTC, business proprietors and/or industrial organizations may form a "fair competition covenant." Many organizations have formed such a pact in an attempt voluntarily to control improper presentation.

(Fair competition rules)

Article 10. Entrepreneurs or trade associations may, as prescribed by Fair Trade Commission Regulations, conclude or establish agreements or rules for preventing unjustifiable inducement of customers and for maintaining fair competition, with respect to the matters relating to premium gifts or presentation, upon obtaining the approval from the Fair Trade Commission. The same shall also apply in the case where they desire to make amendments thereto.

2. The Fair Trade Commission shall not grant the approval under the preceding paragraph, unless it recognizes that the agreements or the rules under the preceding paragraph (hereinafter referred to as the "fair competition rules") conform to the following respective conditions:

(1) That it is appropriate for preventing unjustifiable inducement of customers and for maintaining fair competition;

(2) That it does not threaten unreasonably the interests of the general consumer or related entrepreneurs;

(3) That it is not unduly discriminatory;

(4) That it does not restrict unreasonably participation or withdrawal from the fair competition rules.

3. The Fair Trade Commission shall, if it recognizes that the fair competition rules as approved under paragraph 1 have ceased to conform to respective condition of the preceding paragraph, cancel said approval. In this case, the provision of Article 6 paragraph 2 shall apply mutatis mutandis.

4. The Fair Trade Commission shall, if it has made the disposition under the provision of paragraph 1 or the preceding paragraph, publish a Notification as prescribed by Fair Trade Commission Regulations.

5. The provisions of Article 48, Article 49, Article 67 paragraph 1 and Article 73 of the Law relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade shall not apply to the fair competition rules as approved under paragraph 1 and to such acts of entrepreneurs or trade associations as have done in accordance therewith.

6. Any person aggrieved by the disposition of the Fair Trade Commission under the provision of paragraph 1 or paragraph 3 may file an objection with the Fair Trade Commission within thirty days from the day on which the Notification under the provision of paragraph 4 was made. In this case, the Fair Trade Commission shall, by a decision after the hearing procedure, dismiss said objection, or cancel or alter said disposition.
(Translated by NSK)

In the real estate industry, for example, operators have established in each region "Fair Competition Covenant Concerning Representation of Real Estate" which indicates in great detail what constitutes improper representation and the matters which must be specified in advertisements.

Cosmetics, automobile and home appliance industries, too, have formed similar covenants. The home appliance industry, for example, prohibits the use of words that suggest that a product is forever durable, such as "permanent," "everlasting" and "forever." It also prohibits definitive statements to indicate that a product has absolutely no defects, such as "perfect", "flawless", "100 percent", "almighty" and "infallible".

The automobile industry designates as improper representation such misleading expressions concerning used cars as "quasi-new car", "old-model new car", "refurbished car" and "new old car".

Thus, through the fair competition covenants of each industry and the notifications issued by the Fair Trade Commission, the Premium Gifts and Presentation Law regulates improper presentation over a wide range of businesses. However, advertisements concerning medical supplies which seriously affect the life of man are regulated by Article 66 of the Drugs, Cosmetics, and Medical Instruments Law which prohibits exaggerated advertising. Article 67 of this law stipulates that the method of advertising can be restricted by the government in case of sensitive drugs which are used against cancer and other special diseases and which are dangerous unless they are administered under the guidance of specialists.

Moreover, the Medical Affairs Bureau Director-General's notification "Standards for Proper Advertising of Drugs and Medical Instruments" issued simultaneously with the promulgation of the Drugs, Cosmetics and Medical Instruments Law gives a definitive interpretation of what constitutes untruthful and exaggerated advertising, and lists specific examples of proper and improper advertising expressions.

Drugs, Cosmetics and Medical Instruments Law

(Exaggerated Advertisements, etc.)

Article 66. No person shall, explicitly or implicitly, advertise, describe or circulate false or exaggerated statements regarding the name, manufacturing process, effect, efficacy or efficiency of drugs, quasi-drugs, cosmetics or medical devices.

2. It shall be construed as falling under the preceding Paragraph to advertise, describe or circulate such statements as lead to the false impression that a doctor or other person has certified the effect, efficacy or efficiency of drugs, quasi-drugs, cosmetics or medical devices.

3. The statements or diagrams suggesting abortion, or any obscene statements or diagrams shall not be used in connection with drugs, quasi-drugs, cosmetics or medical devices.

(Translated by NSK)

Exaggerated advertising is regulated also by the Money-lending Business Regulation Law whose Article 16 prohibits such advertising by the money-lending business which has a far-reaching impact on the economic life of individuals.

In addition to the above laws and regulations which are restrictive in that they prohibit exaggerated advertising, there are regulations which define obligatory representation of certain points. "Fair Competition Covenant Concerning Representation of Real Estate" is typical in this respect. It defines in great detail the points which must be stated, for instance, in newspaper ads of houses built for sale.

The Installment Sales Law lists in detail the points which must be mentioned in ads inserted by installment sales retailers and mail-order sales retailers. The

sales price and other contract terms are among the points which must be indicated in concrete terms.

There are also laws and regulations that restrict the volume of advertising in newspapers. The Public Office Election Law stipulates the size of newspaper space and frequency of election ads financed with government subsidy. Paragraph 2 of Article 20 of the Postal Regulations provides that to qualify for third-class mail postage discount, a publication must keep the ad space under half of the total space.

There are also a number of cases in which each industry restricts the volume of advertising through voluntary restraint.

For instance, The Federation of Pharmaceutical Manufacturers' Associations is restricting newspaper ads to five columns per insertion in one paper at one time, while the Federation of Bankers' Associations of Japan restricts the size of a bank's newspaper ad to three columns per insertion in one paper at one time.

To summarize, advertising in newspapers in Japan is regulated by laws, by fair competition covenants of each industry in accordance with the Premiums Gifts and Presentation Law, and by voluntary restraints exercised by the industry. In addition, newspapers sometimes voluntarily refuse ads which do not meet the standards set by themselves. These are the four types of newspaper ad restrictions practiced in Japan today.

CIRCULATION AND SALES PROMOTION

Unfair Trade Practices

With the aim of securing free and fair competition in business activities and thus promoting the sound development of the economy and contributing to the enhancement of the people's life (Article 1), the Anti-Trust Law prohibits the following three forms of behavior: private monopoly and unfair restrictions on transactions (Article 3), and unfair methods of transactions (Article 19). Six categories of unfair methods of transactions are stipulated (Article 2 Paragraph 9) and these are further broken down concretely by government notification (Notification No. 15) into 16 forms of behavior (general designation).

The Anti-Trust Law stipulates that the law will be enforced by the Fair Trade Commission which is independent of other Government departments (Article 27) and which consists of five members appointed by the Prime Minister from among men of knowledge and experience. The Commission's secretariat has a staff of more than 400. It has seven regional offices throughout the country. The law, patterned after the Sherman Act and Clayton Act of the United States, was established in 1958 and amended in 1963.

The law, quite naturally, applies to the newspaper industry as well, but special regulations (protective) have been set up to apply to the newspaper business.

(1) Specific Unfair Trade Practices in the Newspaper Business (Notification No. 14. Special designation)

This notification prohibits newspaper companies from (1) setting different prices (discriminatory pricing) by region or by the purchasing party and giving price reductions, and (2) sending to circulation agents a larger number of copies of the

newspaper than that ordered by the agents. (This is because the circulation agents must pay even for the copies forced on them.) These regulations ensure that newspapers are sold at a fixed price and sustain the system of exclusive circulation agents and closed territory system which are responsible for the high rate (92.5%) of home delivery of newspapers in Japan.

(2) Statutory Merchandise for Which Re-Sale Price Maintenance Contract is Recognized (Article 24 Paragraph 2)

The newspaper is legally designated as "a publication" in the same way as books and magazines and thus it is a merchandise for which a re-sale price maintenance contract can be concluded for its distribution, as in the case of books. This provision, together with the fact that sale at fixed price is stipulated in the above-mentioned (1) special designation, gives double protection to the system of selling at a fixed price.

(3) Surveillance by Fair Trade Commission of Synchronized Price Increase (Article 18 Paragraph 2)

From the standpoint that synchronized price increase in an oligopolistic industry is not desirable, it is stipulated that in the event a price increase should be effected in a specific industry under certain conditions, the Fair Trade Commission will order the companies concerned to submit a report on the reasons for the price increase and will make the case public in its annual report submitted to the Diet (parliament). In the case of newspapers, the "five major national daily newspapers" are believed subject to this rule (established in 1980). "Certain conditions" mean that the total annual supply of the affected commodity or service exceeds 30 billion yen, that the top three companies in the industry account for more than 70% of the total industry supply, that a top company in the industry is included among those which effected the price increase, that other main enterprises follow suit

within three months by raising their prices by a similar percentage or by bringing their prices up to the same level or close to the level of the companies which earlier raised their prices. In passing, it might be noted that "the five national daily newspapers" so far have not been requested to make a report. (A newspaper price increase has not been effected since the regulations were established.)

Anti Monopoly Act

Article 2.

9. The term "unfair business practices" as used in this Law shall mean such business practices as designated by the Fair Trade Commission out of those endangering fair competition and coming under any one (1) of the following items:

- (1) To unjustly discriminate against other entrepreneurs;
- (2) To deal with undue prices;
- (3) To unreasonably induce or coerce customers of a competitor to deal with one-self;
- (4) To undertake transaction with another party, the condition of which is to unjustly restrict the business activities of the said party;
- (5) To trade with another party by unjustly making use of one's position in the transaction;
- (6) To unjustly interfere with the transaction between the other entrepreneurs who compete in Japan with oneself or with the company in which he is a stockholder or an officer, and their partners in transaction; or to unduly induce, instigate, or coerce a stockholder or an officer of a company to act disadvantageously on the part of the said company in case where the said entrepreneur is a company.

Law Prohibiting Improper Premiums Gifts and Presentations

The law was established in 1964 as an independent law by extracting from the regulations on unfair methods of transactions in the Anti-Trust Law, the section dealing with premiums gifts and presentation of products. (It is sometimes referred to as a special law, supplementary law or related law of the Anti-Trust Law.) The reason for this legislation was that it is easy to pass judgment on the legality of matters related to premiums gifts and presentations and that in cases of infringement there is a possibility that consumers will suffer a loss unless the matter is speedily attended to. Thus, the purport is (1) to make speedy handling

possible and, to this end, (2) to make it possible for each industry to form voluntary organizations to handle such cases (Article 12).

In relation to the above-mentioned special designation regarding the newspaper business, the newspaper industry, too, is prohibited in principle from offering premiums gifts in soliciting subscribers under the notification "Restrictions Relating to the Offering of Premiums Gifts" (Notification No. 17).

In order to respect the above-mentioned notification, the newspaper industry has established the Newspaper Fair Trade Council.

Unfair Competition Prevention Law (Law No. 14, Mar. 27, 1934)

(Cessation of unfair competition)

Article 1. In case there is a person who commits an act falling under one of the following items, the other person whose business interest is likely to be injured therewith may demand cessation of such an act:

- (1) Act of using an indication identical with or similar to such full name, trade name, trade mark, container, packing of merchandise of the other person as widely known in the territory where this law is in force or of selling, distributing or exporting merchandise on which the above indication is used, and thereby causing confusion with merchandise of the other person;
 - (2) Act of using an indication identical with or similar to such full name, trade name, mark of the other person or any such other indication of the business and good will of the other person as widely known in the territory where this law is in force and thereby causing confusion with the business establishment or activities of the other person;
 - (3) Act of making a false indication of origin in merchandise or advertisements thereof or in business papers or correspondence in a way easy for the public to recognize or of selling, distributing or exporting merchandise on which such an indication is used, and thereby causing misapprehension of origin;
 - (4) Act of making in merchandise or advertisements thereof or in business papers or correspondence in a way easy for the public to recognize an indication causing the public to misapprehend that such merchandise are produced, manufactured or processed in a territory not belonging to the area where they are actually produced, manufactured or processed or of selling, distributing or exporting merchandise on which such an indication is used;
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STATUTORY TAX PRIVILEGES FOR NEWSPAPERS

Among the laws which affect newspaper companies in Japan are the Corporation Tax Law, Income Tax Law, and Local Taxes Law. A feature of these tax laws or the taxation system relating to newspapers, is the fact that in Japan, too, there are various measures to exempt newspapers from taxes or to lighten their tax burden in order to assist them maintain their public service functions.

News Gathering Expenses Not Included in Entertainment Expenses

Taxing of entertainment expenses was instituted in Japan in 1953 under the Special Taxation Measures Law. In advance of the establishment of this law, with a view to preventing de facto constraints on editing and news gathering activities, the newspaper companies requested that news gathering expenses not be regarded as entertainment expenses. This request was recognized.

(1) Statutory Basis (Relevant Government Office)

Article 38 Paragraph 2 of Enforcement Ordinance Relating to Special Taxation Measures Law (Scope of Entertainment Expenses, etc.)

(Ordinance No. 43, 1957)

(Finance Ministry)

(2) Substance

Corporate entertainment expenses are taxed in principle, but with respect to small and medium corporations the tax is imposed on the amount remaining after subtracting a specific sum which is determined according to the size of capitalization.

However, entertainment expenses do not include "expenses normally needed by newspapers, magazines and other publications as well as by broadcasting organizations for gathering material for and editing news articles or broadcast programs, including the holding of panel discussions".

Shortening of Useful Life of Automobiles Used by Newspapers and News Agencies

(1) Statutory Basis (Relevant Government Office)

Finance Ministry Ordinance Relating to Useful Life of Depreciation Assets.
Attached Table No. 1

(1966) (Finance Ministry)

(2) Substance

The useful life of sedan cars is normally fixed at six years. The useful life of cars used by newspapers and news agencies was shortened by one year to five years.

Shortening of Useful Life of Printing Equipment of Daily Newspapers

The useful life of ordinary printing equipment is fixed at 11 years. As against this, the useful life of monotype, cameras and communications equipment, is set at five years. In addition, there are provisions for type metal, for special depreciation of photo plate-making devices, for adjustment reserves relating to returns of unsold publications and magazines, and for a returned goods claims special account.

Income Tax Relating to Service Fees Paid to Foreign News Agencies, Etc.

(1) Statutory Basis (Relevant Government Office)

Circular Notice of Director of Tokyo National Tax Bureau
(1955) (Tokyo National Tax Bureau)

(2) Substance

Income tax is not deducted at source on that part of payments made by Japanese newspapers and news agencies for news and features supplied by foreign newspapers and news agencies and which does not constitute payment for copyright. (Tax exemption)

Tax Exemption on Photosensitive Material Used by Newspapers

(1) Statutory Basis (Relevant Government Office)

Attached Table No. 6 based on Article 35 of Implementation Regulations of Commodity Tax Law (Class 6 Purchasers Qualified for Tax Exemption)

(Finance Ministry Ordinance No. 24, 1962)

(Finance Ministry)

(2) Substance

General daily newspapers are exempted from payment of Commodity Tax (10-15%) when they purchase magnetic recording and reproducing equipment, record player for magnetic voice reproduction, films, sensitized paper and flash lamps which are necessary for use in gathering news material.

(3) Scope of Application

Limited to daily newspapers which report generally on politics, economy, culture, etc. (excludes sports newspapers and trade journals).

Reduction of Duty on Import of Newsprint

(1) Statutory Basis (Relevant Government Office)

Attached "Tariff Table 4801" based on Article 3 of Customs Tariff Law

(Law No. 54, 1910)

(Finance Ministry)

(2) Substance

At present a tariff of 5.9% is levied on the import of ordinary printing paper. However, the import tariff on newsprint (rolled paper containing ground pulp, weighing less than 58 grams per square meter and exceeding 80 centimeters in width) is set at 4.1 %.

* From April 1, 1984, the rates will be reduced for newsprint to 4.0% and for ordinary printing paper to 5.8%.

(3) Background

In 1951, the import tariff on newsprint was 10%. Because previous to this

newsprint was duty-free, the newspaper industry has been demanding a reduction in the rate.

For a long time, newspaper companies had been exempted from the Enterprise Tax (local tax), but as from April 1985 this tax has become newly applicable to them. The full implementation of this tax for newspaper companies is set for three years later. In the interim, as a transitional measure, newspapers will be given a reduction on the tax to be paid.

Reduction of Corporation Tax

In addition to the above, mention will be made here of the Enterprise Tax, a local tax, as it concerns newspaper companies.

Under Article 72 Paragraph 4 of the Local Taxes Law (Law No. 226, 1950), newspaper businesses had been exempted from the Enterprise Tax for many years, along with other organizations serving the public interest, such as social welfare organizations and educational institutions. The exemption for newspaper businesses, including newspaper delivery companies and general broadcasting enterprises, was abolished in the tax system reform of fiscal 1985. However, a transitional measure extending over three years was set up, during which period the tax will be reduced in the following way.

During the transitional period, newspaper businesses will be allowed to deduct from the taxable amount a sum equivalent to one-half of the income on which the Enterprise Tax is assessed, or ¥3,500,000, whichever is the larger. The tax will be imposed on the remaining sum. The standard tax rate on incorporated businesses is 6-12%, graduated according to the amount of annual income.

LAWS GOVERNING BROADCASTING IN JAPAN

Broadcasting in Japan is regulated under the Radio Law and the Broadcast Law, both of which were established in 1950. The Radio Law is concerned with technical aspects regarding the allocation of radio waves to wireless stations, including broadcasting stations, while the Broadcast Law stipulates the types of broadcasts permitted and the operation of enterprises which engage in broadcasting. The latter law includes even some stipulations concerning the contents of broadcast programs. The Broadcast Law is applied equally to NHK which conducts public service broadcasts and to commercial broadcasting stations. It allows NHK to collect a listening fee but prohibits it from obtaining revenue through advertisements. It also imposes on NHK the obligation to provide broadcast services reaching all corners of the country. Commercial stations, as a rule, engage in regional broadcasting and derive their income from advertising.

The purpose of the Broadcast Law is stipulated in Article 1 as follows:

The Broadcast Law

(Chapter I General Provisions)

Article 1. The purpose of this Law is to regulate the broadcasting so as to meet the public welfare, and to strive for the sound development thereof, in accordance with the principles as stated below:

- (1) To secure the maximum availability and benefits of broadcasting to the people;
 - (2) To assure the freedom of expression through broadcasting by guaranteeing the impartiality, integrity and autonomy of broadcasting;
 - (3) To make the broadcasting contribute to the development of healthy democracy by clarifying responsibility of those persons engaged in broadcasting.
-

Furthermore, Article 3 guarantees the freedom of production of broadcast programs.

Article 3. Broadcast program shall never be interfered with or regulated by any person, excepting the case where he does so upon the powers provided for by law.

Frame Work of Japan Broadcasting Cooperation

NHK is a special corporation which was established for the purpose specified in Article 7 ("in the public interest, to provide broadcast services which can be received anywhere and everywhere in the Japanese nation"). NHK is authorized to undertake the following forms of broadcasting: medium wave, FM, TV, TV multiplex (voice multiplex and character multiplex) and direct satellite broadcasting. In addition, under the orders of the Minister of Posts and Telecommunications, NHK is conducting short-wave radio broadcasts beamed overseas. (NHK is directly responsible for the programming of overseas broadcasts.)

The principles governing the production of NHK's domestic broadcast programs are laid down in Article 44 of the Broadcast Law.

Broadcasting Law

Article 44. The Corporation shall, in compiling and broadcasting the broadcast programs of the domestic broadcasting, follow what are laid down in the following items:

- (1) Shall exert its possible efforts to satisfy the wishes of the people as well as to contribute to the elevation of the level of civilization by broadcasting rich and good broadcast programs;
- (2) Shall keep local programs in addition to national programs;
- (3) Shall strive to be conducive to the upbringing and popularization of new civilization as well as to the reservation of past excellent civilization of our country.

2. The Corporation shall, in order to know the wishes of the people, conduct scientific listening polls at regular intervals and make public the result thereof.

3. The Corporation shall, in compiling the broadcast programs of the domestic broadcasting, follow what are laid down in the following items:

- (1) Shall not disturb the public security, and good morals and manners;
- (2) Shall be politically impartial;
- (3) Shall broadcast news without distorting facts;
- (4) As regards controversial issues, shall clarify the point of issue from all the angles possible.

4. The Corporation shall, in compiling the broadcast programs of the domestic broadcasting, provide, except those provided in accordance with a special business project, cultural programs or educational programs as well as news programs and entertainment programs, maintaining harmony among broadcast programs.

5. The Corporation shall, in compiling and broadcasting educational programs, clearly indicate the persons whom the broadcasting is aimed at and make the contents of the broadcasting being systematic and continuative as well as instructive and appropriate to such persons; at the same time, means shall be so provided as to allow the general public to learn the plans and the contents of the broadcasting in advance. In this case, if the program is intended for schools, the contents thereof shall conform to the standards of the curricula provided for by the laws and regulations relative to school education.

6. The Corporation shall, in compiling the broadcast programs for television multiplex broadcasting, strive to provide as many as possible those broadcast programs which bear connection with the contents of, and further enrich the contents of or raise the effect of television broadcasting programs simultaneously put on the air.

In order to carry out the provisions of this article NHK has the obligation to establish standards in the production domestic programs and to make these standards public. It is also obligated to set up program review councils, consisting of men of knowledge and experience, both at the central and regional levels.

Furthermore, the law was revised in 1982 to make it obligatory for NHK, under Article 45 Paragraph 2, to carry out broadcasts which serve to prevent disasters and to keep down casualties and limit damage at times of natural disasters.

Article 44 Paragraph 3 to 5 are applied mutatis-mutandis to the program production of commercial broadcasting stations. Commercial stations, too, must establish program standards and make them public. Each station, moreover, is obligated to set up a program review organ.

Election Coverage

The Public Office Election Law stipulates that NHK and commercial broadcasting stations shall provide time on radio and TV to candidates in elections for the Diet and prefectural governors to broadcast their personal history and political views. The number of times of broadcast depends on the kind of election. The Public Office Election Law gives freedom within a prescribed limit to broadcasting stations to broadcast news and commentaries pertaining to elections.

Public Office Election Law

Article 151-3 The provisions of this Law relating to restrictions on election campaigning (excepting Article 138 Paragraph 3 "Prohibition of Publication of Popularity Poll") do not obstruct the freedom of the Japan Broadcasting Corporation (NHK) or of private broadcasting enterprises to produce, in conformance with the stipulations of the Broadcast Law, broadcast programs to report or comment on elections. However, freedom of expression must not be misused to broadcast false statements or distorted facts, thus impairing the fairness of elections.

NHK, in Article 45 of Broadcast Law, and commercial stations, in Article 52 of the same law, are obligated to provide equal conditions for broadcasting to all candidates.

Broadcast Law

(Campaign Broadcasting)

Article 45. In case the Corporation allowed any candidate for an elective office to broadcast his political views or make a campaign speech, it must, on application, let other candidates for the same office in the same election broadcast under the same conditions.

Article 52. In case a private broadcast enterpriser has allowed any candidate for an elective office to broadcast his political views or make a campaign speech over the former's broadcast equipment or through other broadcast enterpriser's, it shall, on application, let other candidates for the same office in the same election broadcast under the same conditions whether with or without charge.

Broadcasting Univ. and Multiplex Character Broadcasting

Article 44 Paragraph 3 to 5 of the Broadcast Law are applied to the production of programs of The University of the Air which began fullscale broadcasting over TV and radio in 1985. The University of the Air is prohibited from broadcasting advertising, as in the case of NHK.

For TV multiplexed character broadcasting which went into regular operation at the end of 1985, the following unique system has been adopted.

(1) NHK and commercial stations are able to use for their own purpose one-fourth of the vertical blanking lines usable for multiplexed character broadcasts.

The stations are obligated under Article 44 Paragraph 6 to use the multiplex broadcast facilities as much as possible for supplying texts to supplement the original program being transmitted.

(2) The remaining vertical blanking lines, in the case of both NHK and commercial stations are to be made available to third-party multiplexed character broadcasting enterprises. These enterprises constitute a new kind of commercial broadcasting company. Their program editing is governed by Article 44 Paragraph 3 to 5 inclusive of the Broadcast Law, and they must establish program standards and a program review organ. Their operations are financed by advertising revenue. In the case of NHK, it is expected for the time being that its general TV channel might be used by seven to eight third-party character multiplex broadcasting companies.

As for direct satellite broadcasting, two NHK channels are scheduled to start regular broadcasting in 1986. When a new broadcasting satellite is orbited in 1990, nationwide broadcasting will be conducted over two NHK channels and one commercial channel. The commercial satellite broadcast company will be financed by advertising revenue and by charging viewers (probably by "pay as you view" system).

Although it is not based on the Broadcast Law, a guideline on the ownership of commercial broadcasting stations has been in force since 1959. Known as "Measures to Prevent Concentration of Mass Media", this guideline was issued by the Ministry of Posts and Telecommunications which has jurisdiction over broadcasting. The guideline prohibits, in principle, the simultaneous ownership or domination of the three media of newspaper, radio and TV in a single area by one and the same company. As a way of determining ownership and domination, the guideline contains rules on the equity share and on persons serving concurrently as directors of two or more media companies. An exception is made if there is

another influential media company in the same area and if, because of other circumstances, there is no fear that simultaneous domination of three media in the area by one company will result in monopolistic supply of information to the public. This measure to prevent concentration is applied also to third-party users of multiplexed character broadcasting, although the equity restriction is somewhat easier.

CATV

Regulations governing CATV in Japan are separated into those applying to licensees for cable television broadcasting facilities who set up his own facilities and operate them and to cable television broadcast enterprise who lease facilities from "licensees..." and broadcasts programs of his own making.

The "licensee" of a CATV facility which serves more than 500 terminals needs to obtain a "permit" from the Minister of Posts and Telecommunications. In the case of a network with 50-500 terminals, registration with the Ministry of Posts and Telecommunications is necessary. Not registration is required for less than 50 terminals. The cable television broadcast enterprises need only to register.

Article 3 and Article 44 Paragraph 3 of the Broadcast Law are applied to CATV programs originated by the CATV "enterprises". In addition, they are obligated to set up program review organs. There are no regulations governing a "licensee" who does not produce his own programs but relays the programs of established TV stations. However, he is under obligation to relay simultaneously all programs broadcast by TV stations in that area (including multiplex broadcasts) without making any alternations.