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**Legal Structure, Business
Organisations and Lobbying:
The Japanese Publishing Sector,
1990-2001***

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**Legal structure, business organisations and lobbying: The Japanese publishing
sector, 1990-2001**

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How did incumbents in Japanese publishing maintain resale price maintenance (RPM)?

This article sheds light on the inter- and intra-industrial structure that enabled the protection of RPM, or the fixed price system, amid the country-wide liberalisation in the 1990s. By analysing textual data including governmental reports, trade papers in publishing and leaflets adopted for lobbying, the critical decade was reconstructed. It addresses a scarcity of business history literature about the link between RPM and business organisations, particularly concerning lobbying.

Keywords: lobbying, publishing, Resale Price Maintenance, theorisation, industrial structure

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1. Introduction

Business historians have provided insights into the relationship between firms and legal structure. In particular, much attention has been paid to cartels¹ and resale price maintenance² (RPM). During the Post World War period, antitrust policy, derived from ideas and practice in the United States, diffused across the globe and the legal structure was reformed in many countries accordingly.³ Consequently, cartels and RPM, once widespread, came to be abolished by the 1990s in many parts of the world.

On the one hand, recent research in business history has pushed the research agenda forward especially on cartels. Such studies have addressed the *impact of cartels on firms*, including both the negative and positive side of them⁴ as well as *companies' influence on the status of cartels* through lobbying⁵. On the other, more work needs to be done concerning RPM since the existing knowledge about *how RPM affected firms* is informative, but little is known about *how firms affected (the status of) RPM*. Therefore, this article sheds light on both of these issues, in particular, embracing companies' influence toward the status of RPM by examining the experience of Japanese publishing in the phase of country-wide liberalisation.

The first section of the article explicates the legal structure, in particular, RPM and firms in business history, together with useful angles for analysing lobbying. The

following section compares the fixed price system for books across the world, in particular in Europe. The comparison contributes to further sharpening the analytical perspective on inter- and intra-industrial structure and lobbying. The intra-industrial structure in Japanese publishing was characterised by the two largest wholesalers, Tohan and Nippan, that had approximately 80 percent of the market share. These dominant players clearly held interests in maintaining RPM. Furthermore, unlike other countries, RPM in Japan included both publishing and newspapers. High concentration within the sector and the connection with the newspaper contributed to the maintenance of RPM. What then follows is an examination of the lobbying in Japanese publishing, namely the interaction between the Japan Fair Trade Commission (JFTC), regulatory agency, and incumbents in publishing. Importantly, incumbents in publishing could utilise wider dissemination channels by collaborating with newspaper firms. Ultimately, incumbents' claims reached politicians. Amid the increasing difficulty in implementing regulatory change, the JFTC attempted to directly convince incumbents to accept the JFTC's requirement by forcing them to discount publications; however, this could not accompany legal force. Therefore, incumbents superficially adopted discounts and they maintained RPM as both legal exemption and a component of the established practice.

2. RPM and firms in business history

In terms of *how the legal structure affected firms* in relation to RPM, business historians have provided insights into the importance of dominant players before and after the abolition of RPM. Mercer examines the impact of the abolition of RPM in 1964 in the UK, in terms of retailer-supplier relationships.⁶ During the RPM period, small retailers were protected due to the avoidance of price protection. After the abolition, multiple retailers increased their market share. Moreover, they could secure much more access to capital for growth provided by financial institutions and investors. Consequently, a handful of large retailers became dominant players and exerted a significant degree of pressure to manufacturers and suppliers in various dimensions. While Mercer illustrates the increasing shift of bargaining power from manufacturer to retailers, Tennent's analysis of music distribution in the UK illustrates the retention of bargaining power upstream.⁷ Before the abolition, specialist-oriented distribution was dominant. However, after abolition, while the specialist market remained as a certain niche, the mass market came to be prominent. Importantly, the distribution for the mass market was benefitting four major record companies rather than large-scale retailers. This is because retailers had to accept certain conditions, including 'minimum order levels' presented by record companies. Consequently, the record companies maintained

significant control over retailers.

As indicated above, not much is written about *how firms affected the status of RPM*. Exceptionally, Morelli examines both the impact of (abolition of) RPM and companies' influence on RPM.⁸ His analysis of the UK food retailing sector, on the one hand, illustrates the acceleration of an oligopoly downstream after the abolition of RPM. On the other, he sheds light on dominant players' influence toward the legal structure in the post RPM period. Under RPM, multiples with more than ten stores increasingly perceived a threat from independent voluntary chains that adopted American retailing methods such as cash-and-carry. Accordingly, multiples came to be motivated to challenge RPM and move toward more price competition. Independent chains, again, adopted a US origin method, trading stamps to compete with multiples by increasing the loyalty of customers. Consequently, multiples resisted and spent a certain amount on lobbying, which legislated a restriction on the trading stamp in the sector.

In order to embrace *how firms affect the status of RPM*, a focus on lobbying would be helpful. Lobbying tends to represent the vested interests of incumbent actors, and thus, if successful, may directly benefit them. For example, Pineda investigates Argentinean manufacturers aiming to control the domestic market in the early 20th century. The study identifies such intentional activities by manufacturers, including

lobbying for protective tariffs excluding imports, which have contributed to the protection of the internal economy.⁹ Similarly, Walker examines the effect of voluntary export restraint (VER), which was realised due to European and North American car manufacturers' lobbying of relevant players. As a result of UK-Japan VER, cars manufactured in Japanese transplants in the UK were not considered 'European' in the UK, but were in other European markets. By this, the UK could benefit from foreign direct investment by Japanese manufacturers as well as protect British Leyland, a nationalised car manufacturer.¹⁰ Needless to say, lobbying is not always solely dependent upon the efforts of firms. Decker examines the role of an American firm, Kaisers, in Ghana and illustrates the importance of the diplomatic relationship on the effectiveness of corporate lobbying. In particular, her historical case shows significant changes in the US of the effectiveness of corporate lobbying by Kaisers.¹¹ Furthermore, Planas focuses on enablers and constraints concerning winemaking cooperatives in Catalonia. Catalonian winegrowers formed dense networks, which contributed to the emergence of cooperatives. Importantly, dense networks allowed for lobbying the government for subsidies and technological support. However, due to the limitation of available resources, the governmental support was not prominent in Catalonian winemaking cooperatives, which was one of the obvious constraints for them.¹²

While business historians address the implication of lobbying to a great extent, they remain relatively silent about the content of the argument on lobbying. Exceptionally, Schenk partly touches upon the issue. Schenk examines the impact of anti-competitive constraints on the banking sector in Hong Kong. As a remedy for the financial crisis caused by poor governance, a moratorium was imposed on new bank entry in Hong Kong from 1965, which aimed to enhance governance in banks by increasing the stability of the banking system. Incumbent banks sought further restrictions on new banking operations by lobbying the government. Importantly, Schenk shows that the argument of incumbent banks emphasised the necessity for further regulation in relation to the stability of the industry, rather than their own interests, by highlighting issues such as ‘unhealthy overtrading.’¹³ In order to make sense of the argument in lobbying, the concept of theorisation, which is a specific type of discourse, would be particularly helpful. Theorisation can be defined as ‘the self-conscious development and specification of abstract categories and the formulation of patterned relationships such as chains of cause and effect’ through the use of language¹⁴. This concept has been mainly adopted in the analysis of change that involves proponents and opponents. For example, Misangyi et al. examine the institutionalised corruption in Bosnia and Herzegovina. According to their analysis,

theorisation from proponents and opponents of change can be summarised as follows. If the opponents of corruption argue that poverty is the outcome of corruption, their opponents claim that poverty is the cause of it and first and foremost, poverty needs to be addressed¹⁵. Although the concept has not been adopted in the analysis of lobbying, as seen in more detail below, it would be particularly helpful in embracing the content of the argument, and the dissemination channel adopted for lobbying. In relation to lobbying, theorisation is a simplified claim either defending or attacking the suggested policy.

Importantly, theorisation would be created and disseminated by proponents and opponents of a suggested change such as the implementation of a certain policy.¹⁶ That is, in relation to lobbying, the following relationship can be assumed. By creating theorization, both proponents and opponents simplify the implication of a particular public policy implementation and aim to convince the related audience. Therefore, the government seeks to create theorization of change, which clarifies the effect of the suggested policy implementation. Opponents build theorization of resistance that highlights the implication of resistance to the proposed change and/or the implementation of the alternative measure.

Theorisation can be disseminated through various channels:

[Theorisations] originate from many places, ranging from academic researchers to journalists, and can be communicated to the public in various ways, ranging from research articles to media articles¹⁷.

Zajac and Westphal show that financial economists disseminated theorisation by highlighting the importance of the principal-agent relationship in the form of agency theory through textbooks and formal education¹⁸. Furthermore, Sauder indicates that theorisation highlighting the importance of competition in the legal professional field was disseminated through a particular type of media (U.S. News & World Report)¹⁹.

In summary, this article aims to provide insights into the interplay between RPM and business organisations. By focusing on intra-industrial structure, in particular, the role of dominant players, the existing research examines the effects of RPM on firms. This article argues that such attention to the inter-industrial structure would be necessary for examining the influence of RPM on firms. Also, this article leverages the concept of theorisation which could capture the content and the dissemination of the argument either supporting or opposing the status quo. In the next section, RPM in other countries will be compared. The comparison sharpens the analytical perspective as well

as clarifies the significance of focusing on the Japanese case, namely the intra- and inter-industrial structure.

3. Contextualisation

International comparison: Theorisation and socio-economic change

The fixed price system in publishing has been observed in several countries, in particular in Europe. Certain countries hold RPM for books as seen in Table 1, while other nations have abolished RPM, including the UK, Ireland, Finland and Sweden. In what follows, the examination of countries with RPM as well as those that abolished RPM will be conducted; then follows the illustration of the distinctive characteristics of Japanese publishing.

Insert Table 1 Here

In European countries, as seen in Table 1, RPM was mainly based on the law that enforced RPM. The French law passed in 1981 provided templates for a law concerning RPM in many other European countries in terms of theorisation of maintaining RPM for books.²⁰ French law enforcing RPM for books is commonly known as 'le loi Lang' or

Lang Law, named after then French Minister of Culture, Jacques Lang. The theorisation underlying Lang Law as well as the legalisation of RPM inspired by Lang Law can be summarised as follows: equal and universal access to publications as cultural products as well as the diversity of publications.²¹ Regarding equal and universal access, the fixed price system ensures citizens have equal access to books. Furthermore, the fixed price system avoids price competition, which enables bookstores to survive even in the countryside and guarantees universal access to books. Finally, diversity of publication is achieved since publishers can predict sales of books under the fixed price system, which enables them to concentrate on creative activities; this ultimately results in cultural diversity.

In many of these countries with RPM, legislation was maintained and updated as the socio-economic environment changed. Among these changes, since the 1980s, digital technologies have impacted on publishing incumbents at various levels.²² In relation to RPM, as the online and e-book sales grew, some of these European countries amended the existing law/trade agreement or passed new legislation to deal with such technological change.²³ That is, as seen in Table 1, e-books are included in the RPM scheme in several European countries. Furthermore, in 2014 in France, a new law was legislated to prohibit online bookstores from offering discounts. Importantly, these

responses were underpinned by a similar theorisation of maintaining RPM as mentioned above.²⁴

The exact dissemination channel of the above-mentioned theorisation is not fully examined in the current study. However, it would be worthwhile to point out the existence of interest groups representing European publishers. For example, the Federation of European Publishers located in Brussels plays an important part in disseminating theorisation of maintaining RPM to the EU parliament. The Federation of European Publishers intends to harmonise conditions concerning RPM for books. Consequently, for example, the EU Parliament defined books subject to RPM as follows. '[A]ll printed works, or works reproduced in any other way, in particular literature, music, art and photography, specialist periodicals (but excluding daily and weekly newspapers or popular magazines) and electronic publisher's products, provided they are substitutes for printed books'.

While theorisation supporting RPM was maintained despite changes in the socio-economic elements above, the social and economic change could lead to the abolition of RPM, hence resulting in the prominence of alternative theorisation. Among these, the British publishing case (the NBA (Net Book Agreement)²⁵), which used to be supported by a similar theorisation that emphasised social impact, can provide an

illustrative example. Under the NBA, Publishing Associations agreed not to supply books to bookstores if they did not follow the fixed price of books. In the UK, the fixed price system was illegal. However, as long as the Restrictive Practices Court admits it is not against the public interest, price fixing for certain products could take place. Theorisation supporting the NBA dates back to 1962 when the Restrictive Practices Court confirmed that it was not against the public interest to fix the retail book price since the negative influences were predicted when abolishing the NBA. The Court's decision was based on the following theorisation: a decline in the titles of books, a rise in the book price, and a decline in the number of bookstores.²⁶ That is, through the Restrictive Practices Court, the abolition of the fixed price system would encourage publishers to concentrate on only those books with a mass customer base and they would be unlikely to publish small circulated books. Consequently, in addition to bookstores, supermarkets would enter book sales and launch discounts, which would encourage price negotiation with publishers. In turn, publishers would increase the cover price of books. Amid the intensified price competition, independent small-scale bookstores would have to give up their business.

However, the socio-economic environment has changed since then and two crucial factors encouraged incumbents of UK publishing to break the NBA. First, such a

factor was related to the declining importance of bookstores as sales outlets. For example, in the 1960s, book clubs, one of the alternatives to bookstores, had less than 1% of the publishers' gross sales. However, they amounted to between 12% and 19% in the late 1980s.²⁷ Another factor was related to the increasing importance of exports.²⁸ The exports became increasingly important as, for example, British publishers witnessed frequent consolidation through M&A (mergers and acquisitions) and many of them became conglomerates. Despite increasing exports, the UK publishing industry did not enjoy an upward trend in sales as the UK domestic market was influenced by the recession.²⁹ Amid these changes, theorisation maintaining the NBA highlighted by the 1962 Restrictive Practices Court decision did not prevent several large-scale publishers together with large-scale bookstores from launching a discount in the mid-1990s. This was followed by confirmation by the Restrictive Practices Court that the NBA was no longer legally acceptable.

In summary, the theorisation supporting RPM, even those countries that ultimately abolished it, emphasised the cultural or social implications of RPM in European publishing. On the other hand, the dissemination channel of theorisation was not necessarily clear, which justifies the examination of the Japanese publishing case that is reconstructed, including the dissemination channel. Before examining the

theorisation against liberalisation together with the analysis of the dissemination channel, the socio-economic context surrounding incumbents in Japanese publishing together with intra-industrial structure will be examined in the next section.

Socio-economic context and intra-industrial structure

Figure 1 illustrates the sales of books and magazines of Japanese publishing. It became the highest in 1996 but has declined since then. In this regard, the 1990s was the turning point in sales for Japanese publishing.

Insert Figure 1 here

Also, Japanese publishing in the 1990s witnessed liberalisation.³⁰ The Antimonopoly Act, enacted in 1947, was revised and exemptions were made in 1953 to legalise RPM that allows for fixing the retail price of certain copyrighted products (books, magazines, newspapers, music records, tapes, CDs) and several daily products such as cosmetics and drugs. However, cartels and RPM were exposed to stronger pressure across the globe.³¹ Japanese regulatory reform was dramatically accelerated by the Japan-U.S. Structural Impediments Initiative (SII) around 1990.³² In the 1980s, the US continued

to face a trade deficit with Japan. The US government tried to reduce the trade deficit through holding the Japan-U.S. SII and sought more business opportunities for US firms in Japanese markets.³³ The final joint report of the Japan-U.S. SII was issued on 28th June 1990. In relation to the Japanese publishing industry, it included recommendations regarding the abolition of exemptions of the Antimonopoly Act.³⁴ The Japan-U.S. SII had four follow-ups from October 1990 to July 1992, which continued to exert pressure on the implementation of recommendations in the final joint report of the Japan-U.S. SII.³⁵

Incumbents in publishing were against the review of RPM since their daily operation was inseparable from RPM. Japanese publishing incumbents were composed of publishers, wholesalers and bookstores. In the 1990s, the number of publishers was approximately 5,000 and that of bookstores 25,000; but there were only 30 or so wholesalers. Figure 2 shows the number of publishers and bookstores as well as the largest three wholesalers' concentration rates.

Insert Figure 2 here

The two largest wholesalers were dominant players in the field. Table 2 illustrates the

transition of the six largest wholesalers' sales. For example, in 1991, Tohan's sales were 606.8 billion JPY and Nippan's 557.1 billion JPY, while Osakaya had the third largest at 92.4 billion³⁶.

Insert Table 2 here

Importantly, most books and magazines were via wholesalers in the 1990s.³⁷ Those via wholesalers and sold at either bookstores or convenience stores were 84.1% in 1995 and 84.9% in 2000, a clear majority.³⁸ This dominant role of wholesalers was also seen by the fact that direct orders were less than one percent of sales of bookstores until 2000.³⁹ Thus, the influence of wholesalers had been dominant in the Japanese publishing field.⁴⁰

Incumbents in publishing had shared a practice partly underpinned by RPM in the decades following the Second World War.⁴¹ This established practice had important characteristics centred around wholesalers.⁴² Wholesalers governed transaction rules such as the adoption of RPM combined with a free return policy.⁴³ Written contracts were not formed regarding distribution conditions on an individual publication basis, rather wholesalers determined in their favour.⁴⁴ These conditions were often taken for granted and incumbents tended to believe RPM for publications was legally mandatory,

although it was optional.⁴⁵ Under these transaction rules, wholesalers determined the combination of publications sent to the bookstore based on the past sales record, which is called *haihon* (wholesalers' selection of publications sent to bookstores).⁴⁶

Haihon was a state policy during the Second World War and then a business strategy by the wholesalers afterwards. Approximately 240 wholesalers distributing publications were merged into the Imperial Japanese Wholesaler Company (*Nihon Shuppan Haikyū Kabusiki Kaisha*) in 1941. This national policy concern employed those who worked for wholesalers and publishers. The establishment of this Imperial Japanese Wholesaler Company was associated with the rationing system widely adopted after 1938 due to the legislation of the National Mobilization Law (*Kokka Soudouin Hou*), which enabled governmental control of civilian organisations. After the War was over, the Imperial Japanese Wholesaler Company was forced to stop operation in 1948. Employees from the Imperial Japanese Wholesaler Company started to establish new wholesalers, based on various relationships, those generated in the working environment under the Imperial Japanese Wholesaler Company and those generated in a wholesaler company before it merged with the Imperial Japanese Wholesaler Company (Matsumoto, 1981). In 1949, several wholesalers were established including *Osakaya*, *Nippan*, *Tohan* and *Chuōsha*. These newly established wholesalers had utilised the same

method of distribution adopted by the Imperial Japanese Wholesaler Company (Japanese Federation for Bookstores, 2001) and these wholesalers determined the variety of books and magazines distributed to a bookstore.

The primary emphasis of this distribution pattern had been on publications with mass circulation, namely magazines and blockbuster books.⁴⁷ Under the established practice, publishers could predict and calculate the sales more readily. Furthermore, the established practice had been perceived to be beneficial for publishers in terms of the advertisement fee. Since the late 1970s, the revenue from advertisements has been frequently more than the sales of the magazines:⁴⁸ the larger the circulation, the higher the advertisement price.⁴⁹ Wholesalers could reduce operation costs since they did not have to consider price fluctuation and could obtain a commission income on the transaction. Therefore, for wholesalers, increasing the quantity of publications they dealt with led to higher revenue.⁵⁰ For bookstores, the established practice protected them from price competition and meant that they could be free from inventory risk.⁵¹ In summary, incumbents held an interest in maintaining the established practice.

That said, an exception existed. A limited number of discounted books had been distributed by Yagi-shoten, a medium sized wholesaler since before the Second World War.⁵² Discounted books that Yagi-shoten dealt with were those books and

magazines for which publishers declared they would no longer fix the price. Yagi-shoten had been able to operate without being intervened upon by other wholesalers because they had paid enough attention not to mix the fixed priced book with the discounted book. That is, once a title of a book was handled by Yagi-shoten, they made sure that the same title would no longer exist in the market at the fixed price. To do so, Yagi-shoten rubber-stamped 'B', indicating 'bargain books', on all of the discounted books. Furthermore, Yagi-shoten did not deal with blockbuster books.⁵³ Rather, they focused on books that publishers wished to withdraw from the market. Therefore, the sales via Yagi-shoten remained on a small scale.⁵⁴ Regarding the distribution of books, Yagi-shoten did not adopt a free-return policy. Therefore, if retailers made a transaction with Yagi-shoten, they were not allowed to return books to Yagi-shoten. Although exceptions were seen, the majority of incumbents in publishing adhered to the established practice and held an interest in maintaining the status quo partly underpinned by RPM.

Theorisation of change v. that of resistance

Theorisation of change by regulatory agency

Amid the continued pressure by the US government, the JFTC established a study group

specialising in the review of the fixed price system for certain copyrighted products in 1994. Based on the study group's examination, the JFTC issued the Interim Report (20-A4-page) in July 1995. The report drew on a theorisation against RPM, which illustrated the inevitability of deregulation. It argued that the regulation needs to be updated as socio-economic conditions change:

It has been 40 years since RPM was introduced...Japan has witnessed drastic change...consumers' income level has risen and people's perception of values has diversified...consumer behaviour has changed to a great extent and it is increasingly important to provide various products and services flexibly
[translated by the author] (p.4)

The report assumed there would be benefits from the introduction of a price mechanism for both consumers and incumbents in publishing. The introduction of price mechanisms would provide 'incentives for the incumbents in publishing to provide better services for customers.'⁵⁵ According to the report, the market mechanism enhances competition among incumbents and results in differentiation of incumbent actors. Some may focus on providing a detailed explanation of books and magazines,

while others might focus on lowering the price.⁵⁶ In turn, the variety in service and price provides options for consumers.⁵⁷ In addition to the positive side of the price mechanism, the Interim Report highlighted various problems, including slow delivery of irregular publications and insufficient service at bookstores, allegedly caused by RPM.⁵⁸ These problems are created because there is not enough incentive for incumbents because of the homogenous transaction conditions based on RPM.⁵⁹

Theorisation of resistance by incumbents

The incumbents in publishing demonstrated their disagreement with the JFTC's report by submitting documents to the JFTC. The Publishers' Association, Wholesalers' Association and Bookstores' Association respectively issued documents. The Publishers' Association issued the 17-A4-page document "The necessity of RPM (*Saihanseido no hitsuyō sei*)" in November 1995. The Wholesalers' Association issued the 7-A4-page 'Japanese distribution system of publications and the necessity of RPM' (*Nihon no shuppan ryūtsū to saihanseido no hitsuyō sei*)" in December 1995. The Bookstores' Association issued the 7-A4-page document 'Opinion toward the JFTC's report' (*Chūkan hōkokusho ni taisuru iken*) in November 1995. Moreover, the Bookstores' Association gathered 5157 questionnaire results from customers and re-issued the

49-A4-page ‘Do you want to live in a town without bookstores?’ (*Anata ha honya no nai machi ni sumitai desuka?*) in December 1996.

Similar to the theorization of retaining RPM concerning ‘le loi Lang’, the incumbents highlighted the negative impacts of the price mechanism on consumers.⁶⁰ These downsides included higher price and closure of bookstores. They argued the price mechanism would increase the retail price because the incumbents would be likely to start to negotiate with each other regarding the transaction conditions, pushing up the price.⁶¹ Furthermore, according to the Bookstores’ Association, the price mechanism further accelerates the closing down of bookstores, which is not convenient for consumers.⁶² With respect to the privilege of publication, incumbents argued that RPM must be protected because publications have played fundamental roles in generating and communicating ideas in various disciplines, including politics, the economy, society, education, culture and art.⁶³ RPM would enable citizens to buy books and magazines at the same price regardless of the location.⁶⁴

Wider dissemination: Publishing – Newspaper link

Incumbents in publishing started to disseminate their theorisation of resistance to a wider audience. The availability of dissemination channels depended on the historical

context. The exemption of RPM for certain copyrighted products included newspapers. Newspaper companies with a national circulation had diversified into the field of publishing. Furthermore, the largest newspaper company Yomiuri *Shimbun* Newspaper Company affiliated with a large publisher, *Chūōkōron* in 1999 after it had cash-flow problems. Therefore, large newspaper companies had vested interests in protecting the established practice in publishing as well. Furthermore, newspaper companies had vested interests in protecting their established practice, in which RPM also played a major role.⁶⁵ Both of these incumbents' interests were, more or less, compatible. Therefore, both of them wanted to protect the legal status of RPM. In addition to the publishing-newspaper link, newspaper corporations had established a one-to-one connection with television (TV) stations by the early 1970s.⁶⁶ It is beyond the scope of this article to fully examine the detail of how this link with TV stations contributed to the wider dissemination of theorisation (i.e., investigating dissemination through TV); it would be reasonable to argue it did provide a certain positive effect on the campaign conducted by publishing and newspapers.

The official link between actors in publishing and newspapers regarding the collaboration for protecting RPM dates back to the inauguration of *Katsuji Bunka Kondankai* [Printed Word Meeting] in April 1995 (Yomiuri *Shimbun* newspaper, 20,

April 1995). The executives of the Publishers' Association as well as The Japan Newspaper Publishers and Editors Association attended the first Printed Word Meeting. Immediately after the Interim Report was released, the Printed Word Meeting decided to initiate a campaign through newspapers and publications (Yomiuri Shimbun newspaper, 1, August 1995). By this collaboration, incumbents in publishing could disseminate theorisation through not only publications but also newspapers, while the JFTC's theorisation was blocked.⁶⁷

In the collaborative campaign in publishing, a brochure was created and disseminated by the Publishers' Association. In December 1995, the Publishers' Association inserted a small brochure (4 x B6-pages) into member publishers' books.⁶⁸ This brochure mainly referred to the RPM for publications by quoting an article by an established novelist (Hisashi Inoue), but it also referred to the necessity of RPM for newspapers.⁶⁹ This characteristic that RPM for publications and newspapers was both mentioned can be observed in books issued by publishers in the campaign: *Hon to Shimbun: Siahanseido wo Kangaeru [Publications and Newspapers: Thinking about RPM]* by Iwanami-shoten in 1995, and *Shuppan Saihan: Shoseki, Zasshi, Shimbun no Mirai ha? [What is the Future of RPM for Books, Magazines and Newspapers?]* by Kōdansha in 1996. In addition to these, some books predominantly focusing on RPM

for books and magazines were also issued. These include the following: *Ima Shuppan ga Abunai: Manga de Wakaru Saihanseido* [*The crisis of Publishing: Comic book about RPM*] by Kōdansha in 1997, and *Shuppan Saihan to Shōhisha* [*RPM and consumers*] by Iwanami-shoten in 2000.

Moreover, the campaign was practised in most newspapers.⁷⁰ The emergence and the development of the internet increasingly came to threaten the established status of newspapers.⁷¹ However, the campaign took place before that. Therefore, disseminating theorisation through newspapers was particularly useful in the mid to late 1990s. Especially, Yomiuri's campaign was conducted most frequently compared to other newspapers.⁷² Regarding Yomiuri Shimbun newspaper, approximately ten million copies were circulated daily at the time when newspapers practised the campaign for protecting RPM for newspapers and publications. Furthermore, regarding readership, the then largest four newspapers' (Yomiuri, Asahi, Mainichi and Nikkei) circulation was approximately 28 million in the late 1990s.⁷³ The Japanese population in 1995 was roughly 125 million.⁷⁴ Therefore, it could be claimed that the largest four newspapers reached one out of five Japanese.

In 1997, the study group was reorganised in favour of the incumbents in newspapers and publishing.⁷⁵ The reorganised study group submitted a report

(76-A4-pages) in December 1997. The new report partly criticised the status quo in relation to RPM.⁷⁶ However, at the same time, it evaluated the positive effects of RPM such as the stability of bookstore management.⁷⁷ Furthermore, the campaign resulted in increasing the number of politicians supporting the continuation of RPM for certain copyrighted products.⁷⁸ The ‘*Katsuji Bunka Gīn Renmei [Printed Word Panel]*’ was a group of Diet lawmakers that was formed around the issue. This panel's preparatory meeting was established on 13 December 1996, with 18 lawmakers (Yomiuri Shimbun newspaper, 13, December 1996). Consequently, the Printed Word Panel was formally established on 23rd, April 1997 by 74 lawmakers, and not limited to the then largest two parties, in the Diet (Yomiuri Shimbun newspaper, 25, April 1997).

Survival of RPM

While incumbents in newspapers and publishing disseminated theorisation of resistance to the wider public including politicians, the JFTC's theorisation of change was blocked by incumbents. Furthermore, major consumer groups such as the National Federation of Regional Women (Chifuren) expressed their opposition to RPM for newspapers. Their theorisation was similar to the JFTC and identified RPM as the root cause of the distributional issues of publications.⁷⁹ However, again, their theorisation was not

widely disseminated by newspapers, books or magazines. Amid this situation, the JFTC attempted to disseminate theorisation of change by directly communicating with incumbents in publishing. They aimed to force publishing incumbents to accept theorisation of change and launch a flexible operation of the fixed price system.⁸⁰

In March 1998, the JFTC issued a 1-A4-page statement that required the incumbents to work on a flexible operation of the RPM. The JFTC indicated that they would reach a conclusion about the treatment of RPM for copyrighted products after a few years.⁸¹ Regarding this, the JFTC implied that the flexible operation of RPM would be taken into account and pointed out six items that the JFTC require the incumbents to work on⁸²:

Flexible operation of RPM in terms of duration and scope

Introducing discount method

Prioritising publishers' opinion regarding the price fixing

Promotional activities such as utilisation of coupon

Various distribution routes such as direct distribution and mail-order

Bring transparency to the transaction

Regarding these six items, the JFTC required the incumbents to annually issue ‘Seido no Danryoku Unyō Repōto [Report on Flexible Operation of RPM]’ from 1998. Masako Ōwaki, then an upper house member sent an official written inquiry to the Prime Minister on 28 September 1998 (Shinbunka weekly newspaper, 12, November 1998). A written answer under the name of then Prime Minister, Keizō Obuchi, on 27, October 1998 stated that the document issued by the JFTC ‘does not itself own legal binding force nor has a characteristic of an administrative penalty.’⁸³ Accordingly, these six items could be understood as a typical instance of *Gyōsei-shidō* [Administrative guidance]. Therefore, these requirements from the JFTC could not force the incumbents to transform the established practice of publishing with legal or administrative sanctions. Given the increasing acceptance of incumbents’ theorisation to a wider audience, including politicians, incumbents in publishing did not intend to introduce a flexible operation to the full extent, only in a superficial manner.⁸⁴

Until 2001, the bargain book campaign had been held on a biannual basis. The first bargain book campaign was in the spring of 1998 and six large publishers participated: Kōdansha, Kōbunsha, Shūeisha, Kadokawashoten, Gakushūkenkyūsha and Kawadeshobōshinsha. These publishers provided 20 to 30 titles to the campaign and each publisher bundled their books as a combination and provided from 100 to 400

combinations for this campaign.⁸⁵ Bookstores could order their preferred combinations from participating publishers. These books were distributed through wholesalers and bookstores could set the price of the books themselves. Different from Yagi-shoten's bargain books, this bargain book campaign adopted books that were still circulated in the market.⁸⁶ Participating publishers were concerned with this issue of 'one book with two different prices'. For instance, Kōdansha, one of the largest publishers, sent official letters to bookstores, notifying that 'we only sell a limited number of books at discounted prices.'⁸⁷ In this discounted price campaign, small slips were utilised in the distribution of publications. That is, special slips were inserted in books provided for this campaign and bookstores sent slips to publishers when they sold these books to consumers. These slips, sent back to publishers, notified publishers that they needed to pay promotion expenses to bookstores, which was 20 to 30% of the listed price.⁸⁸ This method adopted in the bargain book campaign was intended to minimise the effect of flexible operation to the established practice because there was no drastic change regarding the distribution of discounted books.⁸⁹ Rather, the incumbents dealt with 'irregular' books by inserting special slips. Therefore, it could be argued that the incumbents, more or less, integrated the distribution of 'irregular' books into the daily distribution of publications. Furthermore, 70 to 90% of books provided for the bargain

book campaigns had been returned to the publishers between 1998 and 2001.⁹⁰ Regarding this high return rate, publishers intended not to provide fast-selling titles.⁹¹ Although the method adopted for the distribution of ‘irregular’ books was integrated into the daily operation in a manner by which the influence of the distribution of discounted books to the status quo was intended to be minimised, this high return rate increased the workload of publishers and wholesalers. Despite this, the incumbents actively participated in bargain book campaigns in order to appeal to the JFTC’s review on the fixed price system for publications.⁹²

In addition to bargain book campaigns, publishers adopted a limited duration of RPM regarding the distribution of magazines. In April 1998, Shōgakukan, a leading publisher, announced that they do not fix the price of the previous issue of ‘*Shūkan Posuto*’, a weekly magazine after the next issue is released.⁹³ Furthermore, other large publishers increasingly adopted fixed duration of RPM on magazines as seen in Table 3.

Insert Table 3 around here

Although the number of magazine titles that shifted to the limited duration of RPM expanded over time, bookstores usually did not keep the previous issue of the magazine.

This is because the distribution of publications adopted a free return policy and bookstores usually returned unsold publications after a certain period of time to wholesalers.⁹⁴ The intention of publishers here was to utilise direct orders from consumers to publishers.⁹⁵ In fact, the publishers that initiated limited duration of RPM unilaterally utilised direct orders for back numbers from consumers.⁹⁶ Between 1998-2001, the price of the weekly magazine, ‘*Shūkan Posuto*’, at bookstores was 320 JPY and back numbers were sold at 200 JPY including the shipping fee.⁹⁷ They had in total 6,000 orders between 1999 and 2000.⁹⁸ However, the weekly circulation of ‘*Shūkan Posuto*’ was approximately 600,000 in the year 2000.⁹⁹ The total of 6,000 orders is equivalent to 1% of the weekly circulation of the magazine. Therefore, this did not significantly impact the existing distribution system. Furthermore, the limited duration of RPM for magazines was rarely utilised in reality regarding other magazines.¹⁰⁰

RPM remained an important part of the established practice, despite the JFTC’s attempts to disseminate theorisation of change by enforcing them to launch the flexible operation of RPM. After its establishment in April 1997, members joining the Printed Word Panel had increased and reached 100 on the eve of March 23, 2001, when the JFTC announced their withdrawal from attempting to abolish the RPM in the Japanese

publishing industry (Yomiuri Shimbun newspaper, 24, March 2001). In summary, the campaign had informed the politicians' growing participation in the Printed Word Panel that secured the legal status of RPM for copyrighted products.¹⁰¹

Conclusion

This article has concentrated on illustrating how Japanese publishing incumbents maintained the fixed price system against pressure for liberalisation. A crucial contribution of this article to business history literature is to advance the understanding of companies' influence to the legal status of RPM. In particular, the article highlighted the importance of both intra- and inter-industrial structures as key factors for maintaining the legal structure. Concerning the intra-industrial structure under the RPM, the two largest wholesalers, Tohan and Nippan, played a dominant role in the industry. Apparently, they held interests in maintaining the legal structure that allowed RPM. Other players in the field, publishers and retailers, also had vested interests in maintaining RPM.

Regarding the inter-industrial structure, the key connection was seen across media. This connection enabled wider dissemination of theorisation that protected RPM. While the European case did not provide much detail, this article illustrates the issue

because of the availability of relevant data. In addition to newspaper firms' diversification into publishing, the newspaper and the publishing industries had both been exempt from the Antimonopoly Act. Therefore, the actors in these fields had shared an interest in resisting changes that they saw as detrimental to their current interests and practices. They thus joined forces and, in this process, advocated the importance of the status quo and necessity to maintain RPM. Importantly, publications and newspapers concentrated on disseminating this type of theorisation, while they blocked opposing theorisation by the JFTC. Particularly, the dissemination via newspapers played a major role in mobilising politicians in favour of the incumbents' position.

Finally, it would be useful to remark on a limitation of this research. As this article was not extensive, future research may need to address inter-industrial connections across Japanese media companies in a more systematic manner.

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Table 1 Fixed price system for publications

Country	Legal basis	Scope
Argentina	Law	Printed books and e-books
Austria	Law	Printed books and e-books
France	Law	Printed books and e-books
Germany	Law	Printed books and e-books
Greece	Law	Printed books and e-books
Italy	Law	Printed books
Lebanon	Decree of Ministry of Economy	Printed books
Netherlands	Law	Printed books
Norway	Trade Agreement	Printed books and e-books
Portugal	Law	Printed books
Slovenia	Law	Printed books and e-books
South Korea	Law	Printed books and e-books
Spain	Law	Printed books and e-books
Japan	Trade Agreement	Printed books, magazines and <i>newspapers</i>

Source: Global Fixed Price Report (March, 2014)

Table 2 The largest six wholesalers' sales

	Tohan	Nippan	Osakaya	Chuosha	Nikkyohan	Taiyosha
1990	562,731	522,092	87,954	36,574	41,903	41,277
1991	606,822	557,176	92,493	38,122	41,184	44,119
1992	638,745	605,515	94,088	38,820	42,187	45,231
1993	672,224	639,727	96,662	39,458	39,925	45,525
1994	709,224	683,427	100,170	39,910	40,486	46,243
1995	736,742	717,316	103,320	39,855	40,855	46,481
1996	772,007	757,955	105,727	39,986	42,599	47,756
1997	797,215	813,373	105,529	37,867	41,985	47,073
1998	785,310	815,747	102,751	35,218	40,921	46,539
1999	768,783	791,406	103,530	33,537	42,408	45,206
2000	738,417	762,998	69,933	31,375	42,163	44,133

Source: Shuppan Data Book (2002)

Table 3 Expansion of fixed duration RPM in magazines

Beginning	Publisher	Title(s)
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March, 2000	Kōdansha	<i>'Shūkan Gendai' 'Tokyo 1 Shūkan'</i>
May, 2000	Shōgakukan	<i>'Shūkan Yangu Sandei'</i>
June, 2000	Shueisha	<i>'Shūkan Pureibōi'</i>
June, 2000	Shotdensha	<i>'Shōsetsu Non'</i>
July, 2000	Shueisha	<i>'Gekkan Tere Kizzu'</i>
October, 2000	Tōyōkeizai	<i>'Ōru tōshi' 'Gekkan Kinyū Bijinesu' 'Kaisha Shikihō'</i>
February, 2001	Futabasha	<i>'Shūkan Taishū'</i>
March, 2001	Futabasha	<i>'Sutekina Shufutachi'</i>

Source: Japanese Publishers' Association et al. "Danryoku Unyō Repōto [Report on Flexible Operation]."

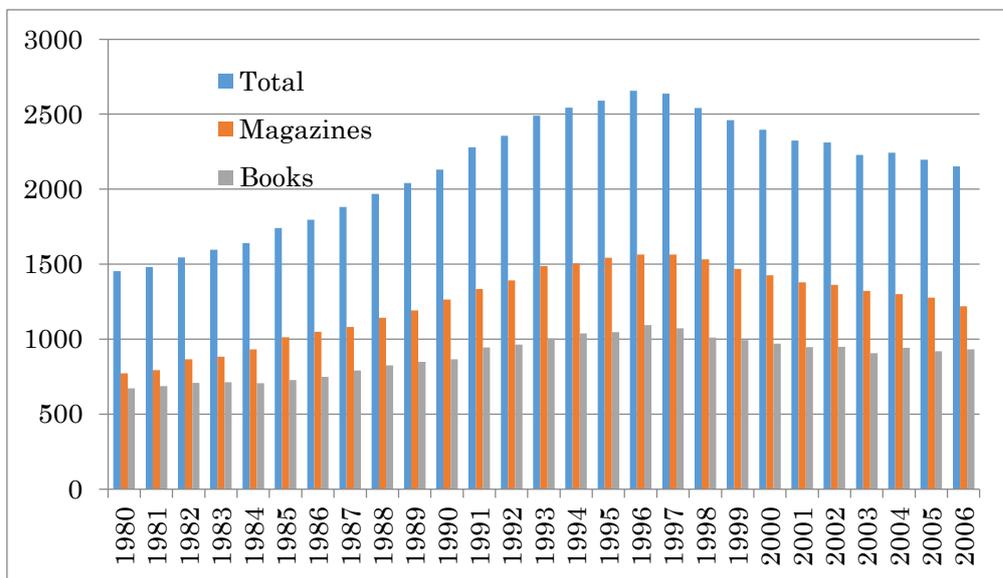


Figure 1 Sales of publications, 1990-2001 (billion Japanese Yen)

Source: Publishing Research Institute (2010)

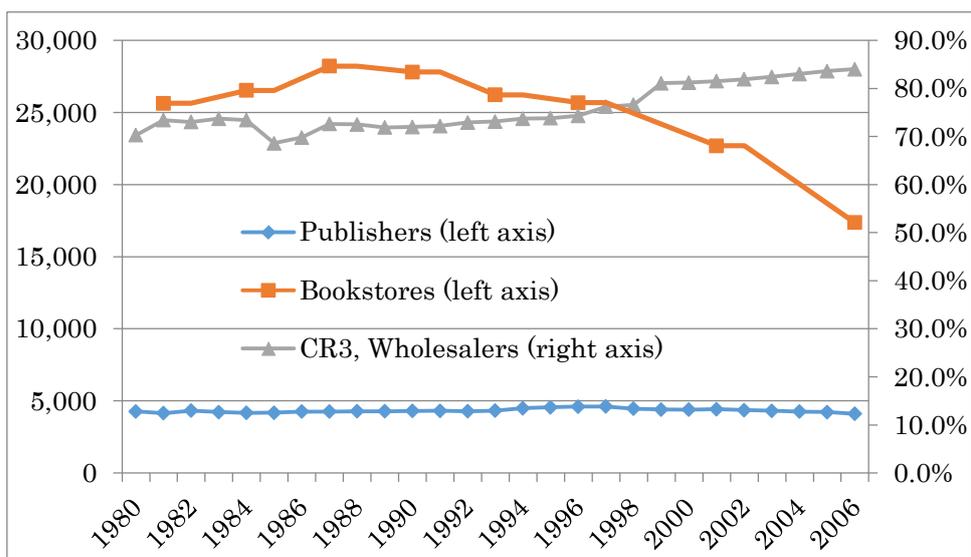


Figure 2 The number of publishers and bookstores and largest three wholesalers' concentration ratio (1980-2006)

Source: JFTC, METI, Publishing Research Institute (2010)

¹ Fear, Cartels; Kikkawa, Functions

² Mercer, Retailer–supplier relationships; Morelli, Constructing a balance; Tennent, A distribution revolution

³ Fellman and Shanahan, Introduction

⁴ Ohta and Kurosawa, Policy transfer; Parc, Cartelisation

⁵ Fear, Cartels

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- ⁶ Mercer, Retailer–supplier relationships
- ⁷ Tennent, A distribution revolution
- ⁸ Morelli, Constructing a balance
- ⁹ Pineda, Manufacturing Profits
- ¹⁰ Walker, Voluntary Export Restraints
- ¹¹ Decker, Corporate political activity
- ¹² Planas, The Emergence
- ¹³ Schenk, Parasitic Invasions
- ¹⁴ Strang and Meyer, Institutional Conditions, 492
- ¹⁵ Misangyi et al., Ending Corruption
- ¹⁶ Suddaby and Greenwood, Rhetorical Strategy of Legitimacy, 41
- ¹⁷ Rao et al., Institutional Change, 816
- ¹⁸ Zajac and Westphal, The Social Construction
- ¹⁹ Sauder, Interlopers
- ²⁰ Stockmann, Free or Fixed Prices, 50
- ²¹ Rønning et al., Books at What Price, 29-31
- ²² Thompson, Books
- ²³ The Japanese trade agreement has not been applied to e-books, while it is to online bookstores.
- ²⁴ Rønning et al., Books at What Price
- ²⁵ Løyland and Ringstad, Fixed or Free; Van der Ploeg, Beyond the Dogma
- ²⁶ Utton, Books Are Not Different, 116
- ²⁷ Ibid, 119

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- ²⁸ Altbach and Hoshino, *International Book Publishing*, 565
- ²⁹ Altbach and Hoshino, *International Book Publishing*, 565; Thompson, *Books in the Digital Age*, Chapter 3
- ³⁰ The influence of technological change was not prominent in Japanese publishing in the 1990s. The American online bookstore giant, Amazon has operated in the Japanese publishing field as Amazon.co.jp since November 2000. While Amazon.com in the US directly forms contracts with publishers and leverage discount, Amazon.co.jp, as well as other online bookstores, had to utilise wholesalers. Consequently, Amazon.co.jp started their operation same as the other 'offline' bookstores, namely without discount.
- ³¹ Fear, *Cartels*; Fellman and Shanahan, *Introduction*
- ³² Chujo, *Kisei Hakai [Disrupting Regulation]*; Noguchi, *1940 Nen Taisei [System Established in 1940]*.
- ³³ Takenaka, *Nichibei Masatsu no Keizaigaku [Economics of Japan-US Economic Friction]*, Chapter 1.
- ³⁴ Accessed 24, November 2014.
http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005583.asp
- ³⁵ Grier, *Japan's Regulation of Large Retail Stores*.
- ³⁶ The Japan Society of Publishing Studies, *Hakusho Shuppan Sangyo [White Paper on Publishing]*, p.55.
- ³⁷ Ando et al. *Shuppan Kurasshu [Crush in Publishing]*. 141
- ³⁸ Shuppan Kagaku Kenkyūjo, *Shuppan Shihyo Nenpo [Annual Data of Publishing]*
- ³⁹ Ando et al. *Shuppan Kurasshu [Crush in Publishing]*. 141-2
- ⁴⁰ Kinoshita, *Shuppan Saihan [RPM for Publications]*, Chapter 1

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- ⁴¹ Ibid.
- ⁴² Kinoshita, *Shuppan Saihan [RPM for Publications]*, Chapter 1; Sano, *Dare ga Hon wo [Who Kills Books?]*, Chapter 1-3.
- ⁴³ Ibid.
- ⁴⁴ Ando et al., *Shuppan Kurasshu [Crush in Publishing]*. 30-2.
- ⁴⁵ The Japan Society of Publishing Studies, *Hakusho Shuppan Sangyo [White Paper on Publishing]*, Chapter 1.
- ⁴⁶ Ando et al. *Shuppan Kurasshu [Crush in Publishing]*, 55-9.
- ⁴⁷ Kinoshita, *Shuppan Saihan [RPM for Publications]*, Chapter 2, 3; Oda, *Shuppan Hukyo Kuronikuru [Chronicle of Publishing Downturn]*, 23-9.
- ⁴⁸ Japan Editor School, *Nihon no Shoseki Shuppansha [Japanese Book Publishers]*, 40-1; Kinoshita, *Shuppan Saihan [RPM for Publications]*, 45-51.
- ⁴⁹ Kawachi, *Shinbunsha: Hatanshita Bijinesumoderu [Newspaper companies: Failed Business-model]*, Chapter 2.
- ⁵⁰ Sano, *Dare ga Hon wo [Who Kills Books?]*, Chapter 1.
- ⁵¹ Ibid.
- ⁵² Yagi-shoten, “Hisaihanbon ni Tsuite [About non-RPM publicaitons].”
- ⁵³ Ibid.
- ⁵⁴ Ibid.
- ⁵⁵ The JFTC, “(Chūkan Hōkoku) [Interim Report]” 9.
- ⁵⁶ Ibid., 13.
- ⁵⁷ Ibid., 13.
- ⁵⁸ Ibid., 16-8

⁵⁹ Ibid., 16-8.

⁶⁰ Japanese Publishers' Association. "Shuppan Saihanseido no Hitsuyosei [Necessity of RMP]." 10-14; Japanese Wholesalers' Association. "Nihon no Shuppan Ryūtsū [Japanese Distribution System]." 4-7; Japanese Bookstores' Association. "Sumitai Desuka [Do You Want to Live]." 45-49.

⁶¹ Japanese Bookstores' Association. "Sumitai Desuka [Do You Want to Live]." 45; Japanese Publishers' Association. "Shuppan Saihanseido no Hitsuyosei [Necessity of RMP]." 13, Japanese Wholesalers' Association. "Nihon no Shuppan Ryūtsū [Japanese Distribution System]." 5.

⁶² Japanese Bookstores' Association. "Sumitai Desuka [Do You Want to Live]." 46; Japanese Publishers' Association. "Shuppan Saihanseido no Hitsuyosei [Necessity of RMP]." 13; Japanese Wholesalers' Association. "Nihon no Shuppan Ryūtsū [Japanese Distribution System]." 4.

⁶³ Japanese Bookstores' Association. "Sumitai Desuka [Do You Want to Live]." 40; Japanese Publishers' Association. "Shuppan Saihanseido no Hitsuyosei [Necessity of RMP]." 15-16; Japanese Wholesalers' Association. "Nihon no Shuppan Ryūtsū [Japanese Distribution System]." 1-3.

⁶⁴ Ibid.

⁶⁵ Tsuruta, Chosakubutsu Saihanseido [RPM]; Kawachi, *Shinbunsha: Hatanshita Bijinesumoderu [Newspaper companies: Failed Business-model]*.

⁶⁶ Sato, History of contemporary media, p. 223.

⁶⁷ Tsuruta, Chosakubutsu Saihanseido [RPM].

⁶⁸ Japanese Publishers' Association, "Saihanseido to Dokusha [RPM and Readers]"

⁶⁹ Ibid.

⁷⁰ Kinoshita, *Shoseki Saihan no Shinchihei* [New Scope of RPM]; Tsuruta, *Chosakubutsu Saihanseido* [RPM].

⁷¹ Kawachi, *Shinbunsha: Hatanshita Bijinesumoderu* [Newspaper companies: Failed Business-model], Chapter 5.

⁷² Tsuruta, *Chosakubutsu Saihanseido* [RPM].

⁷³ The Japan Newspaper Publishers and Editors Association, *Shinbun nenkan* [Newspaper yearbook].

⁷⁴ Accessed 24, November 2014. <http://www.stat.go.jp/english/index.htm>

⁷⁵ Tsuruta, *Chosakubutsu Saihanseido* [RPM]; Kinoshita, *Shoseki Saihan no Shinchihei* [New Scope of RPM].

⁷⁶ Ibid., 27-30.

⁷⁷ Ibid., 14-5.

⁷⁸ Tsuruta, *Chosakubutsu Saihanseido* [RPM].

⁷⁹ National Federation of Regional Women, 2003, 50 years, p.92

⁸⁰ Ibid.

⁸¹ The JFTC, “Chosakubutsu Saihan Seido [RPM for Certain Copyrighted Products]”.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ The Japan Society of Publishing Studies, *Hakusho Shuppan Sangyo* [White Paper on Publishing], Chapter 1, 3, 7.

⁸⁵ Japanese Publishers’ Association et al. “Danryoku Unyō Repōto [Report on Flexible Operation].”

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ The Japan Society of Publishing Studies, *Hakusho Shuppan Sangyo [White Paper on Publishing]*, Chapter 1, 3, 7.

⁹⁰ Japanese Publishers' Association et al. "Danryoku Unyō Repōto [Report on Flexible Operation]."

⁹¹ The Japan Society of Publishing Studies, *Hakusho Shuppan Sangyo [White Paper on Publishing]*, Chapter 1, 3, 7.

⁹² Ibid.

⁹³ Japanese Publishers' Association et al. "Danryoku Unyō Repōto [Report on Flexible Operation]."

⁹⁴ Kinoshita, *Shuppan Saihan [RPM for Publications]*, Chapter 2.

⁹⁵ The Japan Society of Publishing Studies, *Hakusho Shuppan Sangyo [White Paper on Publishing]*, Chapter 1, 3, 7.

⁹⁶ Japanese Publishers' Association et al. "Danryoku Unyō Repōto [Report on Flexible Operation]"

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Shuppan Kagaku Kenkyūjo, *Shuppan Shihyo Nenpo [Annual Data of Publishing]*, 350-3.

¹⁰⁰ The Japan Society of Publishing Studies, *Hakusho Shuppan Sangyo [White Paper on Publishing]*, Chapter 1, 3, 7.

¹⁰¹ Tsuruta, Chosakubutsu Saihanseido [RPM].