

# A Guide to US-Japan Documentary Coproduction

(Hard copies of the following booklet are available upon request to the US CULCON secretariat at the contact information listed under the main menu)

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## INTRODUCTION

This booklet has been prepared as a practical guide for organizing and implementing an international television documentary coproduction. Although the material in this booklet in large part reflects the seminar and real life experiences of Japanese and American public broadcasters working together, there are clearly broader implications for the variety of commercial, cable and independent cooperative arrangements in television news and documentaries that are the reality in today's marketplace.

Leo Eaton, a veteran of many international television documentary projects, describes them as a challenge, but with clear rewards: "The great merit of an international coproduction," Eaton says, "is the opportunity to achieve something which you could not manage alone. There is no way I could make all the difficult arrangements for filming in Japan without a solid local partner.

"A coproduction is like an arranged marriage. There are difficulties, but like a marriage, it can endure and blossom, but only if there is a commitment on both sides."

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## PROGRAM HISTORY/GOALS

In 1991, the Corporation for Public Broadcasting (CPB), in cooperation with the East-West Center in Honolulu and the Japan Broadcasting Corporation (NHK) in Tokyo, organized the first of four seminars for Japanese and American television producers and directors.

The series was conceived with two goals in mind:

- To build working relationships between producing organizations in both countries by improving personal contacts between networks or stations; and
- To use these contacts to improve practical knowledge on both sides about how Japanese and American television production teams work. Specifically, the goals were to identify and understand differing approaches to shooting, editing, organizational responsibilities, and then to learn how to cope with the differing approaches in order to create successful coproductions.

The first seminar, held in Washington, D.C. from July 15-19, 1991, included twelve veteran producers, six from each country. Each participant brought two programs for screening and discussion, focusing on identifying differing approaches to program production, especially those rooted in cultural dissimilarities.

The second meeting, held at the East-West Center in Honolulu from Sept. 14-18, 1992, included seven producers, four from America and three from Japan, plus a senior NHK executive. As in the first meeting, there were screenings and discussions about differing production approaches, but this time, a new phase was added -- role-play. Japanese and American teams were formed, with the purpose of simulating the coproduction negotiation process through role-play.

The third meeting, also at the East-West Center, was held from Nov. 29-Dec. 3, 1993. Twelve producers, six from each country, gathered to screen and analyze previous coproductions. Based on the first two meetings, a list of differences in thematic approach, program structure and story development were identified, and then discussed within the context of actual coproductions which were screened at the meeting.

The fourth meeting, again at the East-West Center, was held from Dec. 6-10, 1994. Twelve producers, six from each country, focused almost entirely on project negotiation role-play, and a joint editing workshop. The editing workshop was organized to give both Japanese and American producers the practical experience of working together in editing a brief segment from a program.

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## SIMILARITIES AND DIFFERENCES IN US AND JAPANESE AND DOCUMENTARIES

The practical problems which all TV documentary coproductions face are linked to an enigma. The answer, according to veteran co-production executive Leo Eaton, is "mind-sets -- things we expect to see or hear." Any international co-production immediately challenges mind-sets on both sides, because it involves differing "mind-sets," usually based on cultural values or preferences. Working with a Japanese production unit for the first time, Eaton said, "forced me to re-assess my perceptions of what was 'right' or 'wrong' in approaching a production."

Those who organize and implement international co-productions, the producers, say that anyone undertaking such a project must recognize and cope with, among other elements, three major differences in approach:

- Differing audience needs and tastes;
- Differing styles; and
- Production issues (editorial control; distribution rights)

What follows is broad-brush approach to these elements. As with any creative process, there are exceptions and variations to any approach.

#### **A. Key Audience Issues**

The general broadcast Japanese television market is without doubt the most highly competitive in the world. A nation with just half the population of the United States contains not only a massive public broadcast network (NHK), but five other major private national television networks, plus scores of local stations and networks, all competing fiercely for audience share.

The fact that the Japanese cable market is in its infancy, however, means that an enormous future demand will be created for programming of all kinds, including U.S., European and Asian productions. This also means a strong future market for international coproductions. One indication of the room for growth is NHK's proportion of programs acquired overseas, which increased from just 2.8% in fiscal 1987 to 5.2% in 1992.

The competitive scene in America is much more broadly based than in Japan. America's enormous cable television market means that the ultimate competitive force is the home viewer with a remote control unit, changing channels quickly, looking for something interesting.

These differences in audience profile explain in part why U.S. programs aim to entice viewers with a fast-paced production which deter them from changing to another channel. Although the pacing of Japanese documentaries is becoming faster, their audience appeal depends more on the promise of offering previously unrevealed information or "the inside story" of a topic.

#### **B. Key Stylistic Issues**

Producers in both countries have identified three key areas in which differences, usually based on 'mind-sets', most often appear:

##### **1. Thematic Approach**

International news and topics are covered in great detail in the Japanese print media. This, plus the enormous growth of Japanese overseas tourism in recent years, has led to a corresponding increase in television programming with international themes.

Documentaries are no exception. Japanese networks regularly broadcast news documentaries produced by their overseas bureaus as well as special crews dispatched to overseas locations.

In America, documentary TV productions tend to be more oriented to domestic themes, reflecting the less international tastes of the U.S. audience.

2. **2. Editing Style**

Japanese documentary producers tend to favor creating 'moods' in their programs which depend on a much slower editing style than is commonly seen in the U.S. Editing cuts in a typical U.S. documentary sequence might be no more than 1-2 seconds long. In Japan, one cut can be many seconds in length, often including a slow camera pan or gradual zoom-in on an interviewee's face, or a detail in a scene.

3. **3. Story Development**

The general Japanese approach is very information-oriented. The number of 'talking heads' (interviews) tends to be fewer than in the U.S.; narration is used as the main tool for conveying information.

In international documentaries, sub-titles are often used when the subject does not speak Japanese.

Teasers are used occasionally to start documentaries, but more commonly, producers use a 'cold' opening.

U.S. documentaries often use teasers to start the program. Unlike most Japanese documentaries, those in America are generally driven by several main characters or voices, with less emphasis on narration. The dramatic orientation of many American producers leads them to emphasize 'story-telling' through characters, not narration, as the main tool for conveying information.

Whereas Japanese producers assume that non-Japanese interviewees will not speak their language, American producers often try to get subjects who speak English. Failing that, they will usually dub English under the interview rather than using sub-titles.

<b>Summary of Differences in Stylistic Approaches Between the United States and Japan</b>		
	<b>United States</b>	<b>Japan</b>
<b>Thematic Approach</b>	domestic-oriented	international-oriented
<b>Program Structure</b>	fast-paced	slow-paced
<b>Story Development</b>	logical	emotional
	many characters or voices	few characters or voices
	less emphasis on narration	emphasis on narration
	less volume of information	high volume of information
	sparing use of subtitles	considerable use of subtitles

	almost always use teaser at start of program	occasional use of teaser at start of program, but most commonly use a 'cold' opening
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(Japanese producer) "American documentaries tend to be more comprehensive, with a macro point of view. Many Japanese producers still take a micro point of view, using an individual or limited experience and linking it with a universal issue."

4. 4. **Examples of specific areas in which problems based on differing approaches are most likely to arise:**
  - a. **Interviews**

An NHK producer describes what he believes is the biggest stylistic difference between Japanese and American documentaries: "In American documentaries, the interview often is the essence. The proportion of interviews is high, because U.S. producers seem to believe that the words uttered by people who are interviewed weighs heaviest in the program's content. Collaborating with videographers, they make every effort to set up the right framing and lighting for interviews. Many NHK producers, however, feel that the essence of a program lies in the spontaneity of its scenes. They believe that interviews are not as candid as spontaneous events.

"Westerner broadcasters are inclined to call the Japanese style as 'cinema verite,' a style developed in the West in the early 1960s. Such critics label this style as obsolete and say the Japanese style should be modified to conform to contemporary Western techniques."

Such labeling, the NHK producer believes, is excessively simple, and overlooks a deeply rooted difference in cultural approach to film-making. "Japanese are accustomed to implicit communication (which relies more heavily on non-verbal communication), but Westerners treasure explicit communication." The NHK producer argues that unlike Western couples which confirm their love or feelings through words, Japanese couples do so through their behavior toward each other.

The NHK producer also believes that because nine out of ten Japanese feel very uncomfortable in front of a camera, unplanned conversations and accidental events often prove more eloquent than planned interviews. Moreover, he says, this approach has a greater impact on Japanese audiences.

Thus the reason why NHK producers depend on hand-held cameras is not because they are clinging to an out-moded concept, but because the general reaction of Japanese to taped interviews means that true drama cannot occur in the presence of large amounts of filming equipment.

- b. **Shooting and Lighting**

The American tendency to carefully stage, place and set up every camera shot in documentaries derives from its dramatic film tradition. The use of hand-held cameras is more often associated with live news coverage. The use of natural lighting is acceptable under outdoor shooting

circumstances, but indoors, few American directors would be satisfied with natural lighting.

In Japan, there is a preference for hand-held cameras and natural lighting. The very fact that the camera may shake, or the lighting may be dim, confirms to the Japanese audience that the scenes are spontaneous and therefore authentic.

c. **c. Narration**

American productions often use a personality or reporter as a key 'character' in a program. NHK and the private Japanese networks tend to depend upon a narrative style. The "reporter" usually is in the background, not in front of the camera.

d. **d. Editing**

An editing workshop at the fourth seminar vividly illustrated differing approaches among Japanese, American and British styles, but also revealed that it is difficult to generalize about 'cultural' tendencies.

Three editing teams were formed. Each was given identical materials from which to edit a 3-5 minute sequence. One team was headed by an NHK producer, another was led by a British producer now working and living in the U.S. and a third team was headed by an American.

The Japanese team produced a highly structured segment which stressed the presentation of information. The British producer's approach emphasized both information and a story line. The American team used music and effects to create a mood sequence.

A Japanese producer said that he was shocked by the result. "I expected the Americans to produce the most logical story, and the Japanese to rely more on mood, but the result was exactly the opposite." "Each team produced a unique sequence," said another Japanese producer. "And yet each one was valid in its own right. That opened my mind, and made me more flexible about accepting other approaches to editing." As one producer noted, "we cut three dresses from the same cloth."

American producers spend much more time on "polishing" their edits. "My goal," said one, "is to produce three minutes of polished editing per day."

"If an NHK director got only three polished minutes per day," said a Japanese producer, "that director would be fired."

The typical daily editing output for an NHK documentary, the producer said, would be 10-15 minutes of finished work. This is due in large part to greater deadline pressures at Japanese networks, which produce many more documentaries per year than networks in America.

A one-hour NHK documentary production schedule would typically allow two months for research, two months for writing the scenario and making shooting arrangements, one month for the shooting itself, and one month for post-production (rough cut, recording, mixing, final cut).

C. **C. Key Production Issues**

"Co-productions are not ultimately made between organizations. They are made between people."

## 1. Funding

NHK and Japanese private networks usually provide an immediate budget for an approved project. The funds available from U.S. public television for programming are considerably lower and often forces stations to seek additional funding once the project has been decided.

International coproductions, because their logistics are more complex, need a much longer planning lead time, to assure not only that funds are in place on both sides, but in the correct proportion.

Producer Leo Eaton recommends that producers make a detailed list of logistical expenses. Depending upon the number and location of overseas shoots for each side, their production expenses may differ greatly. Producers should add 25-40% to their budget estimate to cover such logistical expenses.

## 2. Relationships

Among U.S. teams, conflict between the Executive Producer (EP) and the field producer sometimes result in a change in producer during the course of a production. In Japanese networks, EPs and producers usually come from the same division and have known each other for years. Producers are never changed in mid-project.

Another contrast is the relationship between producer and crew. American producers have great authority, including the right to decide everything in the field. At NHK, producers are more like coordinators, integrating various views or opinions among the crew. They seek teamwork, not autocracy.

(Japanese producer) "It is essential to discuss decision-making procedures in great detail, so that both sides will have a realistic understanding of how to proceed."

(American producer) "One of the most common mistakes Americans make in working with Japanese is talking down to them, or not making enough effort to seek out or understand Japanese opinions on a problem or discussion point."

## 3. Shooting

Japanese crews tend to have much higher shooting ratios than American crews. On average, the ratio of footage shot for a completed hour is about 20:1 in America. At NHK, the ratio is 100:1. At private Japanese networks, the ratio is closer to 50:1.

(Japanese producer) "The Japanese shooting approach is deeper, but narrow. The American approach is shallow, but broader."

For example, in discussing a possible coproduction which would focus on the daily lives of middle class Japanese and American families, the Japanese producers wanted to select just two families, but the Americans wanted at least four.

The Japanese objective was to focus more narrowly, but in greater depth, on the two families.

The American objective was to take a broader view of more families, sacrificing in-depth coverage of a family for the sake of a greater range of characters and situations.

4. **4. Editing**

Americans will take between 12-15 weeks before coming to rough cut in the editing room. At NHK, about 2-3 weeks is normal. The key difference is that Japanese teams will assemble the shot sequences on paper before the editing begins. This approach involves writing each individual shot on separate note cards and then arranging them in sequence. As the discussion of how to put the program together proceeds among the production staff, the order of the shots can be easily rearranged simply by moving them around on a board. Japanese producers feel that this approach saves precious time.

(Japanese producer) "One of my first international co-productions was a three-way affair including American and British teams. I thought everything was going well, until I saw the rough cut. As I watched, I could feel the color drain from my face. Their style was do different. They used 10 or 11 interviews, which would be hopelessly confusing to a Japanese audience. I had to ask them to send us three hours of raw footage so that we could edit our own program. Otherwise, it would have been a disaster."

5. **5. Pacing**

Americans tend to like fast-paced shows, with fast cuts and a style of aggressive dramatic development. Japanese audiences prefer slower-paced scenes, long, lyrical pans, less dialogue, with a heavier reliance on narration imparting detailed information. But in recent years, as the ratio of foreign programming has increased on Japanese television, audiences are becoming more accustomed to faster paced shows.

Not all American editing styles rely on fast pacing. In the editing workshop at Seminar 4, an American-led editing team produced a very 'moody,' slow paced sequence, while a Japanese-led team (with some suggestions from its American members) produced a much faster-moving sequence.

6. **6. Negotiating**

(Japanese producer) "It is essential for Americans to understand the roles and responsibilities which exist within any Japanese production team. In other words, knowing who has the ultimate responsibility for signing off on a project."

(American producer) "One of the most common conflicts between Japanese and American producers is Americans complaining about Japanese trying to over-control everything, and Japanese complaining that the Americans haven't prepared sufficiently before the shooting begins."

7. **7. To avoid this conflict, the producer said, both sides must negotiate and agree beforehand on three key objectives:**

a. **Content**

1. What are the main 'messages' of the program?
2. What editorial approach should be followed?
3. How should proposals be submitted to NHK?

Because NHK is managed by consensus, no producer can individually say "I like this idea, it will be produced." But there is value in having a strong



advocate to present the idea to the other NHK decision-makers. Personal contracts are still the best entree into NHK.

NHK has recently developed a three-tier system to review international proposals.

#### **Tier One**

The first step is to present a proposal to the appropriate producer. If a proposal is not addressed to a specific person, it will begin in the new Division for International Production, which meets every Tuesday to consider new proposals. Representatives of MICO and NHK Enterprises are also present.

#### **Tier Two**

If those at the first tier like the proposal, it moves to the Coproduction Facilitation Working Group. This group is comprised of financial managers and chief producers from all divisions and subsidiaries, such as HIGH VISION, MICO, Satellite Division, and NHK Enterprises. Every representative expresses an opinion on the prospects of a proposal before it moves to the next level.

#### **Tier Three**

Senior management approves all projects. This group has the power to say yes or no. If the answer is yes, money will be allocated and pre-production commences.

#### **b. b. Lines of Responsibility**

It is essential to decide clear lines of responsibility for such tasks as:

#### **1. Shooting at the various locations**

In most cases, each side is responsible for shooting on its 'home turf,' but if there are third country locations, with potential language problems, perhaps a mixed production team might be appropriate, or a team from the country closest to the shoot location.

#### **2. 2. Obtaining archive footage**

Archival footage is usually handled in the same manner, but some producers want to see all the archival footage with their own eyes. Thus a 'team' approach might be appropriate.

#### **3. 3. Primary research (libraries/databases, etc.)**

Primary research in Japan is conducted either by the Japan side or an American, fluent in Japanese, who can review the materials with an American audience in mind. The reverse would be true for primary research conducted in the United States.

#### **4. 4. Editorial control**

Editorial control is the most difficult issue of all. "One approach," says producer Leo Eaton, "is for each team to place its trust in one person, who will then work closely together as a team, with the understanding that their decision on editorial matters will be accepted by both sides."

Eaton acknowledges that it is very difficult to find two people who can carry out this difficult task, but he points out that once two organizations have worked together, there is the chance that they

can identify such people on the basis of their ability to work smoothly, despite inevitable differences of opinion or perspective. "The key factor," says Eaton, "is building trust on both sides. That takes a great deal of time and energy, but it will eliminate or minimize many problems which arise simply because of poor communication on either side."

5. **5. Editing style**

Editing style is perhaps best left to each side to decide for itself, given the differing needs of audiences, Eaton says. In the event of differences which cannot be resolved, both American and Japanese producers say that it is best to agree beforehand to 'cut two dresses from the same cloth.'

6. **6. Contractual Obligations**

These include distribution and ancillary rights for both domestic and foreign markets; cable TV and broadcast satellite TV rights; and publication rights for commercial and/or educational materials.

The real 'bottom line' issue, according to veteran producers, involves the attitude of both partners.

"You must be willing to take creative risks," says Leo Eaton. "You must be willing to compromise, while still retaining a sense of 'ownership' in the finished product."

A successful coproduction, he says, is a synthesis of differing approaches.

"Too often, the parting point in a coproduction is only 20% into the project," Eaton says. "This is a huge waste of time and energy. If the two producers make the effort to understand the differing needs of their audiences, it is possible to complete up to 80% of the project working closely together."

At that point, he says, each side is then free to version its material to the needs of its audience.

To get to that point, he repeated, both sides must be willing to make compromises.

Japanese and American shooting styles, for example, are very different. A Japanese crew usually is most concerned with recording information, while an American crew is more concerned with focus, proper lighting and composition.

Eaton calls these differences "subjective realities, reflecting what audiences are accustomed to seeing on the screen."

The other key difference which requires compromise is story telling. As noted earlier, an American producer will use pictures and sound to 'move' the story along, while a Japanese producer will tend to depend more on narration and content.

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# SUGGESTIONS FOR RESOLVING CO-PRODUCTION ISSUES

The following suggestions were made by veteran producers from both countries:

## A. Create 'style books'

In the U.S., many documentary series have their own style books, with guidelines regarding camera work, editing and story concepts. Co-production teams should screen and discuss each other's past work as well as other documentaries which are relevant to the proposed co-production. Only through discussion and debate can the team agree on a set of guidelines for their own production. This process also is essential in creating the personal rapport and trust which is the key to a successful production.

## B. Open Channels of Communication

One of the basic problems in past co-productions has been poor communication on both sides, often caused by a lack of openness and language skills. Both sides must share their concerns and opinions with each other. Japanese producers especially need to make greater efforts to speak more openly and frankly about co-production problems.

(American producer) "Any production is hard work, but an international co-production is often not worth the effort -- unless you both feel that it's an excellent project. This isn't just true of Japanese/American productions. Even the British and Americans have enormous problems in co-productions. The only way to overcome this barrier is mutual respect, and that can only come from detailed discussions at the beginning of the project."

(American producer) "During the rough cut screenings for the first Minidragons series, we were watching the NHK version of one of the episodes, and it was a very good rough cut. We Americans thought it would work well for the American audience, except for three or four terrible scenes. I asked the Japanese producer why these scenes were left in. He looked surprised, 'Oh, we put them in especially for you,' he said. 'We thought that's what Americans would want, even though we hated those scenes.'"

## C. Appoint coordinating producers

Efficient liaison is equally crucial to a successful co-production. It is too much to expect a producer to handle this important task. A new position -- coordinating producer -- should be created by each team. The two coordinating producers could then concentrate all their efforts on information exchange and liaison. One of their key tasks would be identifying and handling conflicts or emerging problems before they become serious.

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# FEEDBACK FROM PRODUCERS

(each paragraph represents the comment of one person)

## A. Editing

- o American directors

The speed and pacing of editing between American and Japanese crews is dramatic. Compromise must be the keyword if you want to have a successful collaboration.

The Japanese team wanted a much more factual, sequential presentation than the Americans. We would have created a more thematic sequence, while the Japanese wanted to make sure they got as much information as they could into the sequence.

- o o Japanese directors

The Americans asked me to cut the length of one shot which was five seconds. I reluctantly cut it to three seconds, and they said that was still too long. I was amazed.

I was surprised when the Americans wanted to write the script before editing the sequence. We would never do that in Japan. Our attitude is: see what you have to work with first, and then create the sequence or program from those materials at hand.

My critique of the American style is that the cuts are too short, the camera often moves too fast, and intrudes on what should be a natural, spontaneous scene.

## B. B. Style

- o Japanese directors

I understood for the first time how our stereotypes about each other get in the way of understanding. In this workshop, I could see beyond the stereotypes, to understand why the Americans do things the way they do.

This was my first real exposure to American diversity. I could see for myself how Americans, among themselves, have many different approaches to shooting, editing, and even problem- solving. I'm from outside Tokyo, and I feel there are many differences in approach among Japanese, too.

- o o American directors

Understanding our biases -- that's key. Not just understanding the other person's perspective. We are both trying to serve our viewing audience. That affects our

style, our approach to making programs. We need to pay more attention to how to use language to bridge some of these barriers.

One of the big problems of communication is not just the language, but the way we act. It took us a while before we stopped acting the way we thought the other side expected us to act. When we began to drop our formality and become more candid, the communication improved.

### C. C. Teamwork

- Japanese director

Before I attended this workshop, I was convinced that Americans were too pushy and never listened to anyone else. Now I know better. We all have our opinions, and, being producers, we feel strongly about things. But when we get together and truly analyze our problems, it is possible to compromise, and produce a result which is satisfactory to both sides. This is what I call real teamwork.

- ○ American directors

We dwell on our differences too much. In this workshop, we all learned how to become potential partners. We also learned that there can be mutual benefits from a co-production. For me, true collaboration can be very exciting.

I believe there is strength in diversity, and that goes for international coproductions, too. What's needed on both sides is patience, and respect. Both Japanese and Americans learned that during this workshop.

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## Appendix I: Legal Issues in Coproduction

Before a camera captures a single frame of footage, a complex legal infrastructure must be put in place to assure that all aspects of a partnership are understood and agreed upon by the coproduction partners.

The contract is the most obvious legal facet of a coproduction but there are other legal ramifications to consider. Decisions that producers make while the production is in progress must conform to legal norms in the country where shooting is taking place and in the jurisdictions of the parties engaged in the coproduction.

Because coproduction legal issues are so numerous, the presentation was structured as a question and answer session.

## Questions and Answers

### Union Issues

**Q.** In Japan, small honoraria or token gifts of appreciation are frequently given as payment for the appearance of personalities. How does NHK know what to pay for the appearance of American talent?

**A.** In the United States almost all professional talent, and in some locales almost all technical personnel, are members of trade unions. Actors are likely to be members of AFTRA (the American Federation of Television and Radio Artists) or SAG (the Screen Actors' Guild). Directors will likely be members of the Directors' Guild of America. Technicians and crew members may belong to a variety of unions.

Unions and guilds set minimum levels of payment that their members can accept. Even when union members perform outside the United States, their contracts still stipulate that they must be paid "to scale" or according to the provisions of their union agreements. Well-known performers will command even more pay unless they agree to work for less because they believe in the cause. This is why American talent cannot accept honoraria or tokens of appreciation as payment.

Union contracts also stipulate terms for working conditions and schedules such as how much time can be spent in rehearsal or in performance. Contracts also spell out terms for future video and cable rights and all other ancillary production use. These details are specific and must be followed.

### Entering into Union Contracts

**Q.** How should NHK proceed when doing location work on sites where unions have a strong presence? Is it advisable for NHK to enter into agreements with various unions to expedite working on location?

**A.** The advice was that NHK should politely resist the pressure to join unions without offending the unions. It is difficult to imagine the long term benefits that NHK would gain by doing so.

Abiding by union contracts increases the time and money required to complete a project. Because NHK is not experienced in dealing with unions, it would be easy for unions to take advantage of this naiveté, and guarding against this possibility would incur even more legal and administrative costs.

Once signed, a contract with a trade union applies to all future productions regardless of where the production takes place. In other words, signing a contract with an electrician's union in New York would legally bind the party to work under the same rules and at the same pay scale even when working on a non-union shoot elsewhere.

Location is the major determinant in whether U.S. stations engage in union contracts. Some American public television stations are unionized such as WNET in New York. It would be impossible for WNET to carry on business in NYC without union contracts. The city is highly

unionized, and not being unionized would invite continuous disruption and harassment. On the other hand, Maryland Public Television is able to conduct business from Owings Mills, Maryland, relatively free from union activity and therefore is not a signatory to union contracts.

When a station which is not a signatory to union contracts is on location in unionized territory, it too must abide by union rules, and work with the unions. This poses a dilemma: either it signs the union contracts, and becomes bound to the provisions of the contract in all future dealings, or it chooses not to sign the contracts and suffers possible harassment and work stoppages.

The best way to proceed under these circumstances is to find a coproduction partner or subcontractor who already has established ties with the unions. While it might seem inconvenient to find a partner based solely on its union ties, the alternatives are even less desirable.

## Rights Issues

**Q.** What are the obligations of NHK to individuals who appear in productions? For example, how are rights of those passing by in a long shot street scene different from those of a public figure used in a news documentary?

**A.** Issues involving the rights of those in long shots, street scenes, and spontaneously captured footage are very complex. One must weigh two fundamental American rights against each other. The right of free press must be balanced against the right of privacy. Interpretation of which right prevails is difficult. There are some norms to guide actions and several examples were cited to illustrate the issues and rights involved.

**EXAMPLE A:** A hidden camera captures the sale of illegal drugs and in the process records a murder.

The right to privacy is not in the commission of a crime. The right of free press in covering news is powerful. Even passers-by would have no claim to privacy in this example.

**EXAMPLE B:** A news team gets permission from an ambulance crew to follow along as they respond to emergency calls. The team is able to record dramatic footage of the ambulance crew offering aid to a heart attack victim in his own house.

The right of privacy in this instance supersedes the right of free press. This event took place inside a private residence, was a personal matter, and no laws were broken, so there must be a release signed by the heart attack victim in order to show this footage.

**EXAMPLE C:** A documentary on prostitution and drugs captures a long shot of a public housing complex. Three women pass by during the long shot. They are included in the program without their permission.

Because of the defamatory nature of the topic, these three women were damaged by their coincidental inclusion in the footage. It implies that they were engaged in prostitution. When using

a wide shot one must be very careful about the content of voice-overs or narration, as well as the general topic of the program, because what is said will implicate the incidental people in the shot.

### **When to Get Releases**

**Q.** Under more routine instances when is a signed release necessary?

**A.** Broadly speaking, when the program topic is news, no releases are required. When the program and topic is entertainment, releases are required.

It is best to decide before production begins if releases are to be used, and then apply that standard uniformly. Problems arise when releases are obtained from only a few subjects in the program.

### **Indemnification**

**Q.** Are there ways to indemnify one partner in a coproduction from Lawsuits which may result from the actions of their coproduction partners?

**A.** Indemnification would be a function of the contract that exists between the two or more coproduction partners. Those suing the production on any grounds would likely sue all partners.

### **The Coproduction Contract**

**Q.** How much detail should be included in a coproduction contract?

**A.** The objective of a good coproduction contract is to practice "preventive law," that is, to insure that as many potential issues which could arise are addressed before they become divisive. The most costly time to try to come to terms on an issue is when a production is already in progress.

The coproduction contract is the foundation upon which the creative work is built. Producers frequently see contracts as quagmires in which one can become bogged down. Instead, they should be seen as documents that if, crafted with care, can help smooth the way to a successful project.

All coproductions encounter problems as they evolve and this should be accepted as unavoidable. Since contracts cannot realistically provide for every scenario which might occur, the goal is to provide for framework in which even unanticipated problems can be logically handled.

Most contract language is detailed and laborious, but is straightforward and somewhat standardized. There are many issues that contracts must address; conversion rates for currencies; financial control; creative rights; staffing decisions; and provisions for how budgetary disputes will be resolved.

There are some issues which are more difficult to address in advance but which must also be dealt with in the contract. A common difficulty is determining the nuances of what constitutes creative



control, and providing a means for determining when other production or management concerns override it. Disputes frequently erupt over a misunderstanding of the relationship between budgetary and artistic constraints.

An example would be a shoot which was scheduled for outdoors, but is delayed by weather. Weather delays are costly and outside of a producer's control. There are crews' salaries and travel expenses, and expenses mount with every hour of the delay. So the issue must be addressed before it happens as to when a producer will have to change an artistic vision because of cost constraints.