Report on Market Study on Transactions Between Performers and Entertainment Agencies in the Music and Broadcasting Industry

(Market Study on Ensuring Fair Transactions to Support Creators)

Japan Fair Trade Commission

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Contents

I. Purpose of the Market Study, etc. 1
1. Purpose of the Market Study 1
2. Surveying method 2
(1) Questionnaire survey 2
(2) Hearing survey 4
(3) Information provision form 4
II. Outline of Public Entertainment Field 5
1. Trading subjects 5
(1) Performers 5
(2) Entertainment agencies 5
(3) Broadcasters, etc. 6
(4) Record companies 7
2. Provisions of a contract between trading subjects 7
(1) Provisions of a contract between a performer and an entertainment agency 7
(2) Provisions of a contract between a broadcaster, etc., and an entertainment agency or performer 11
(3) Provisions of a contract between a record company and an entertainment agency or performer 14
III. Application of Antimonopoly Act and Competition Environment 16
1. Application of Antimonopoly Act, Subcontract Act, Act on Improvement of Transactions between Freelancers and Companies, and Labor-related laws and regulations 16
2. Bargaining position 18
(1) General remarks 18
(2) Bargaining position of entertainment agencies 18
(3) Bargaining positions of broadcasters, etc. 19
(4) Bargaining positions of record companies 20
3. Hindrance to fair competition 20
(1) Hindrance to fair competition through abuse of superior bargaining position 20
(2) Hindrance to fair competition through other acts of non-naked price restraint 21
IV. Actual conditions of transactions between performers and entertainment agencies and promotion of fair competition 22
1. Actual conditions of restrictions on performers' leaving agencies 22
2. Period of obligation under exclusive contract 25
(1) Term of contract 25
(2) Right to request an extension of term 29
3. Non-competition obligation, etc. 34
(1) Actual conditions 34
(2) Viewpoints from the Antimonopoly Act 36
4. Obstruction of transfer or independence 38
(1) Demand for a monetary benefit in connection with transfer or independence 38
(2) Interference with performers wishing to transfer or become independent 42

(3) Interference with performers having transferred or become independent 46
(4) Concerted restriction of transfer by several entertainment agencies or a trade association 53
5. Acts to performers' rights 56
(1) Actual conditions of belonging of rights 56
(2) Authorization to exploit various rights to deliverables 58
(3) Restriction of using stage names and group names 62
6. Acts relating to the treatment of performers 65
(1) Unilateral decision on fees 65
(2) Compulsion of job 70
7. Acts of impairing transparency of contracts 72
(1) Not making a contract in writing or not giving a full explanation for the provisions of a contract 72
(2) Clearly showing the details of a transaction of a demonstration to a performer 77
(3) Clearly showing statements pertaining to performers' fees 78
V. Actual conditions of transactions between a broadcaster, etc., and an entertainment agency or performer and promotion of fair competition 80
1. Not making a contract in writing, not giving a full explanation for the provisions of a contract, and not accepting negotiations 80
(1) Actual conditions 80
(2) Viewpoints from the Antimonopoly Act 86
VI. Actual conditions of transactions between a record company and an entertainment agency or performer and promotion of fair competition 87
1. Demonstration prohibition clause 87
(1) Actual conditions 87
(2) Viewpoints from the Antimonopoly Act 89
2. Rerecording prohibition clause 90
(1) Actual conditions 90
(2) Viewpoints from the Antimonopoly Act 92
VII. Initiatives of the JFTC 94

I. Purpose of the Market Study, etc.

1. Purpose of the Market Study

Content, such as cartoons, music, broadcast programs, movies, games, and *manga*, is proud property of Japan. With technological progress, the source of the competitiveness of content is shifting to individual creators. Meanwhile, it is pointed out that, to improve the environment to one in which the creativity of the individual creators of Japan is shown to the maximum, we need to set about rectification of business relations that hinder appropriate return of profits to creators.

The Japan Fair Trade Commission (JFTC) has carried on with various efforts to promote fair and free competition in the aspect of human resources and in the field of public entertainment, in such ways as the publication of a Report on Examination Meeting on Human Resources and Competition Policy in February 2018 (Competition Policy Research Center) and "Examples of Expected Acts Which May Come into Question in the Antimonopoly Act in the Field of Public Entertainment" in September 2019.

Afterward, in the Content Industry Revitalization Strategy (formulated and specified in the "Grand Design and Action Plan for a New Form of Capitalism, 2024 Revised Version" decided by the Cabinet on June 21, 2024), it is specified that, it is essential to correct trade practices in order to create a comfortable working environment for performers and others; in light of the current technological innovation, the content industry is shifting its emphasis to individual creativity; with the cooperation of the Japan Fair Trade Commission, we will conduct a fact-finding survey on trade practices in the music and broadcast program fields, with an emphasis on preventing abuse of a superior bargaining position and protecting individuals. In addition, in the Intellectual Property Promotion Plan (decided by the Intellectual Property Strategy Headquarters on June 4, 2024), it is specified that, to improve the trade environment to one in which the creativity of individual creators is shown to the maximum, Japan will conduct a survey of relations with trade associations, record companies, and broadcasters, including grasping of the actual conditions of transactions between performers and entertainment agencies or theatrical ones in the field of music and broadcast programs.

Based on those conditions, to improve the trade environment to one in which the creativity of individual creators is shown to the maximum, the JFTC at this time is to conduct an actual condition survey of contracts between performers for music and broadcast programs (e.g. artists, actors, actresses, and personalities) and entertainment agencies or theatrical ones to which they belong (hereinafter simply referred to as "entertainment agencies") (hereinafter referred to as the "Survey").

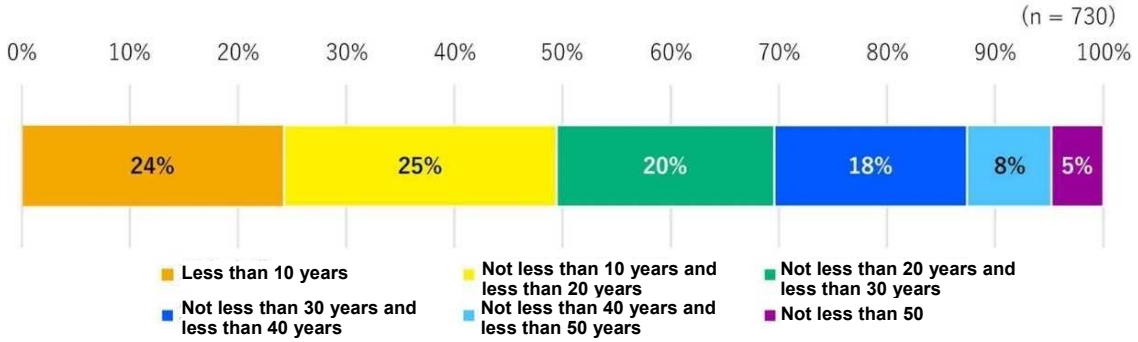
2. Surveying method

(1) Questionnaire survey

From August to November 2024, the JFTC conducted a questionnaire survey of 2,628 entertainment agencies (respondents, 810; response rate, 30.8%).

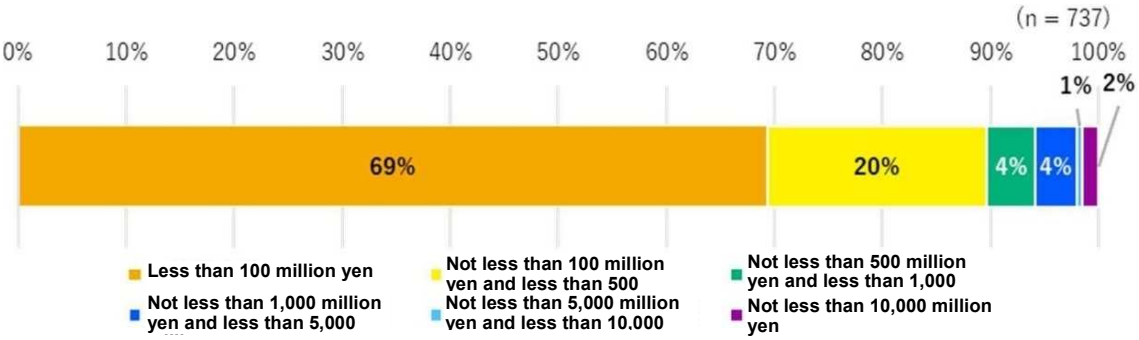
Regarding entertainment agencies that responded to the questionnaire survey, proportions by the number of years from their establishment year, their sales, the most common attribute of performers belonging to them, and the number of performers belonging to them[1] are as follows.

Figure 1. Proportions by number of years from establishment year



Source: Created by the JFTC based on responses to the questionnaire survey[2].

Figure 2. Proportions by sales

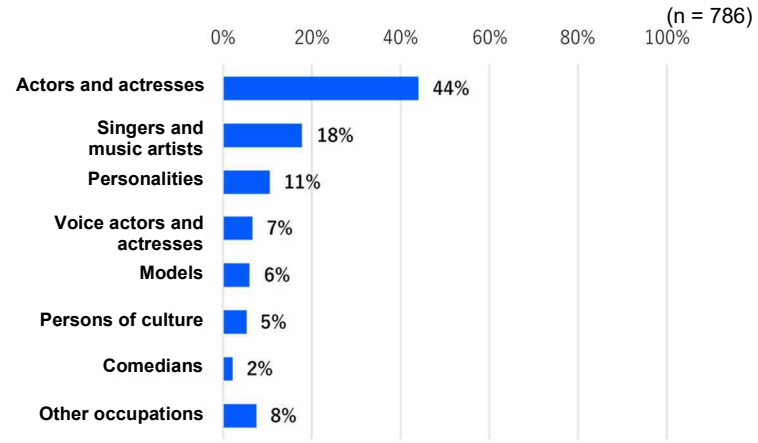


Source: Created by the JFTC based on responses to the questionnaire survey.

[1] Since figures are rounded off to the first decimal place, there are cases where the total does not amount to 100%. The same applies hereinafter.

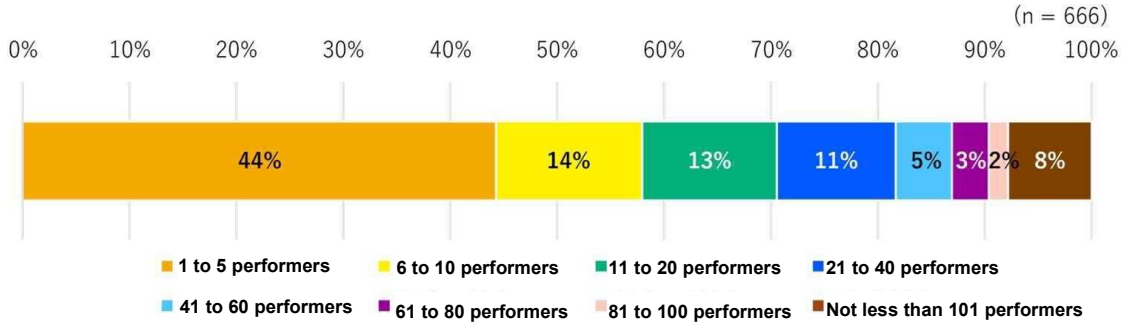
[2] Only responses to questions were totaled (non-responses were not totaled). The same applies hereinafter.

Figure 3. Most common attribute of performers belonging to agencies[3]



Source: Created by the JFTC based on responses to the questionnaire survey.

Figure 4. Number of performers belonging to agencies



Source: Created by the JFTC based on responses to the questionnaire survey.

[3] Major responses stated in the free space regarding “Other” are as follows (there are cases where several responses stated in the free space are stated together. Hereinafter the same applies to responses stated in the free space).
• Hosts
• Magicians
• *Kodan* narrators

(2) Hearing survey

From April to November 2024, the JFTC conducted a hearing survey of the following 95 persons in total.

Objects	Number of persons
Performers	29
Entertainment agencies	37
Broadcasters and program production companies	10
Record companies	8
Trade associations	9
Experts (lawyers)	2

(3) Information provision form

To collect and grasp information about facts that seem to be problematic in connection with contracts between performers and entertainment agencies in the field of music and broadcast programs, the JFTC prepared an information provision form on its website in April 2024 and obtained information from a total of 901 persons before November 2024.

II. Outline of Public Entertainment Field

1. Trading subjects

(1) Performers

A performer is defined in Article 2, paragraph (1), item (iv) of the Copyright Act as "actors, actresses, dancers, players, singers, and other persons who give demonstrations[4] and persons who direct demonstrations." In addition to those given as examples in said Act, it widely includes personalities, comedians, voice actors and actresses, video distributors, models, hosts, and persons of culture.

Performers include persons who belong to an entertainment agency and conduct show business and who conduct show business as an individual without belonging to an entertainment agency. In addition, performers include persons who conduct show business exclusively in a specific field and who conduct show business in various fields. Furthermore, performers include persons who solely conduct show business and who conduct show business as a group of several persons. Stages to play on include various ones, such as broadcast programs, movies, show places, recorded content, such as CDs, and magazines. Recently, they have been active widely in the Internet media, such as video distribution services and SNS. As mentioned above, performers and the state of their show business are various.

Though there is no comprehensive statistics on the number of performers, the number of performers who entrust management of neighboring rights to the Center for Performers' Rights Administration of the Japan Council of Performers Rights & Performing Arts Organizations[5] was about 100 thousand in fiscal 2023. Not all performers are able to earn a living by only show business. In addition, generally, whether or not a performer is able to gain a stage to play on fully is strongly influenced by not only his/her ability and efforts but also his/her popularity, trends, and rumors of the times. So it is said that it is difficult to continue to be active in the long term. A certain number of performers leave entertainment agencies and stop (retire from) show business.

(2) Entertainment agencies

A. Outline

In the Survey, an entertainment agency means a company that negotiates with a person who provides a stage for show business or provides a stage for show business for itself and manages a performer's schedule, for the sake of a performer who belongs to it. Specifically, an entertainment agency enters into an exclusive management contract (specified in detail in 2, (1) below) with a performer and carries out a wide range of operations such as, in addition to negotiation with broadcasters and program production companies (hereinafter collectively referred to as "broadcasters, etc.") and record companies and business activities related to them, and schedule management for performers, finding and training of new stars, career development for performers and promotion incidental thereto, accounting management, and legal protection. In addition, there are cases where entertainment agencies provide a stage for show business for a performer or propose a project to provide it, for itself.

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[4] A demonstration is defined as "dramatically performing, dancing, playing singing, narrating, reciting, or otherwise acting a work (including acts similar thereto which have an entertainment-like nature without playing a work)" (Article 2, paragraph (1), item (iii) of the Copyright Act).

[5] A public interest incorporated association that, in such a case where a broadcaster or rental company uses a music CD, collects rental fees and fees fixed through negotiations with an industrial association from individual companies and distributes those fees to the performer and the right holder through individual entrusted right bodies as a centralized management body for neighboring rights.

Regarding those operations by entertainment agencies, an agent system, in which a performer is contracted personally with experts in the field of business, such as managers and lawyers, is the mainstream in foreign countries, including those in Europe and America. Meanwhile, it is pointed out that, as mentioned above, in Japan, the mainstream is a business model in which entertainment agencies invest funds and carry out all operations pertaining to promotion of performers, such as accounting and legal affairs, in addition to finding, training, publicity, and sales. Under the situation where operations are carried out in that way, typically, in the agent system in Europe and America, performers personally bear the cost of those services, and entertainment agencies tend to bear that cost in Japan.

B. Trade associations

Representative trade associations for entertainment agencies include the Japan Association of Music Enterprises, Federation of Music Producers Japan, Japan Entertainment Management Entrepreneurs Association, and Nippon Seiyu Jigyosha Kyogikai (JSYCC).

(3) Broadcasters, etc.

Broadcasters, etc., are given as one of representative providers of stages for show business.

A broadcaster means a person who is always transmitting information to receivers at hand to allow the receivers to watch it. Specifically, they mean the Japan Broadcasting Corporation, terrestrial commercial broadcasters, and satellite broadcasters that broadcast via artificial satellites. Broadcasters produce programs to be broadcasted on TV or radio for themselves or by entrusting production of all or any of the programs to program production companies. Specifically, of terrestrial commercial broadcasters, each of the five TV stations in Tokyo called "key stations" (Nippon Television Network Corporation, Tokyo Broadcasting System Television, Inc., Fuji Television Network, Inc., TV Asahi Corporation, and TV TOKYO Corporation) has built TV and radio networks called networks, and many local TV stations belong to any of the networks. While many broadcasters make profits by selling to companies advertising frames to advertise products and services in them, regarding the Japan Broadcasting Corporation and some satellite broadcasters, their main source of revenue is license fees and viewing fees which they receive from viewers.

In addition, when a broadcaster entrusts program production to a program production company, in addition to that program production company producing a program for itself, the program production company sometimes re-entrusts the program production to another program production company. Program production companies include a program production company with capital ties with a broadcaster called a “program production company affiliated with a TV station” (including a case where a program production company belongs to the same corporate group in such a case where it is under the umbrella of the same shareholder as that of a broadcaster).

(4) Record companies

A record company means a company which carries out planning, production, manufacture, sale, and publicity of a master disk (a sound source in which sound demonstrated based on a musical piece is fixed). In this respect, some record companies outsource some functions without having all functions. There are cases where each record company has a label branded based on musicianship or other factors[6]. The classes of the uses of a master disc include music software, such as CDs and DVDs, which is called a "package" or "physical," as well as downloads and streaming distribution via the Internet.

A general flow of master disk production is as follows: a songwriter or composer creates a musical piece; an arranger arranges the music piece; a record company records a song or performance by a performer, finishes it through editing, and records its data on a medium. Cases where an entertainment agency or music publisher produces a master disk are now increasing, and it is said that the main role of a record company is shifting to planning and publicity. Acquiring a tie-up with a broadcast program and an advertisement for publicity is also one of important roles of a record company.

2. Provisions of a contract between trading subjects

(1) Provisions of a contract between a performer and an entertainment agency

A. Outline of a contract

Since performers who enter into a contract with an entertainment agency are various, contracts between a performer and an entertainment agency are also various. Representative contracts are those called exclusive management contracts.

Pursuant to a general exclusive management contract, an entertainment agency assumes various roles, such as training a performer through lessons, providing opportunities for demonstrations in broadcast programs, carrying out necessary promotion, and entering into contracts with third parties, such as broadcasters, and charging considerations for demonstrations. Meanwhile, a performer has an obligation under exclusive contract to deal only with the entertainment agency to which he/she is contracted and an obligation to give demonstrations on stages provided by broadcasters, etc., which are business connections of the entertainment agency and receives fees from the entertainment agency for considerations therefor.

Moreover, the provisions of an individual contract, such as the method of calculating a consideration earned from a third party, such as a broadcaster, etc. (the form of paying fees to the performer[7]), the term of the contract, and rights to be transferred from the performer to the entertainment agency, vary depending on the performer or entertainment agency. There are cases where sample forms by trade associations[8] are used as references for the clauses of that exclusive management contract.

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[6]There are cases where a label is an independent corporation, such as a subsidiary of a record company, and where it is a division of a record company.

[7] The forms of fees paid by an entertainment agency to a performer include a fixed-salary basis in which a fixed amount is paid not based on the proceeds from demonstrations by a performer, a commission basis in which the proceeds from demonstrations by a performer are distributed between the entertainment agency and the performer at a predetermined rate, and a hybrid system in which both a fixed-salary basis and a commission one are used.

[8] They include a “standard exclusive artist contract (revised edition on September 25, 2019)” of the Japan Association of Music Enterprises, “2013 Guide to Artist Contracts for Theatrical Agencies” of the Federation of Music Producers Japan, “Belonging Contract (draft) of the Japan Entertainment Management Entrepreneurs Association, and “Belonging Contract Sample Forms” of Nippon Seiyu Jigyosha Kyogikai (JSYCC).

Contracts other than those exclusive management ones include a so-called agent contract pursuant to which a performer entrusts an entertainment agency only with getting opportunities for appearances and negotiation over terms. In that case, the performer pays commission to the entertainment agency.

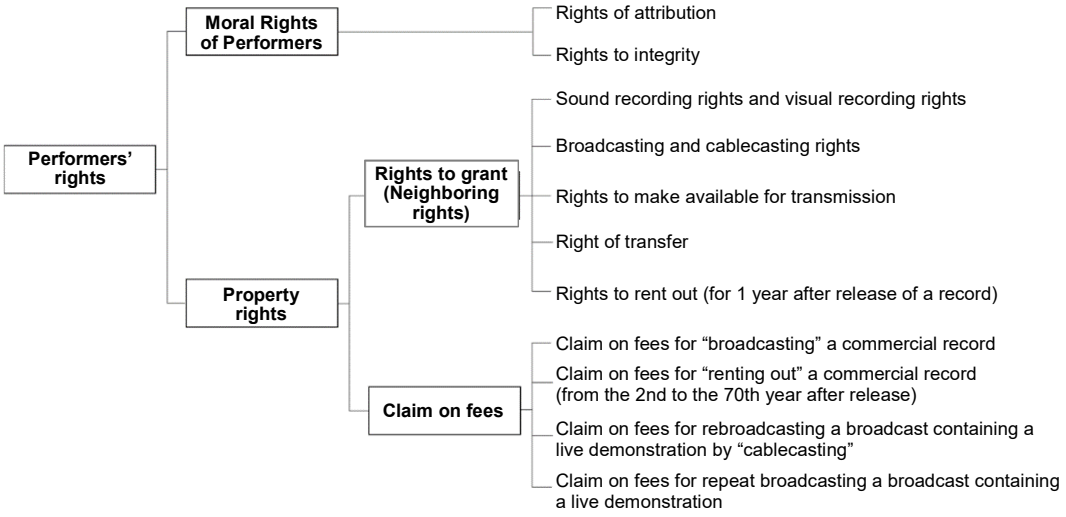
B. Handling of performers' rights

(a) Rights which performers are to acquire

A performer acquires neighboring rights granted to a person who plays an important role in conveying a work to the public.

The Copyright Act mainly prescribes the following rights as rights peculiar to performers.

Figure 5. Performers' rights under Copyright Act



Source: Created by the JFTC based on the FY 2024 edition of Copyright Text by the Copyright Division of the Agency for Cultural Affairs.

In addition, when a performer not only demonstrates a song but creates a work (e.g. a case where he/she also writes words and music for a song), the performer owns the copyright as an author of the work.

(b) Belonging of rights acquired by performers

Although the Copyright Act provides that the rights outlined in (a) above belong to a performer, there are cases where belonging of rights or authorization to exploit rights are agreed on in an exclusive management contract between an entertainment agency and a performer. In sample forms of exclusive management contracts by trade associations, it is specified that copyrights and neighboring rights prescribed by the Copyrights Act as well as publicity rights[9] having been recognized in precedents shall be transferred by a performer to an entertainment agency or shall belong to an entertainment agency during the duration of an exclusive management contract.

Entertainment agencies are appreciated because they do business smoothly by managing those rights comprehensively and exercising the rights to third parties (including those through entrustment to copyright management

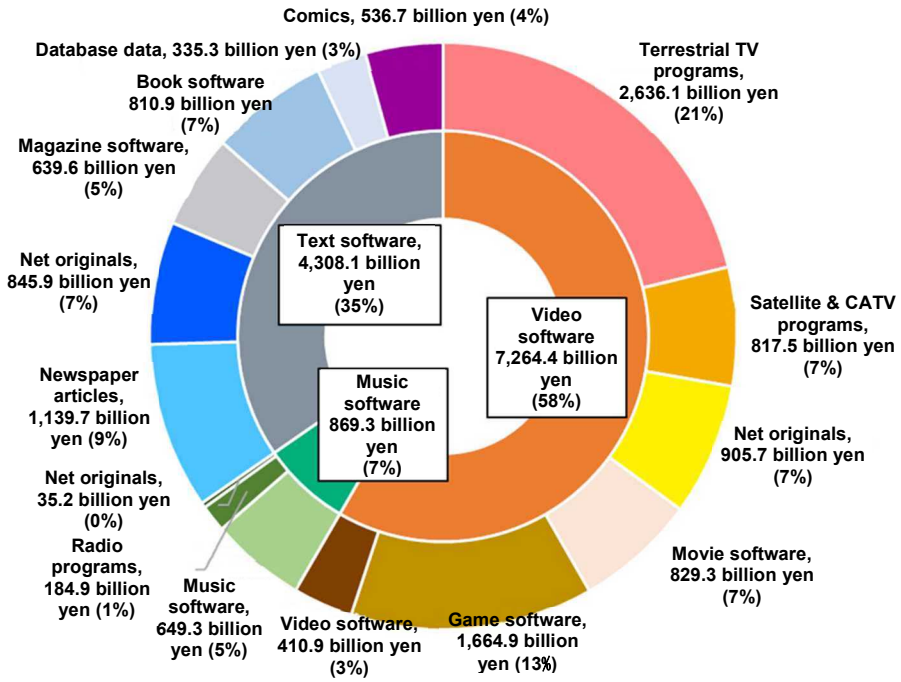
[9] The right to exclusively exploit goodwill of a name or portrait (Pink Lady case (Supreme Court decision on February 2, 2012 that is stated on page 89 of issue 2 of Volume 66 of Civil Casebook)).

bodies) and contribute to maximizing the value of the rights through investment. Meanwhile, it is pointed out that transferring the rights to and their belonging to entertainment agencies cause a disadvantage to performers for such a reason that it becomes difficult for a performer to transfer or become independent.

C. Market scale

The market scale of the whole content market was over 12 trillion yen in 2022. As for the market component ratio by software, video software, and sound software, which are expected to be stages on which performers are active, accounted for more than 60 percent of the whole market.

Figure 6. Market Scale of Media and Software (2022)[10]

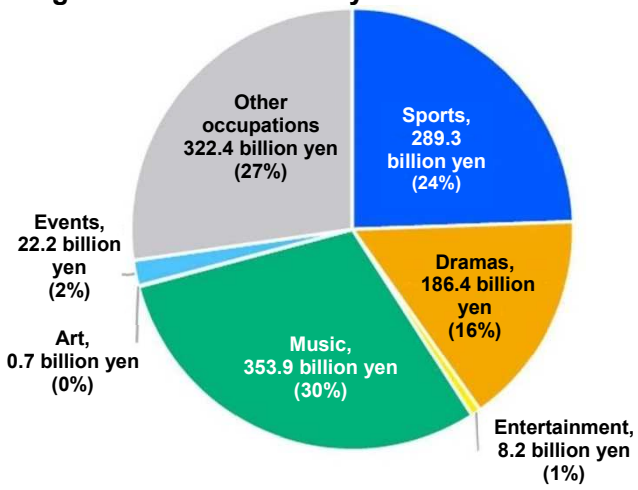


Source: Created by the JFTC based on the Report on Research and Study of Actual Conditions of Production and Distribution of Media and Software (June 2024) by the Institute for Information and Communications Policy of the Ministry of Internal Affairs and Communications.

Seeing annual sales by field in the field of show business, the total of sales of “dramas,” “entertainment,” and “music” amounts to about 550.0 billion yen. Furthermore, seeing a breakdown of the proceeds in them, “admission fees and box-office revenue” account for about 40 percent of the annual sales. In addition, in a breakdown of “other revenue,” “royalty income,” “televising right income,” and “ad rate income” were mainly given.

[10] The objects of net originals are media and software produced for distribution on the Internet for PCs and on the Internet for mobiles.

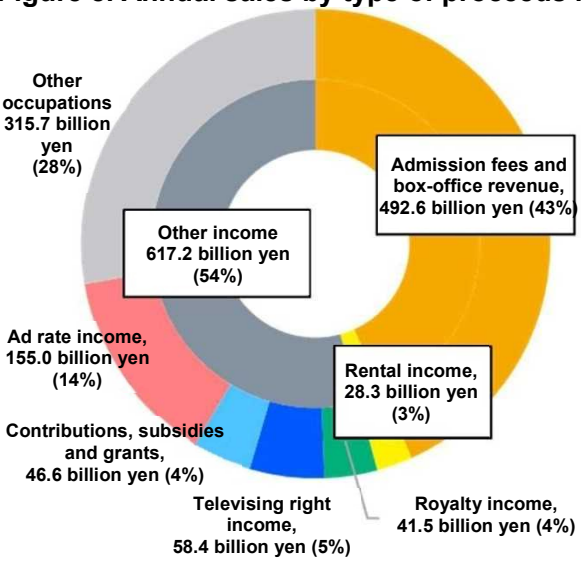
Figure 7. Annual sales by field in field of show business (2020)[11]



Source: Created by the JFTC based on Part Entire Scale (Table 5) of Part B Survey (Show Places and Show Groups) Second Totaling Result of 2020 Report on Survey of Actual Conditions of Economic Structure (announced in July 2021) by the Ministry of Economy, Trade and Industry.

[11] Types of shows: “Dramas” include dramas, operas, *kabuki*, puppet shows, musicals, ballets, Japanese dancing, plays, and popular song shows. “Entertainment" includes comic storytelling, cross talks, *kodan*, naniwabushi recitations, shows, acrobatics, and feats. “Music" includes various types of concerts (e.g. popular music and classical music), recitals, and dinners and floor shows. “Sports" include professional baseball, professional soccer, grand *sumo* tournaments, professional boxing, and professional wrestling. “Art" includes painting exhibitions, exhibitions, calligraphy exhibitions, and sculpture exhibitions. “Events" include Thanksgiving festivals, athletic meets, various assemblies, lecture meetings, movie screenings, and a large variety of events. “Other types” include things not applicable to the above.

Figure 8. Annual sales by type of proceeds in field of show business (2020)[12]



Source: Created by the JFTC based on Part Enterprises with 5 Employees or More (Table 5) of Part B Survey (Show Places and Show Groups) Second Totaling Result of 2020 Report on Actual Condition Survey of Economic Structure (announced in July 2021) by the Ministry of Economy, Trade and Industry.

(2) Provisions of a contract between a broadcaster, etc., and an entertainment agency or performer

A. Outline of a contract for a TV program appearance

In many cases where a performer appears in a TV program produced by a broadcaster, etc., an individual program appearance contract is entered into between the broadcaster, etc., and an entertainment agency to which the performer belongs (a performer who belongs to no entertainment agency enters into that contract directly with the broadcaster, etc.). Generally, the broadcasting date and the filming period of the program, fees, the number of times of broadcast, the secondary use, and other conditions are agreed on in a contract.

In addition, there are cases where a broadcaster, etc., entrusts a program production company with program production. In that case, a program appearance contract is sometimes entered into between the program production company and an entertainment agency.

[12] Types of proceeds: “Admission fees and box-office revenue” include admission fee income and income such as entrance fees. “Rental income” includes rental income from entertainment facilities, such as theaters. Breakdown classes of other income: “Royalty income” includes income from the portrait rights of actors and actresses belonging to agencies and royalties, and income from naming rights to show places. “Televising right income” includes televising right income and radio broadcasting right income. “Contributions, subsidies, and grants” include contributions, subsidies, and grants from companies, individuals, groups, and local public bodies. “Ad rate income” includes income from ad rates.

“Other income” includes income other than the above, such as appearance fees for entertainers.

B. Repeat broadcast of TV program videos

A performer has a claim on fees for repeat broadcast by a broadcaster. Generally, a claim on fees is transferred from a performer to an entertainment agency to which the performer belongs pursuant to an exclusive management contract. In general, a fee for repeat broadcast is agreed on in a program appearance contract.

C. Secondary use of pictures in TV programs

(a) Outline of the system under Copyright Act

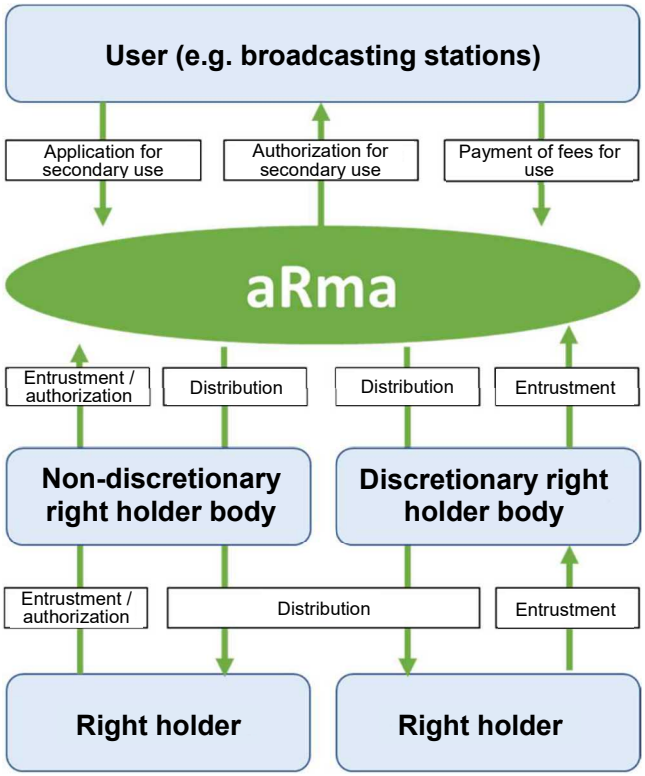
In the Copyright Act, regarding a demonstration recorded in a cinematographic work [13], a performer has broadcasting rights and cablecasting rights, when the demonstration is broadcasted or cablecasted; rights to make available for transmission, when it is stored or inputted in a server for transmission on the Internet; and rights of transfer, when the performer transfers its reproduction such as a DVD. So-called secondary use, such as recording a broadcast program on a DVD and Internet distribution of the program, requires the performer's authorization connected with those rights. A claim on fees for secondary use which a performer has in the case of secondary use is generally transferred from a performer to an entertainment agency to which the performer belongs pursuant to an exclusive management contract. So a fee for secondary use is paid to the performer through the entertainment agency. It is often specified that a consideration for secondary use is included in an appearance fee paid when a program appearance contract is entered into, up to a certain number of uses or a certain scope.

(b) Management bodies

The audiovisual Rights management association (aRma), which is a copyright management body, centrally manages rights pertaining to demonstrations recorded in TV programs. So for a secondary use (so-called all use) of a TV program in which a performer who entrusts the aRma with management of his/her rights (or an entertainment agency to which the performer belongs) appeared, such as recording it on a DVD or Internet distribution, a broadcaster should apply for the use to the aRma.

[13] A "cinematographic work" under the Copyright Act is a concept which means a work by which cinematic audiovisual effects are fixed in an item, not limited to movies for theaters, and includes broadcast programs.

Figure 9. Role of aRma



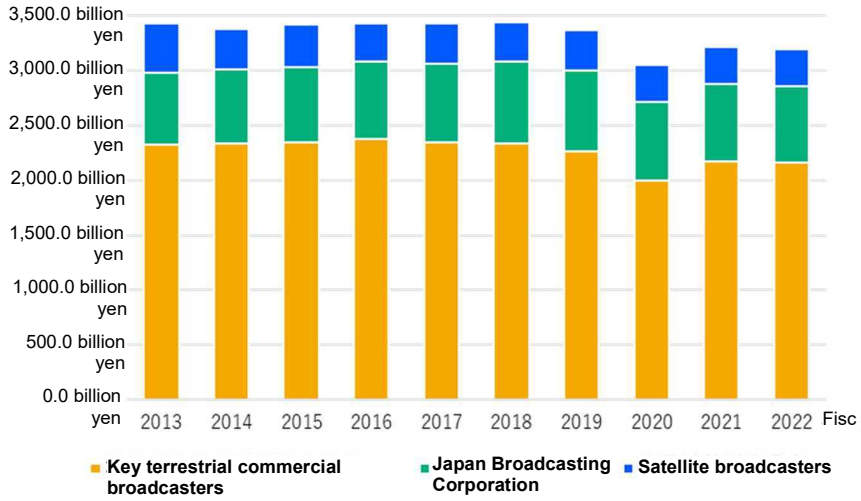
Source: Edited and created by the JFTC based on the contents of aRma's websites.

Meanwhile, regarding the use of only part of a TV program (so-called partial use or use for other purposes), a broadcaster should apply for the use directly or indirectly to the entertainment agency through the Japan Association of Music Enterprises or the Performers' Rights Entertainment (PRE).

D. Market scale

Sales of the whole broadcasters have tended to decrease recently.

Figure 10. Changes in sales of all broadcasters[14]



Source: Created by the JFTC based on Information and Communications in Japan, WHITE PAPER 2024 by the Ministry of Internal Affairs and Communications.

(3) Provisions of a contract between a record company and an entertainment agency or performer

A. Outline of a contract

In general, an exclusive performer contract for demonstrations in music production is entered into between two parties, a record company and an entertainment agency, or a record company and a performer (in the former case, there are many cases where a performer agrees on and signs the contract between those two parties)[15]. An exclusive performer contract specifies an obligation under exclusive contract according to which a performer shall provide demonstrations (songs and performances) exclusively for CDs and DVDs sold by a record company to which the performer belongs, during the term of the contract[16], and the record company produces master discs pursuant to the contract[17]. It is specified that the scope covered by the obligation under exclusive contract includes demonstrations for the purpose of recording. So in many cases, it is specified that it also includes demonstrations for media other than CDs and DVDs, such as streaming distribution and advertisements.

[14] For the figure of satellite broadcasters, operating revenue pertaining to satellite broadcasting business was totaled. For the figure of the Japan Broadcasting Corporation, ordinary business income was totaled.
[15] As another example, a single contract (so-called one-shot contracts) is sometimes entered into on a master disk basis.
[16] However, there are cases where recordings for the purpose of only broadcasting by broadcasters and those to which a prior consent is obtained from the record company are excluded.
[17] There are cases where a record company solely produces a master disc, and where a record company produces a master disc jointly with an entertainment agency or music publisher. Handling of a master license is separately agreed on in a master disc contract.

B. Provisions of other major contracts

(a) Demonstration prohibition clause

A demonstration prohibition clause is a clause to prohibit a performer from giving all demonstrations for recording (e.g. master disc production and distribution) for a certain period after the end of the term of a contract between a record company and an entertainment agency or performer.

(b) Rerecording prohibition clause

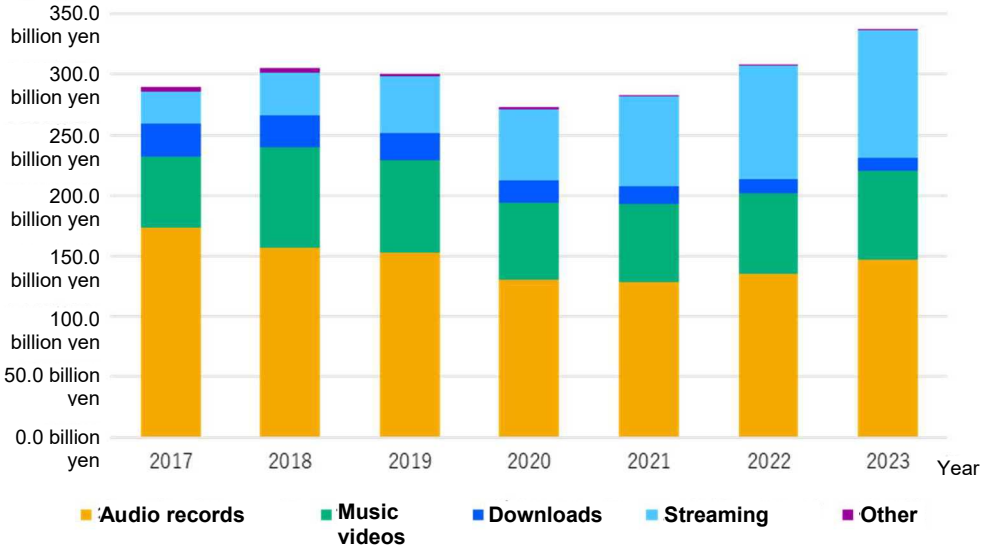
A rerecording prohibition clause is a clause to prohibit a performer from giving a demonstration for recording pertaining to a musical piece having been released by a record company (so-called rerecording for master disc production and distribution) for a certain period after the end of the term of a contract between that record company and an entertainment agency or performer.

C. Market scale

Regarding the field of music, although an increase in sales of streaming distribution is remarkable compared with traditional music software, such as CDs, sales of music software are still higher than those of streaming distribution in Japan.

Moreover, it is said that sales of streaming distribution are higher than those of music software in the entire world[18].

Figure 11. Changes in amounts of sales results of music software production and music distribution[19]



Source: Created by the JFTC based on the Record Industry in Japan 2024 (March 2024) by the Recording Industry Association of Japan.

[18] Report on What Business Model Should Be in conformity with a New Era in Music Industry (July 2024) by the Ministry of Economy, Trade and Industry

[19] Music software means audio records and music videos, and music distribution means downloading and streaming. In addition, audio records mean CD albums, CD singles, and analog discs. “Other types” include the use of musical pieces as a ringtone and a ringtone for mobile phones.

III. Application of Antimonopoly Act and Competition Environment

1. Application of Antimonopoly Act, Subcontract Act, Act on Improvement of Transactions between Freelancers and Companies, and Labor-related laws and regulations

Relations between performers and entertainment agencies are various, and applicable laws and regulations will be decided based on the individual actual conditions. In the case where a performer is found to be a "laborer" under the Labor Standards Act[20], such as a case where a performer is found to be engaged in a job substantially under the direction of an entertainment agency, labor-related laws and regulations apply.

It is conceivable that transactions between companies to which labor-related laws and regulations do not apply [21] may fall under the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (hereinafter referred to as the "Act on Improvement of Transactions between Freelancers and Companies"), the Act against Delay in Payment of Subcontract Proceeds, etc., to Subcontractors (hereinafter referred to as the "Subcontract Act"), and Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as the "Antimonopoly Act") . It is conceivable that, if an entertainment agency falls within an "entrusting business operator" (Article 2, paragraph (5) of the Act on Improvement of Transactions between Freelancers and Companies) or "specified entrusting business operator" (paragraph (6) of said Act), the Act may apply to the entertainment agency. If an act in violation of the Act on Improvement of Transactions between Freelancers and Companies is simultaneously in violation of the Antimonopoly Act or the Subcontract Act, the Japan Fair Trade Commission will apply the Act on Improvement of Transactions between Freelancers and Companies preferentially, as a rule[22].

And, if an entertainment agency falls into the category of "large procuring enterprises" (Article 7 of the Subcontract Act, it is conceivable that the Subcontract Act may apply to the agency, but the Japan Fair Trade Commission applies the Subcontract Act preferentially over the Antimonopoly Act, as a rule[23].

Moreover, there is a possibility that the acts referred to in IV and later below may be in violation of not only the Antimonopoly Act but also the Subcontract Act or Act on Improvement of Transactions between Freelancers and Companies. Acts which may be in violation of those Acts and main applicable provisions are as follows.

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[20] Even in the case where a performer is not found to be a "laborer" under the Labor Standards Act, there is a case where the performer is found to be a "laborer" under the Labor Union Act, which is one of labor-related laws and regulations.

[21] There are cases where it is conceivable that a transaction between companies to which the Labor Union Act, which is one of the labor-related laws and regulations, applies may fall under the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators, the Act against Delay in Payment of Subcontract Proceeds, etc., to Subcontractors, and Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.

[22] Thinking on Application of the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators, Antimonopoly Act and Subcontract Act
(announced on May 31, 2024)

[23] Outline of Opinions on "Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act" (draft) and Thinking on those Opinions (announced on November 30, 2010)

Act which may be in violation of Act on Improvement of Transactions between Freelancers and Companies or Subcontract Act	Main applicable provision
Demand for a monetary benefit in connection with transfer or independence (IV, 4, (1) below)	Unfair demand to provide an economic benefit (Article 5, paragraph (2), item (i) of the Act on Improvement of Transactions between Freelancers and Companies and Article 4, paragraph (2), item (iii) of the Subcontract Act)
Unilateral decision on fees (IV, 6, (1) below)	Beating down (Article 5, payment (1), item (iv) of the Act on Improvement of Transactions between Freelancers and Companies and Article 4, paragraph (1), item (v) of the Subcontract Act)
Compulsion of job (IV, 6, (2) below)	Unfair demand to provide an economic benefit (Article 5, paragraph (2), item (i) of the Act on Improvement of Transactions between Freelancers and Companies and Article 4, paragraph (2), item (iii) of the Subcontract Act)
Not making a contract in writing or not giving a full explanation for the provisions of a contract (IV, 7, (1) below)	An obligation to clearly show the terms of a transaction (Article 3 of the Act on Improvement of Transactions between Freelancers and Companies) and an obligation to deliver a document (Article 3 of the Subcontract Act)
Clearly showing the details of a transaction of a demonstration to a performer (IV, 7, (2) below)	An obligation to clearly show the terms of a transaction (Article 3 of the Act on Improvement of Transactions between Freelancers and Companies) and an obligation to deliver a document (Article 3 of the Subcontract Act)
Not making a contract in writing, not giving a full explanation for the provisions of a contract, and not accepting negotiation (V, 1 below)	An obligation to clearly show the terms of a transaction (Article 3 of the Act on Improvement of Transactions between Freelancers and Companies) and an obligation to deliver a document (Article 3 of the Subcontract Act)

From the results of the questionnaire survey and the hearing survey of entertainment agencies in the Survey, it seems that the relations between a performer and an entertainment agency are often handled as those to which labor-related laws and regulations do not apply[24]. When those laws and regulations are applied to

[24] When a performer is a person responsible for an enterprise, the performer may form a business cooperative pursuant to the Small and Medium-sized Enterprise Cooperatives Act. There is a case where the business cooperative has entered into a collective agreement for the terms of appearances with a

individual cases, whether or not the Antimonopoly Act applies to a case is to be decided based on the actual conditions of each case. In the following, as a competition environment which constitutes a background in considering application of the Antimonopoly Act and the viewpoints from the competition policy, we are to survey the bargaining position of entertainment agencies.

2. Bargaining position

(1) General remarks

The terms under which a company carries out a transaction are basically left to independent judgment between parties to the transaction. However, an act of unfairly causing a disadvantage to the other party to a transaction in light of normal business practices[25] by using its position by a party whose bargaining position is superior to the other party comes into question in the Antimonopoly Act as abuse of superior bargaining position (Article 2, paragraph (9), item (v) of the Antimonopoly Act).

A party to a transaction (Party A) being in a superior bargaining position to the other party (Party B) means a case where making it difficult for Party B to continue transactions with Party A will pose a great hindrance to business management, so that Party B is forced to accept a markedly disadvantageous demand by Party A. In making that judgment, Party B's dependence on Party A in trade, Party A's position in the market, the possibility of Party B's changing business connections, and other specific facts showing the necessity of dealing with Party A are comprehensively considered[26].

(2) Bargaining position of entertainment agencies

An exclusive management contract between an entertainment agency and a performer generally prescribes a so-called obligation under exclusive contract according to which the performer shall provide services only for the entertainment agency. Under the obligation under exclusive contract, since the performer may not carry out transactions with other entertainment agencies during the term of the contract, it is conceivable that all the proceeds gained for considerations for demonstrations given by the performer may depend on payments by the entertainment agency, which is the other party to the contract, as a rule.

In addition, while most entertainment agencies are in a corporate form, most performers conduct business as an individual. So it is conceivable that a performer generally has fewer pieces of information and poor bargaining power, compared with an entertainment agency. For example, some trade associations have made sample forms for the provisions of a contract between an entertainment agency and a performer (see II, 2, (1), A above), but the sample forms are not announced widely. The provisions of individual contents are various. Usually, a person other than parties to a contract (including custodians, when a performer is a minor, and agents for performers) cannot learn the provisions of the contract.

For that reason, it is difficult for a performer to compare the provisions of his/her contract with those of the contract of another performer belonging to other entertainment agency or the same entertainment agency. So it is conceivable that, except such a case where a performer has transferred from several entertainment agencies or receives advice from a lawyer who is familiar with the field of public entertainment, a performer is often in a situation where he/she is forced to enter

broadcaster to improve the economic status of the performer, who is a member of the cooperative.

[25] "Normal business practices" mean acts approved of from a standpoint of maintaining and promoting fair competition order. An act is not to be justified immediately even for the reason that the act is consistent with actually existing business practices.

[26] II, 1 and 2 of Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act by the JFTC

into a contract with an entertainment agency although he/she has not fully gained information needed to judge whether the provisions of the contract is right or wrong or proper or improper. In addition, in the situation where there seem to be not many opportunities to enter into a contract with an entertainment agency, in such a case where a little-known young-age performer makes a contract with an entertainment agency for the first time through scouts or auditions, it is conceivable that there are many cases where the performer cannot select an entertainment agency by comparing the terms of the contracts of several entertainment agencies but can only choose whether or not he/she is to make a contract with a specific entertainment agency which has scouted him/her or given an audition to him/her. For that reason, it is conceivable that, except for some famous performers who can choose an entertainment agency to which they are to belong from among several entertainment agencies, performers are often in a situation where they have poor bargaining power with entertainment agencies.

From the results of hearing in the Survey, in most cases, performers accept a contract presented by an entertainment agency as it is. In addition, it is supposed that, regarding a performer who wishes to transfer or become independent, when an entertainment agency demands a monetary benefit from the performer or obstructs the transfer or independence, in not a few cases, the performer who has been subjected to such acts accepts all or any of the acts, although he/she will suffer a great disadvantage to his/her business activities afterward. From this, it is conceivable that performers depend on entertainment agencies and are in a disadvantageous position regarding information and bargaining power.

From the above, it is conceivable that, except for the exceptional cases of some famous performers who are familiar with contracts after they have transferred from several entertainment agencies and can choose an entertainment agency to which they are to belong from among several entertainment agencies, it is highly probable that an entertainment agency is in a superior bargaining position to a performer with whom the entertainment agency enters into an exclusive management contract.

(3) Bargaining positions of broadcasters, etc.

Since whether or not a broadcaster is in a superior bargaining position to an entertainment agency depends on their respective scales or performances, it cannot be judged uniformly. However, in the hearing survey of entertainment agencies, regarding transactions with Japan Broadcasting Corporation and leading broadcasters, such as key stations, the agencies answered that there are cases where a performer can win fame all over Japan by appearing in a program by a broadcaster, which is in an overwhelmingly strong position in relation to the performer and the entertainment agency; that, since a performer is grateful for the appearance itself when the performer is little known, the performer appears at an amount as the broadcaster has said without negotiation (over an appearance fee); that, while some broadcasters offer an unbelievably low fee, some entertainment agencies request broadcasters to make their performers appear even for nothing, resulting in no negotiation. In view of those answers, transactions with those leading broadcasters not only involve a considerable amount of appearance fees paid in the transactions but are important to entertainment agencies' business management to raise the degree of the name recognition of performers through appearances in individual TV programs. So it is conceivable that entertainment agencies depend on the leading broadcasters to a certain extent.

Furthermore, in the questionnaire survey of entertainment agencies, some respondents answered that they bear appearance fees so that they will not be deprived by (leading broadcasters) of appearances. So it can be inferred that an entertainment agency which depends on transactions with those leading

broadcasters may be in a situation where, even if a leading broadcaster offers a markedly low fee, the agency is forced to accept the fee.

From the above, it is conceivable that, except for such an exceptional case as entertainment agencies to which many famous performers belong[27], there is a possibility that those leading broadcasters are in a superior bargaining position to entertainment agencies.

(4) Bargaining positions of record companies

An exclusive management contract between a record company and an entertainment agency or performer generally prescribes a so-called obligation under exclusive contract according to which the performer shall give a demonstration for recording only for the record company. Therefore, the performer may not give a demonstration for recording for other record companies during the term of the contract. For that reason, it is conceivable that the entertainment agency or performer depends on the record company, which is the other party to the contract, in connection with all the proceeds which the performer gains as considerations for giving a demonstration for recording, as a rule.

In addition, in the Survey, situations where, under a contract between an entertainment agency or performer and a record company, the performer's activities are restricted for a certain period after the termination of the contract with the record company have been seen in such cases of a demonstration prohibition clause (see II, 2, (3), B, (a) above) and a rerecording prohibition clause (see II, 2, (3), B, (b) above). Although there are cases where most entertainment agencies or performers suffer a disadvantage to their later business activities owing to those acts, they are in a situation where they accept all or any of the acts.

Meanwhile, in the hearing survey of record companies, some of the companies answered that music artists can now create high quality music without enlisting the help of a record company (without a studio or many funds); that an entertainment agency can provide distribution without depending on a record company, and therefore the necessity of dealing with record companies is decreasing among entertainment agencies and performers.

From the above, though there is a possibility that the bargaining position of record companies may be lowering while distribution services are increasing, sales of music software are still higher than those of distribution services in Japan (see II, 2, (3), C above). So it is conceivable that there is a possibility that record companies may be still in a superior bargaining position to entertainment agencies and performers, except for entertainment agencies and performers that do not need to depend on record companies for master disc production.

3. Hindrance to fair competition

(1) Hindrance to fair competition through abuse of superior bargaining position

If a party whose bargaining position is superior to the other party causes a disadvantage unfairly in light of normal business practices to the other party by using its position, it hinders the transaction on the other party's own free initiative, and while the other party comes to have a disadvantage in competition in relation to its competitors, the doer is liable to come to have an advantage in competition in relation to its competitors. Accordingly, the doer is regulated pursuant to the Antimonopoly Act for abuse of superior bargaining position. In what case an act is

[27] To raise the audience ratings of programs produced by them, it is general practice for broadcasters to request famous performers to appear in their programs. It seems that there are cases where, with intention of having those performers continue to appear in programs, a broadcaster guesses an entertainment agency's feelings, in such a way as a broadcaster does not use a performer who has transferred or become independent from an entertainment agency to which several famous performers belong. In that case, it is conceivable that the broadcaster is not in a superior bargaining position to the entertainment agency.

found to be liable to hinder fair competition is to be decided for each individual case in consideration of the degree of the disadvantage in question, the spread of the act, and other factors[28].

For example, a case where an entertainment agency causes a great disadvantage to a performer by restricting a wide range of activities through a non-competition obligation or where an entertainment agency causes a disadvantage to many performers belonging to it by imposing restrictions on activities on them in such a way as using sample form contracts containing the same provisions is prone to be found to be liable to hinder fair competition.

(2) Hindrance to fair competition through other acts of non-naked price restraint

As mentioned below, acts by an entertainment agency include those which come into question not only as abuse of superior bargaining position but as other acts of non-naked price restraint (acts of restricting the other party's business activities other than pricing). Regarding an act of non-naked price restraint, when the act causes market foreclosure effects; that is, if newly entering parties and existing competitors are excluded or if the act is liable to cause a situation where opportunities for their transactions decrease, the act is found to be liable to hinder fair competition [29].

Regarding whether or not there are market foreclosure effects, the higher a company is in a position in the market in which the company imposes restrictions[30], the stronger the possibility of the restrictions having effects. Based on the bargaining position of entertainment agencies as referred to in 2 above, and based on the state of competition in the market, each individual case is to be judged.

[28] I, 1 of Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act by the JFTC

[29] Part I, 3, (2), A of the Guidelines Concerning Distribution Systems and Business Practices by the JFTC

[30] Entertainment agencies conduct business in two markets, one in which they provide stages for demonstrations to performers and one in which they enter into contracts with broadcasters and record companies. Whether the Antimonopoly Act applies to relations between a performer and an entertainment agency is considered based on the former market.

IV. Actual conditions of transactions between performers and entertainment agencies and promotion of fair competition

1. Actual conditions of restrictions on performers' leaving agencies

Recently, cases where a performer leaves an entertainment agency and transfers or becomes independent are seen. As a result of the questionnaire survey of entertainment agencies, the proportions of companies based on the number of performers who have transferred from other entertainment agencies (including activities as a freelance) in the most recent three years are as shown in Figure 12. About 50 percent of entertainment agencies answered that they have performers who have transferred from other entertainment agencies (including activities as a freelancer).

Entertainment agencies find performers "in the making" whose necessary skills for show business are at the immature stage, train the performers as they bear costs for dance lessons and vocal exercises, and living costs according to circumstances, and promote the performers using advertising expenses and operation cost. There are cases where the agencies invest capital to maintain and expand their popularity even after the performers have become popular[31]. Those efforts may have competition promotion effects in such a way as developing the performers' abilities. As shown in Figure 13, to recover the invested capital, some entertainment agencies sometimes prescribe various provisions pursuant to which they may restrict a performer's activities in a contract between an entertainment agency and a performer.

Securing freedom of the choice of jobs, transfer from the entertainment agency, and independence for performers is an important precondition for market functions being shown. Restricting that freedom through those provisions may have adverse competitive effects.

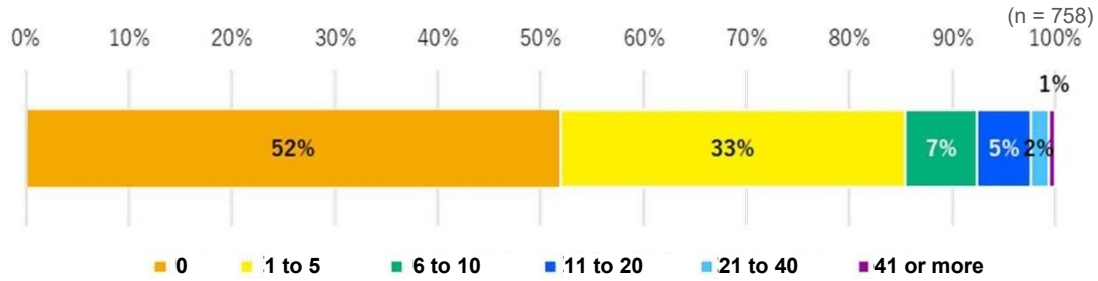
Recovering costs invested by an entertainment agency to train a performer as mentioned above is given as the reason why the entertainment agency restricts the performer's activities through the provisions. As shown in Figure 14, from the hearing of entertainment agencies, the method of recovering training costs includes scraping up training costs for other performers from the proceeds earned by a handful of popular performers, which is a characteristic of the entertainment industry. So the thinking of an entertainment agency recovering training costs as a whole was seen. Meanwhile, as shown in Figures 15 and 16, it seems that the trend of managing training costs more precisely by each individual performer, in such a way as calculating whether an investment in an individual performer is recovered, has begun to be seen recently.

Moreover, regarding unrecovered training costs at a performer's leaving an entertainment agency:

i. even when the performer has not transferred or become independent, the entertainment agency cannot always recover the full amount of unrecovered part of training costs actually incurred; and
ii. it is conceivable that there is a case where a performer's ability and power to attract customers may be developed through not only the training but the performer's efforts and resources; and there is a case where it is impossible to consider that all the ability and power are the results of training by the entertainment agency. Therefore, it is conceivable that the full amount of unrecovered part of training costs itself is not always on an appropriate level.

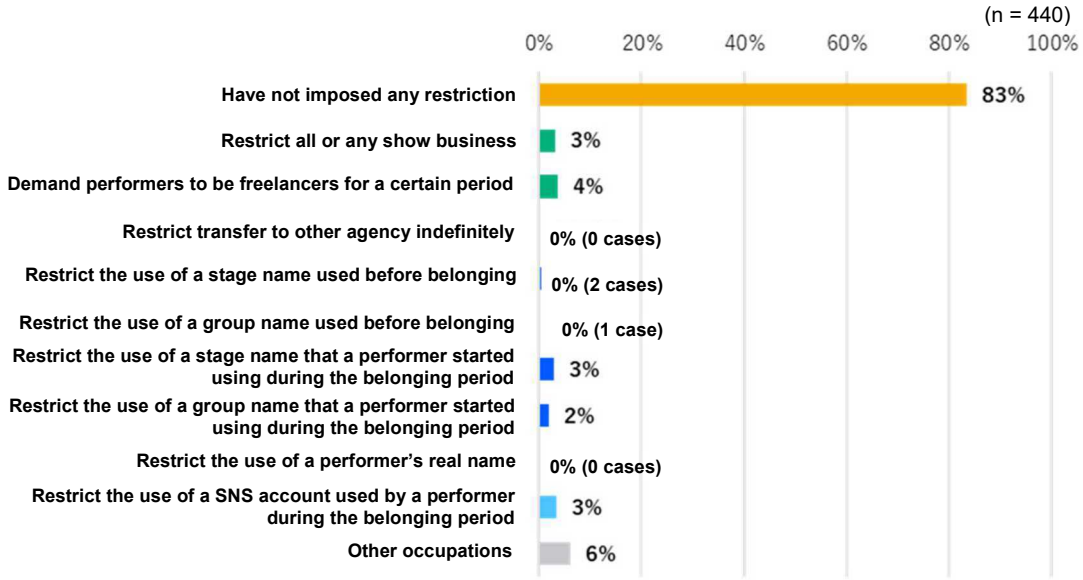
[31] Page 30 of Efforts in Competition Policy in the World of Entertainment by Hidenori Nakai (Fair Trade No. 836 of 2020).

Figure 12. Number of performers who have transferred from other entertainment agencies (including activities as a freelancer) in the most recent 3 years



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 13. Restrictions on performers having left agencies when performers have left agencies in the most recent 3 years (multiple answers allowed about details of restrictions)[32]



Source: Created by the JFTC based on the results of the questionnaire survey.

[32] Main responses stated in the free space about other reasons are as follows:
- fulfillment of an obligation of confidentiality for business information known while belonging;
- restricting an appearance in a competitive advertisement after leaving the agency when a contract for a competitive advertisement project continues; and
- prohibiting the performer from rerecording the same musical piece as the master disc produced or commercialized during the term of the contract.

Figure 14. Costs required for performer training in entertainment agencies and thinking on method of recovering the costs

<Entertainment agencies>

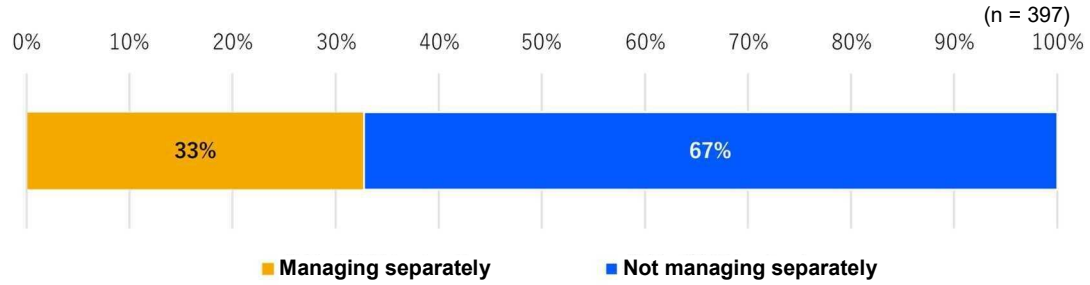
- We give various lessons to performers but do not have the idea of recovering training costs from the performers, and bear all of the costs. We make a budget on the assumption that training costs will be incurred to a certain extent and wish that we can recover the costs through the business as a whole.
- We think of the recovery of training costs from the perspective of the whole of us rather than from the perspective of individual performers. Firstly, the entertainment industry includes the element of making a bet, that is, a performer will not always become popular even if an entertainment agency invests in him/her.
- We explain to a performer that we wish him/her to belong to us until he/she will become able to conduct show business in his/her own way, because certain expenses are incurred, before he/she belongs to us. If not so, an entertainment agency would only train a performer, and the performer will leave the agency when he/she becomes able to be active.
- We think that relations between a performer and an entertainment agency is in a test of patience until profits are made. Our agency makes efforts not to neglect to create an environment in which performers continue belonging to us.

Figure 15. Grounds for calculation of costs required for performer training in entertainment agencies

<Entertainment agencies>

- Recently, we make it a rule to calculate to what extent we have invested in performers. For example, we exempt some performers from training costs and have considered the exemption our kindness, but now we add up the exempted costs as part of investment costs. However, it is difficult to demand all invested costs from a performer when he/she actually leaves our agency. Performers themselves now have the idea of a “portion earned by them” and cannot accept the idea of bearing the portions of other performers. For that reason, the training function which entertainment agencies took formerly has collapsed in the whole entertainment industry. I think that agencies tend to make a contract with a performer who has been perfect or a person who is already famous in another field.
- After we draw up a profit and loss statement for each performer and consider whether we can recover investments appropriately, based on calculated indices such as return on investment (ROI), we set training costs and investment costs.
- Personnel expenses for staff members engaged in management are the highest and mean allocating our agency’s resources for promoting a performer. So it is very difficult to calculate training costs. Our agency does not demand training costs from a performer and pours its energy into increasing the value of itself and the performer mutually and getting income.
- Since we make plans to train a performer individually, we cannot necessarily give an explanation based on grounds for calculating training costs. We make it a rule to explain quantifiable matters to the extent possible.

Figure 16. Whether entertainment agencies manage training costs pertaining to performers from entry into the agency separately from operating expenses for the agency



Source: Created by the JFTC based on the results of the questionnaire survey.

2. Period of obligation under exclusive contract

(1) Term of contract

A. Actual conditions

An obligation under exclusive contract means an obligation according to which a performer shall deal only with an entertainment agency to which he/she is contracted.

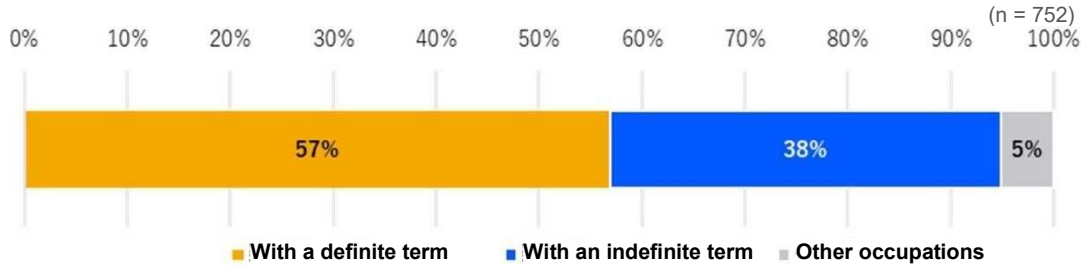
In the questionnaire survey, when we questioned entertainment agencies about whether an exclusive contract with a performer is a fixed-term one, as shown in Figure 17, about 60 percent of the agencies answered that it is fixed-term one, and about 40 percent of them answered that it is a contract with an indefinite term. Regarding reasons for a contract with an indefinite term, as shown in Figure 18, they answered that, firstly, they have no concept of the term of a contract and that it is because a performer may leave the agency at any time if he/she wishes to do so.

In addition, as shown in Figure 19, of entertainment agencies that answered that the term of contract is specified in their contract (fixed-term contracts), about 60 percent of them set the term of contract for one year (the most answers), and about 30 percent of them set that term for two years. Thus, most entertainment agencies set the term of contract for two years or less. In addition, in the questionnaire survey, as shown in Figure 20, about 90 percent of entertainment agencies chose “automatic renewal” according to which the contract will be renewed on the same terms, unless a party to the contract gives a notice not to renew the contract before the expiration of the term of the contract. In that way, recently, most entertainment agencies set the term of contract for two years or less. However, considering that there formerly existed entertainment agencies which set the term of a contract for a longer period, it is conceivable that the term of a contract tends to shorten. However, when there are any circumstances, such as a case where an agency trains a young performer, there is a contract with a long term. In almost all cases, a fixed-term contract is renewed automatically. So it is conceivable that cases where a young performer enters an entertainment agency for the first time and automatically renews his/her contract repeatedly to be registered for a long time while he/she receives training, as before, are not a few.

Furthermore, according to the hearing survey of entertainment agencies, as shown in Figure 21, regarding the term of a contract, some of the agencies answered that they set that term based on the wishes, state, and attributes of a performer. Meanwhile, according to the hearing survey of performers, as shown in Figure 22, some of them answered that, if the term of a contract is long, a

performer cannot easily transfer to another agency which offers favorable conditions.

Figure 17. Whether or not a contract is a fixed-term one[33]



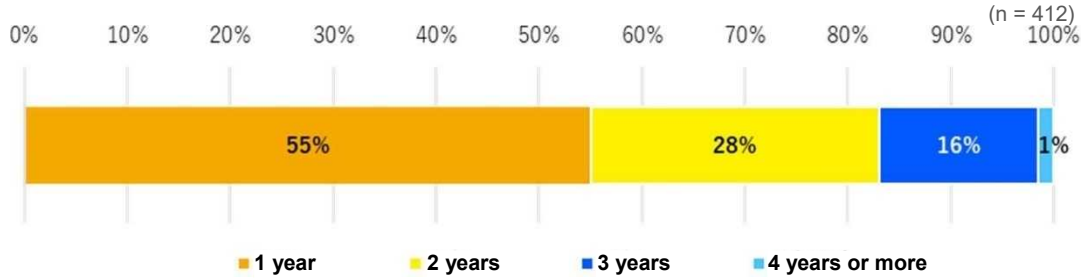
Source: Created by the JFTC based on responses to the questionnaire survey.

Figure 18. Thinking on time of leaving agencies using contracts with an indefinite term

<Entertainment agencies>

- We have no concept of the term of a contract. As long as a performer belongs to our agency, we provide exclusive management to the performer. A performer is to leave our agency if the performer or our agency notifies the other party of doing so.
- We accept leaving our agency at any time when a performer wishes to do so for such a reason for transfer to other agency or independence.

Figure 19. Term of a contract which is set most often for Fixed-term contracts

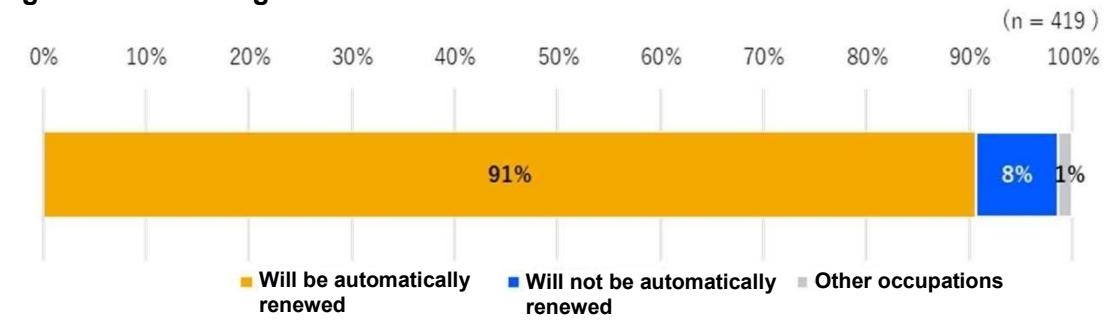


Source: Created by the JFTC based on responses to the questionnaire survey.

[33] Main responses stated in the free space for "other cases" are as follows:

- Contracts with performers who entered an agency at and after a certain time are fixed-term ones, and those with performers who entered the same before that time are contracts with an indefinite term.

Figure 20. Renewing methods for fixed-term contracts[34]



Source: Created by the JFTC based on responses to the questionnaire survey.

Figure 21. Responses about reasons for setting term of a contract from entertainment agencies

<Entertainment agencies>

- We uniformly make a one-year contract with performers, including new ones. We think it important to review the provisions of a contract each year.
- We basically make a three-year contract but make a contract with a shorter term if a performer wishes such a contract. In the past, we made a five-year contract with promising young performers. However, since performers now do not like to be tied down for a long time, we have shortened the term of a contract.
- The term of a contract varies depending on the performer. We set that term for one to three years. The term of a contract with a younger performer is longer. It is because our agency wishes to help young performers step up for a long time, not from the point of view of recovering training costs, since the looks of young performers will change with their growth.
- We initially make a three-year contract for the purpose of training, and automatically renew the contract every two years afterward. We consider that a necessary and sufficient period to recover training costs is three years. Since there are cases of relatively long-term transactions, such as stages, differently from movies and dramas, one year is too short for the term of a contract after renewal.
- We basically make a one-year contract but, if there are such circumstances as we are forced to make a long-term contract for a long-term project, we exceptionally make a three-year contract.
- The term of a contract varies depending on the performer. We often make a two-year contract under the influence of the term of a contract with a record company.

[34] Main responses stated in the free space for “other cases” are as follows:

- There are both cases where a contract will or will not be automatically renewed.

Figure 22. Responses about term of contract from performers

<Performers>

- In cases where the term of a contract is long, such as three years, and where a contract is automatically renewed for a period equal to the term of the original contract, it is disadvantageous for performers. It is acceptable that a consideration makes a set with the term of a contract, as in the world of professional sports. A consideration is not set in the world of entertainment. In the case of a long-term contract, even if a performer finds a business connection with which it is possible for him/her to be able to earn more money, the performer is to lose an opportunity to seize that chance. Thus, the performer has no freedom of the choice of his/her occupation.
- In the case of a long-term contract, a performer is liable not to do a job which he/she wishes to do at an important time for him/her, in such a case where his/her direction is different from that of his/her entertainment agency. An entertainment agency also may have a performer not on the way to success or who does not go well with the agency, and this should take costs.
- Some entertainment agencies just keep a performer who has his/her intention to leave the agency on the payroll pursuant to a contract to be automatically renewed for three years. For example, if a performer has his/her exposure reduced by being offered a job only at the renewal of his/her contract without being offered jobs thereafter, it is difficult to express his/her intention to leave the agency.
- "Two years" are long for the term of a renewed contract. A blank period is to arise in a period from a performer's wishing to leave his/her agency to his/her actually leaving the agency. In addition, if a performer conveys his/her intention to leave his/her agency early, the performer is liable to not be given a job.
- I received from my entertainment agency upon my entry into the agency an explanation that I may leave the agency whenever I wish to do so and that the agency would not tie me down after I leave the agency. However, actually, the contract specified the long term of the contract and that I may not conduct show business at any other agency for a certain period after the termination of the contract. Since I heard that I might quit my agency at any time, I was not conscious of the term of the contract and other provisions.

B. Viewpoints from the Antimonopoly Act

An obligation under exclusive contract generally leads to an incentive for an entertainment agency to provide training to a performer and may have competition promotion effects, such as developing a performer's ability. Thus, imposing an obligation under exclusive contract on a performer to the extent that reasonable necessity and appropriateness of means are recognized to achieve the purpose of recovering unrecovered part of training costs, to tie down the performer, does not immediately come into question in the Antimonopoly Act.

However, for example, if an entertainment agency whose bargaining position is found to be superior to a performer ties down the performer by imposing an obligation under exclusive contract on the performer over an exclusively long period[35]in light of the purpose of recovering unrecovered part of training costs

[35] It is conceivable that a period of an obligation under exclusive contract needs to be decided based on the circumstances of individual performers, because training costs which are expected to be necessary may vary depending on performers, such as a performer who has had a certain ability or who has transferred to the agency (it is conceivable that, in such a case where an agency sets the term of contracts for a long period uniformly, cases where necessity and appropriateness of means are not recognized may arise). In addition, according to the Survey, there are cases where an agency imposes an obligation under exclusive contract for a period equal to the term of the original contract at the renewal of a contract. However, regarding a period of an obligation under exclusive contract after renewal of a contract, in light of the purpose of recovering the unrecovered part of training costs, whether or not a question in the Antimonopoly Act has arisen is decided based on a period of a performer's being registered at the renewal of a contract (it is

by using its position to cause a disadvantage to the performer unfairly in light of normal business practices, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, an entertainment agency's imposing an obligation under excessive contract over an excessively long period in light of the purpose of recovering the unrecovered part of training costs causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for transactions decrease, in such a way as other entertainment agencies become unable to secure performers, it comes into question in the Antimonopoly Act as an exclusively conditional transaction or binding conditional transaction.

Furthermore, if, in making a contract with a performer, an entertainment agency does not give a full explanation for or gives a false or exaggerated explanation for a period of an obligation under exclusive contract, thereby making the performer mistake the provisions of the contract for those of a significantly superior or advantageous one to the actual contract, and unfairly ask the performer who may deal with another entertainment agency to be contracted with itself, it comes into question in the Antimonopoly Act as deceptive customer inducement.

(2) Right to request an extension of term

A. Actual conditions

There are cases where a contract between a performer and an entertainment agency prescribes the right to request an extension of term as a right to renew the contract unilaterally only at the decision of the entertainment agency, even when the performer notifies the agency of his/her leaving the agency at the expiration of the contract.

In the questionnaire survey, when we questioned entertainment agencies about whether or not a provision for the right to request an extension of term was contained, as shown in Figure 23, 18 percent of the agencies answered that the provision is mentioned in contracts and 8 percent of them answered that the provision is not mentioned in contracts but that they recognize that they have that right. Thus, about 25 percent of the agencies answered that they recognize that they have the right to request an extension of term.

In addition, as shown in Figure 24, of entertainment agencies that answered that the provision is contained in their contract or that the provision is not contained in their contract but that they recognize that they have that right, only about 10 percent of them (about 2 percent of all the entertainment agencies that responded to the questionnaire) answered that they have actually exercised the right to request an extension of term.

In the hearing survey of entertainment agencies, few cases where an agency exercised the right to request an extension of term were seen. As shown in Figure 26, as reasons for it, some agencies answered that, even if it has a performer continue a contract by force by exercising that right, it cannot expect a good demonstration. Meanwhile, as shown in Figure 25, entertainment agencies that prescribe the right to request an extension of term answered that the purpose of prescribing the right to request an extension of term is to recover training costs, to check a performer's transfer or independence, and to prevent an act of poaching.

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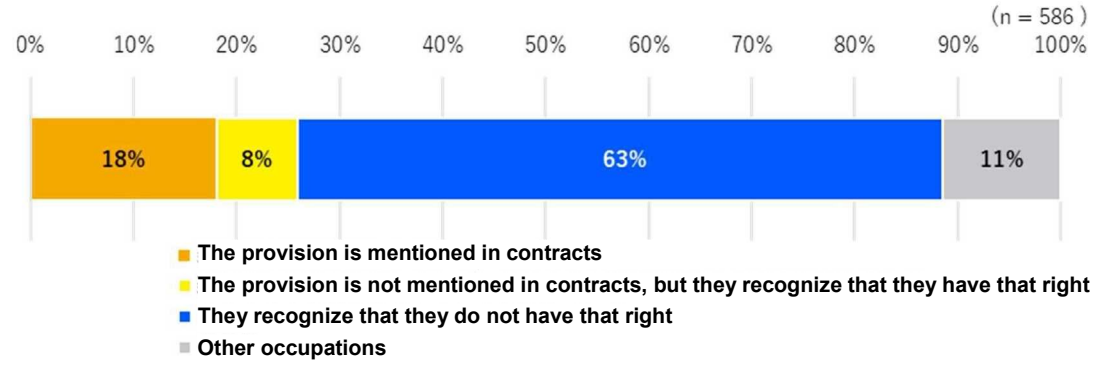
conceivable that, if a performer's period of being registered is long at the renewal of a contract, imposing an obligation under exclusive contract for a considerably long period after renewal to tie down the performer may cause a case where necessity and appropriateness of means are not recognized).

In addition, in the hearing of performers, as shown in Figure 27, performers answered that the entertainment agency hinted that it would exercise the right to request an extension of term although the agency did not need to recover training costs because the performer had been registered at the agency for a long time and that the agency said that it would exercise the right to request an extension of term, which is taken as not approving of the performer's leaving the agency, although training costs were not incurred for the performer because he/she entered the agency after he/she had been active to some extent.

Moreover, in addition to the above, in the hearing survey of trade associations, as shown in Figure 26, some of the associations answered that there are advantages in resolving trouble by demanding a monetary benefit, such as a transfer fee, rather than exercising the right to request an extension of term.

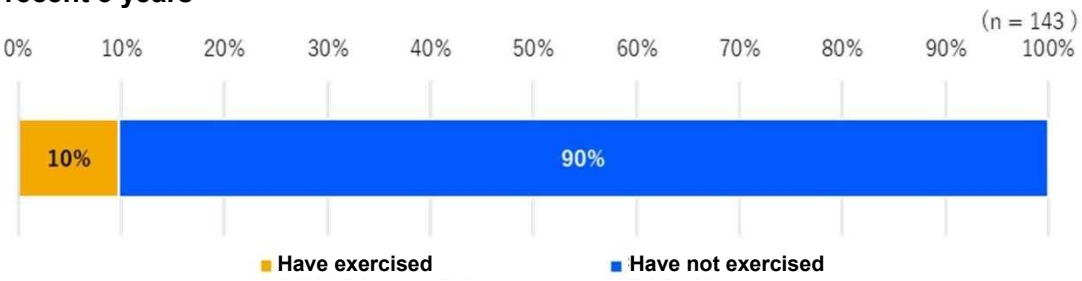
Figure 23. Whether or not provision for right to request extension of term is contained[36]



Source: Created by the JFTC based on responses to the questionnaire survey.

[36] Main responses stated in the free space for "other cases" are as follows:
• To decide it through separate consultations with a performer.
• It does not think that it has that right naturally but there is a possibility that it will specify the right depending on the terms of a contract.
• It does not make that provision because of its being a private agency.

Figure 24. Whether or not exercising right to request extension of term in the most recent 3 years



Source: Created by the JFTC based on responses to the questionnaire survey.

Figure 25. Reasons for entertainment agencies to prescribe right to request extension of term

<Entertainment agencies>

- Our agency will not exercise the right to request an extension of term but prescribes that right to check a performer because we do not wish a performer to think that he/she can easily transfer or become independent from us. If our performers frequently transfer or become independent from us, our agency would lose its reputation.
- The reason why we prescribe the right to request an extension of term, although we do not intend to actually exercise that right, is that we provide against such an unexpected situation as a performer requests termination of the contract in an unreasonable form. That right has a shade of meaning like insurance.
- We prescribe that right to prevent a dishonest act of poaching.
- Although our agency has not prescribed that provision, it is a risk that a contract is terminated before we have not recovered even invested costs. Specifically, I can understand that there may be a case where, when an agency provides lessons and pays a performer's living expenses for years until he/she becomes popular, if he/she leaves the agency immediately after he/she become popular, the agency cannot recover investments.

<Trade associations>

- I think that, to have a function to have a performer who wishes to leave an agency think better of the leaving, there still is an entertainment agency that wishes to prescribe that right in its contract.

Figure 26. Reasons for entertainment agencies not to exercise the right to request extension of term

<Entertainment agencies>

- We prescribe no provision for the right to request an extension of term and there is no case where we exercised that right. Since there is no advantage in extending the term of a contract by force on bad relations with a performer, we have no idea of the extension.
- Our agency does not prescribe that right in our contract. Not keeping a performer by force but having a performer wish to continue the contract, because his/her entertainment agency takes good care of him/her or the agency's culture attracts him/her, is ideal.
- We have prescribed the right to request an extension of term until recently but do not prescribe that right now, because we have had trouble with a performer.
- We prescribe the right to request an extension of term but have not exercised that right actually and have not been in a situation where we wish to exercise the right.
- We prescribe the right to request an extension of term. As a case where there is a possibility of exercising that right, a case where a performer who has begun to become popular suddenly, although he/she had not become popular for a long time, requests leaving his/her agency suddenly is conceivable. However, now is not in an age in which an agency has a performer who wishes to leave the agency belong to it by force. Basically, there is no case of actually exercising the right.

<Trade associations>

- We hear that, even if the right to request an extension of term is prescribed in a contract, that right is not actually exercised. Firstly, the right to request an extension of term is exercised in a case where an entertainment agency has trouble with a performer. If the performer stays on at the agency, a relationship of mutual trust between the agency and the performer has disappeared, and the performer cannot be expected to work well. So there is no advantage for the agency.
- Even if the provision for that right is prescribed in a contract, even though an agency has a performer who wishes to leave the agency stay on at it by force, a performer should not be expected to actually work well. It may just cause stress to both the entertainment agency and the performer. There should be advantages for an entertainment agency in reaching a monetary resolution through a sunset clause[37] or transfer fee rather than extending the term of the contract by force.

[37] It means a clause which imposes on a performer an obligation to pay a sum obtained by multiplying the proceeds after a performer's transfer or independence by a gradually decreasing rate to an entertainment agency to which the performer has belonged.

Figure 27. Responses about right to request extension of term from performers

<Performers>

- The right to request an extension of term was prescribed in a contract with an entertainment agency to which I belonged before. Since I had been registered in said agency for a long time, I was very careful so that the agency would approve of my leaving the agency without exercising the right to request an extension of term in the first place. The entertainment agency initially hinted that it would exercise that right, but in the end did not exercise the right. I suppose that the agency thought that, even if it extended the term of the contract, it would not gain a benefit because I was firmly resolved to leave the agency.
- I notified the entertainment agency to which I belonged before my leaving the agency at the expiration of the contract. The agency made such a remark that it had the right to exercise the right to extend the term of the contract for one year, which could be taken as not approving of my leaving the agency. Since I belonged to that agency after I have been active to a certain extent, I could not think that the cost of gaining publicity was newly incurred and that it is appropriate for the agency to exercise the right to request an extension of term.

B. Viewpoints from the Antimonopoly Act

Prescribing the right to request an extension of the term of a contract in a contract and exercising that right lead to an incentive to train a performer, together with the above-mentioned obligation under exclusive contract, may generally have competition promotion effects, such as developing a performer's ability, if they are to the extent that reasonable necessity and appropriateness of means are found to achieve the purpose of recovering the unrecovered part of training costs. Meanwhile, the purpose of the right to request an extension of term is to extend the term of an exclusive management contract unilaterally to tie down a performer, although the performer expresses his/her intention to leave the agency. So it is conceivable that, as a right to hinder the choice of entertainment agencies on a performer's own free initiative, the degree of a disadvantage caused by the right is not small. In the hearing survey of entertainment agencies, some answered that the purposes of prescribing and exercising the right to request an extension of term are to "check" a performer's transfer or independence and to "prevent an act of dishonest poaching," in addition to recovery of training costs. The purposes of checking a performer's transfer or independence and preventing poaching do not show reasonable purposes other than hindering competition among entertainment agencies in the market in which the agencies gain performers, and are not recognized as reasonable purposes of prescribing and exercising the right to request an extension of term[38].

For that reason, for example, if an entertainment agency whose bargaining position is found to be superior to a performer causes a disadvantage to the performer unfairly in light of normal business practices in such a way as getting the performer to give up transfer or independence by prescribing or exercising the right to request an extension of term by using the agency's position, it comes

[38] Prescribing and exercising the right to request an extension of term is exceptionally allowed only to the extent that reasonable necessity and appropriateness of means are recognized to achieve the purpose of recovering the unrecovered part of training costs (regarding whether the necessity, etc., are recognized, consideration is given to circumstances such as whether an extended term is limited to a period needed to recover costs, whether the right is clearly shown to a performer in such a way as prescribing it in a contract, a possibility of substitution through monetary compensation, and whether full consultations have been held). For thinking on a sum needed to recover training costs, see 1 above.

into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, if an entertainment agency's prescribing or exercising the right to request an extension of term causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for transactions decrease, in such a way as other entertainment agencies become unable to secure performers, it comes into question in the Antimonopoly Act as an exclusively conditional transaction or binding conditional transaction.

Furthermore, if, in making a contract with a performer, an entertainment agency does not give a full explanation for or gives a false or exaggerated explanation for prescribing the right to request an extension of term, thereby making the performer mistake the provisions of the contract for those of a significantly superior or advantageous one to the actual contract, and unfairly asks the performer who may deal with other entertainment agency to make a contract with itself, it comes into question in the Antimonopoly Act as deceptive customer inducement.

3. Non-competition obligation, etc.

(1) Actual conditions

A contract or agreement at leaving an entertainment agency between a performer and the agency sometimes prescribes an obligation for the performer having left the agency not to give a demonstration for a certain or indefinite period after the termination of the contract. In addition, as a result of the Survey, cases where an agency imposes restrictions on a performer's activities, such as having the performer carry out activities as a freelancer (which means carrying out activities without belonging to a specific entertainment agency) for a certain period after leaving the agency were seen (those restrictions are collectively referred to as "non-competition obligation, etc." hereinafter).

In the questionnaire survey, as shown in Figure 13 (page 25), 3 percent of entertainment agencies answered that they restrict performers who have left them from conducting "the whole or any part of show business" in the most recent three years, 4 percent of them answered that they "request those performers to be a freelancer (without approving of the performers' belonging to other agencies) for a certain period," and 0 percent of them answered that they "restrict the performers from transferring to other agencies for an indefinite period." Regarding the purpose of prescribing a non-competition obligation, etc., in a contract, as shown in Figure 28, some entertainment agencies answered that the above purpose is to prevent performers in whom they have invested for training from being poached by other entertainment agencies. In addition, although the reason for a non-competition obligation is often confidentiality, trade associations and experts answered that performers who basically give demonstrations only and are not concerned in entertainment agencies' management itself learn no secret information in the course of duties and that therefore there are no grounds for justifying a non-competition obligation, etc., and that entertainment agencies basically assert that a non-competition obligation is to recover investments.

Meanwhile, as a result of the hearing survey of performers, as shown in Figure 29, they answered that it is provided in a contract that the agency may restrict the performer from carrying out activities for a certain period after the termination of the contract and that such a provision functions as the power to have a performer think better of leaving the agency. In addition, some performers answered that they were prohibited from transferring to other entertainment agencies for a certain period after the termination of the contract and that it was provided that the performer might not transfer to another agency without going through a certain period of being a freelancer after leaving the agency.

Figure 28. Responses about purpose of prescribing non-competition obligation

<Entertainment agencies>

- We prescribe a non-competition obligation for one year, but there is no instance in which we forbade individual show business. The purpose of prescribing a non-competition obligation is to prevent poaching. Since we have made investments in our own way, it annoys us that another entertainment agency would poach a performer easily.
- We prescribe that, if a new performer himself/herself wishes to leave us, that performer shall not carry out activities for one year after leaving us. It only means checking leaving us. Even if a performer actually transfers to other entertainment agency, our agency does not take specific measures.
- Although an obligation of confidentiality is imposed for the purpose of managing information about broadcast programs, we do not prescribe a non-competition obligation. However, I hear that, since record companies prohibit a performer from carrying out recording activities for one year after his/her transferring from the record company, there are many cases where music entertainment agencies prescribe a non-competition obligation following it.
  *In the hearing of entertainment agencies, when the JFTC verified the purpose of restricting activities, such as a non-competition obligation, none of the agencies answered that the purpose is to prevent a leakage of trade secrets.

<Trade associations>

- Except where a performer handles confidential information, such as trade secrets, there is no secret information known to a performer who has not been concerned in entertainment agencies' management itself in the course of duties. So, there are no grounds for justifying that restriction, such as a non-competition obligation.

<Experts>

- The reason for a non-competition obligation in other industries is often to protect secrets, but that reason is not acceptable at all in the entertainment industry. Basically, entertainment agencies assert that a non-competition obligation is to recover investments.

Figure 29. Cases where a non-competition obligation, etc., was prescribed or imposed

<Performers>

- A contract with an entertainment agency to which I belonged before prescribed restriction of activities for six months after the termination of that contract. I hear that it is necessary to keep a certain period open as a "period of handing over" in the entertainment agency, but I think that it should take one month at the longest to hand over duties. I felt that the clause is prescribed as power to have a performer think better of leaving the agency.
- The contract with an entertainment agency prescribed that the agency might restrict a performer's activities for six months after leaving the agency. Since there is no reason why a non-competition obligation was imposed on me, I resisted. Then, the entertainment agency threatened me that the agency would make public all pieces of information that it had, including my personal information.
- In the entertainment agency to which I belonged before, there was such a custom as, if a performer transferred to another entertainment agency because of his/her situation, the performer might not appear in a broadcast program for at least six months after the termination of the contract.
- The contract with an entertainment agency to which I belonged before prescribed that a performer should not belong to another entertainment agency for at least two years after the termination of that contract. In short "independence" was no problem, but "transfer" was prohibited.
- I hear that, generally, a performer may not transfer to another agency without going through being a freelancer for a period of three to six months after leaving an agency.

<Entertainment agencies>

- A performer who has transferred from another entertainment agency to our agency has been given an order to suspend his/her activities for one year. Actually, our agency has been told by the entertainment agency from which the performer has transferred that our agency should not have the performer have an audition.
- Regarding a performer who has transferred to our agency, the entertainment agency from which the performer has transferred pointed out that the performer did not obey the period of a non-competition obligation.

(2) Viewpoints from the Antimonopoly Act

A non-competition obligation, etc., is a provision that a performer shall not conduct any show business at all or shall not provide services to another entertainment agency for a certain period after leaving an agency. The obligation directly restricts business activities of the performer's demonstrations. As an obligation that hinders transactions on a performer's own free initiative, the degree of a disadvantage caused by it is considerably large.

In the hearing survey of entertainment agencies, some only answered that the reason for restricting activities through a non-competition obligation is the purpose of preventing poaching and recovering training costs. Simply preventing poaching does not have a reasonable purpose other than hindering competition among entertainment agencies in the market in which they gain performers and is not recognized as a reasonable purpose of imposing a non-competition obligation. In addition, since an agency cannot recover training costs by restricting a performer's activities after leaving the agency[39], it is conceivable that restricting a performer's activities after leaving the agency for the purpose of recovering training costs is

[39] There is a precedent in which a judge concluded that, even if a non-competition obligation clause restricts a performer's demonstration activities, an entertainment agency will not make a profit by it to achieve the purpose of recovering a prior investment and that there is no relation between restricting a performer's activities through a non-competition obligation clause and recovering a prior investment by an entertainment agency (Intellectual Property High Court Ruling (Ne) No. 10059 of 2022 on December 26, 2022).

not approved of.

A non-competition obligation generally allows provision of information equivalent to a trade secret to a performer and may have competition promotion effects, if the obligation is imposed to the extent that reasonable necessity and appropriateness of means are recognized to achieve the purpose of preventing a leakage of a trade secret. However, even if restriction of activities, such as a non-competition obligation, is imposed for the purpose of preventing leakage of a trade secret, based on the facts that it is conceivable that a performer who basically gives demonstrations only and is not concerned in an entertainment agency's management itself in the field of public entertainment may learn trade secrets in an exceptional case and that, even if an agency has a trade secret to be protected, such a means of entering into a confidentiality agreement may be considered as other, less competition restrictive means than imposing restrictions on business activities themselves, such as prohibition of demonstrations, it is conceivable that it is very probable that the necessity or appropriateness of imposing those restrictions on activities may not be recognized.

For that reason, for example, if an entertainment agency whose bargaining position is found to be superior to a performer causes a disadvantage to the performer unfairly in light of normal business practices in such a way as getting the performer to give up transfer or independence by imposing a non-competition obligation on the performer by using its position, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, if an entertainment agency's imposing a non-competition obligation etc., causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for transactions decrease, in such a way as other entertainment agencies become unable to secure performers, it comes into question in the Antimonopoly Act as an exclusively conditional transaction or binding conditional transaction.

And, even if the necessity or appropriateness of imposing a non-competition obligation, etc., is exceptionally recognized, if, in making a contract with a performer, an entertainment agency does not give a full explanation for or gives a false or exaggerated explanation for imposing of a non-competition obligation, etc., thereby making the performer mistake the provisions of the contract for those of a significantly superior or advantageous one to the actual contract, and unfairly ask the performer who may deal with another entertainment agency to make a contract with itself, it comes into question in the Antimonopoly Act as deceptive customer inducement.

Furthermore, from the point of view of the competition policy of preventing a violation of the Antimonopoly Act, a non-competition obligation, etc., should not be prescribed in a contract, as a rule. If a performer grasps a trade secret to be protected, an entertainment agency should firstly consider a confidentiality agreement as other, less competition restrictive means.

4. Obstruction of transfer or independence

(1) Demand for a monetary benefit in connection with transfer or independence

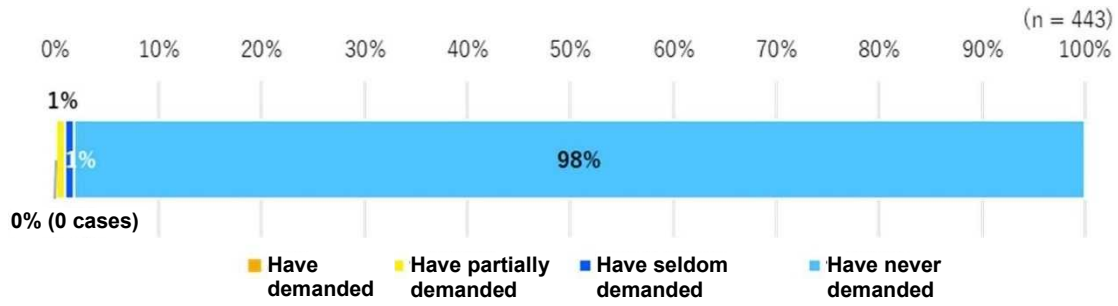
A. Actual conditions

An entertainment agency sometimes demands a monetary benefit (a so-called transfer fee[40]) from a leaving performer or other entertainment agency to which a performer now belongs, to the former agency.

In the questionnaire survey, as shown in Figure 30, a total of 1 percent of entertainment agencies answered that they "have" or "have partially" demanded a monetary benefit in connection with performers who have left them in the most recent three years. As shown in Figure 31, a total of 3 percent of entertainment agencies answered that they "have" or "have partially" been demanded by entertainment agencies to which the performers have belonged to pay a monetary benefit in connection with performers who have transferred to the agencies in the most recent three years. From that, it seems that, when a performer leaves an agency, a monetary benefit is not demanded in most cases.

Meanwhile, as a result of the hearing survey, as shown in Figure 33, there exist performers who were demanded to pay a monetary benefit in connection with their leaving agencies. From performers' responses, it is supposed that there are cases where a demand for a monetary benefit at the time of leaving an agency is used for the purpose of obstructing transfer or independence in such a way as a large amount of a transfer fee amounting to tens of millions of yen is demanded although a performer has contributed to the entertainment agency for a long time, or such as a performer is demanded to pay a transfer fee for unreasonable reasons.

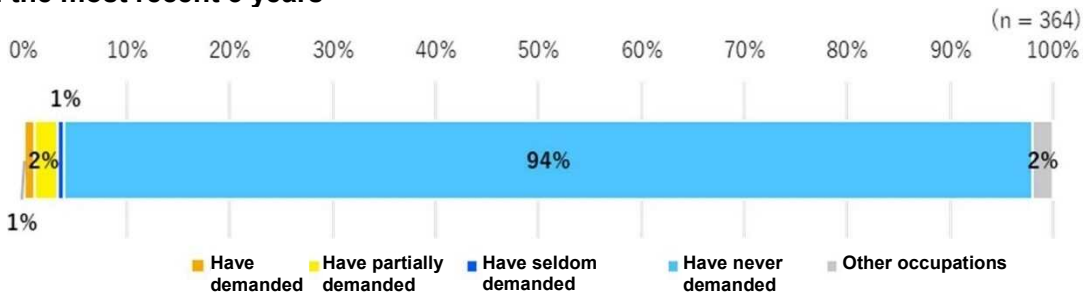
Figure 30. Whether agencies have demanded performers having left or entertainment agencies to which the performers have transferred to pay money when performers have left the agencies in most recent 3 years



Source: Created by the JFTC based on the results of the questionnaire survey.

[40] As shown in Figure 32, in addition to a "transfer fee" for which a fixed amount is demanded in a lump, there is a "sunset clause" pursuant to which an obligation is imposed on a performer to pay an amount obtained by multiplying the proceeds after the performer's transfer or independence by a gradually decreasing rate to an entertainment agency to which the performer has belonged.

Figure 31. Whether entertainment agencies have been requested by the entertainment agencies of performers before their transfer to pay money in connection with the performers having transferred to them when the performers have transferred to them in the most recent 3 years[41]



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 32. Responses about taking monetary solutions from entertainment agencies, trade associations, and experts

<Entertainment agencies>

- I was told by an agency to which a performer who wished to transfer to our agency belonged that they would not stop his/her transfer but asked me what I thought about investments that the agency had made until then. I understand that, when a performer who has become able to make money at last leaves his/her agency, the agency feels an agency to which the performer has transferred to be acting unfairly. In this respect, it is difficult to demand money personally from a performer if the performer does not transfer to other agency but becomes independent.
- In the case of independence, since we cannot think that the performer is able to pay a large amount of money personally, we will not demand an amount equivalent to recovery of training costs from the performer. In addition, since we do not have a performer leave our agency to transfer to another entertainment agency, we will not demand money from an entertainment agency to which a performer transfers.

<Trade associations>

- If a performer whom the agency has trained since the performer was a new one leaves the agency when the performer has become popular at last, the entertainment agency would be annoyed. We think that a sunset clause is more desirable than a transfer fee as a monetary solution. In short, for example, it is more fair to prescribe in advance such a sunset clause pursuant to which, after leaving an agency, the former agency may gain 30 percent of income in the first year, 20 percent of income in the second year, 10 percent of it in the third year, and 0 percent in the fourth year and thereafter. Some agencies assert that the problem should be solved through a transfer fee, but (if an entertainment agency to which a performer is to transfer pays that fee) there are many small-scale entertainment agencies to which only one performer belongs. In addition (if the performer pays the fee), the performer cannot actually pay a large sum of money when he/she becomes independent.
- It is actually difficult for a performer to build a detailed consensus on a transfer fee when he/she leaves an agency. Meanwhile, it is psychologically difficult for an entertainment agency to talk looking ahead to leaving the agency at the time of entry into it by prescribing a sunset clause in a contract. However, if prescribing in advance a sunset

[41] Main responses stated in the free space for "other cases" are as follows:

- I have been told that, if a performer transfers to our agency, the entertainment agency to which a performer belonged would demand a transfer fee from our agency.

clause in a contract makes it obvious that a performer may leave an agency, there is an advantage of lowering a hurdle in a performer's entering the agency.
- It is difficult to draw a line in expenses, and it is hard to estimate actual investment costs. In many cases, if a performer wishes to leave an agency, which will force an entertainment agency to accept that wish and will just give up investment costs that the agency was not able to recover.
- It is better for an entertainment agency to stop demanding a transfer fee. Actually, a performer is demanded to pay a transfer fee regardless of the length of his/her belonging to the agency.

<Experts>
- I do not think that the problem is which is desirable, a transfer fee or sunset style profit distribution. If a performer emotionally wishes to break off relations with the agency at once, it seems that the performer will think a transfer fee desirable.

Figure 33. Responses about demand for a monetary benefit from entertainment agency from performers

<Performers>
- When I notified an entertainment agency to which I belonged before of my leaving the agency, I was demanded to pay tens of millions yen. I asserted that, being active constantly, it might not take much cost for promoting me. Then, finally I could leave the agency without paying money.
- After I left an entertainment agency to which I had belonged for more than ten years, I was demanded to pay a certain proportion of the total proceeds after leaving the agency. That agency does not carry out management of activities after leaving the agency.
- When a performer whom I know tried to leave the entertainment agency because he/she was able to earn money from video distribution services, the agency told the performer that he/she should pay several million yen if he/she was to leave the agency. As a result, the performer gave up the idea of leaving the agency.
- When I notified my leaving the agency to which I belonged, which told me that I had not repaid the agency's favor sufficiently. I was demanded to pay costs for a project that had been stopped because of my situation more than ten years ago. That agency paid those costs from its own will although a company for which I appeared stated that the agency did not need to pay them. But the agency acted as if the costs were my debts.

B. Viewpoints from the Antimonopoly Act[42]

An entertainment agency's demanding a monetary benefit from a performer to leave the agency leads to an incentive to train the performer through allowing the entertainment agency to secure training costs and may have competition promotion effects, such as developing the performer's ability, if it so demands to a reasonably necessary extent for the purpose of recovering the unrecovered part of training costs required for the performer. Meanwhile, making a demand for an unreasonably large amount of a monetary benefit in comparison with the purpose of recovering the unrecovered part of training costs has the effect of hindering transactions on a performer's own free initiative in such a way as making such a demand itself makes a performer hesitate about transferring or becoming independent.

[42] There is a possibility that a "demand for a monetary benefit pertaining to transfer or independence" may be in violation of not only the Antimonopoly Act but also the Subcontract Act or the Act on Improvement of Transactions between Freelancers and Companies (see III, 1 above).

For that reason, an entertainment agency's demanding a monetary benefit by an entertainment agency is allowable only at an amount to the extent that reasonable necessity and appropriateness of means are recognized to achieve the purpose of recovering the unrecovered part of training costs[43]. As shown in Figure 33 above, in the hearing survey of performers, it is supposed that there are cases where a demand for a monetary benefit is used as a tool to obstruct transfer or independence. Such a purpose of obstructing transfer or independence does not have a reasonable purpose other than hindering competition among entertainment agencies in the market in which the agencies gain performers. So that purpose is not approved of.

Based on the above, for example, if an entertainment agency whose bargaining position is found to be superior to a performer causes a disadvantage to the performer unfairly in light of normal business practices in such a way as getting the performer to give up the idea of transferring or becoming independent by demanding a monetary benefit from a performer to leave the agency by using its position, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, if an entertainment agency's demanding a monetary benefit from a performer or another entertainment agency to which the performer is to transfer causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for transactions decrease, in such a way as other entertainment agencies become unable to secure performers, it comes into question in the Antimonopoly Act as an exclusively conditional transaction or binding conditional transaction.

Furthermore, if an entertainment agency's demanding a monetary benefit from a performer to leave the agency or another entertainment agency to which a performer now belongs causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for transactions decrease, through obstructing transactions between other entertainment agency and the performer, it comes into question in the Antimonopoly Act as obstruction of transactions.

In addition, if, in making a contract with a performer, an entertainment agency does not give a full explanation for or gives a false or exaggerated explanation for demanding a monetary benefit at the time of leaving the agency, thereby making the performer mistake the provisions of the contract for those of a significantly superior or advantageous contract to the actual one, and unfairly ask the performer who may deal with other entertainment agency to make a contract with itself, it comes into question in the Antimonopoly Act as deceptive customer inducement.

[43] Regarding whether necessity is recognized, consideration is given to circumstances such as whether a monetary benefit is limited to an amount needed to recover the unrecovered part of training costs, whether a monetary benefit is clearly presented in advance to a performer in such a way as prescribing it in a contract, and whether sufficient consultations have been held. For thinking on a sum needed to recover training costs, see 1 above.

(2) Interference with performers wishing to transfer or become independent

A. Actual conditions

As a result of the hearing survey of entertainment agencies, as shown in Figure 34, the agencies answered that performers' transfer or independence are unavoidable.

Meanwhile, as a result of the hearing survey of performers, as shown in Figure 35, the performers answered that they have suffered the following acts from entertainment agencies:

i. not permitting a performer to leave the entertainment agency at the expiration of the term of the contract contrary to an explanation given by the agency at the performer's entry into the agency;
ii. threatening that a performer will become unable to conduct show business at all afterward if he/she transfers or becomes independent from the entertainment agency;
iii. prohibiting a performer from negotiating over transfer with another agency during the term of the contract pursuant to the contract;
iv. circulating a bad reputation of a performer to the agency to which the performer is to transfer and the mass media; and
v. although a manager in charge of a performer has his/her intention to leave the agency with the performer, prohibiting the manager from transferring to the competitive entertainment agency or preventing the performer from transferring or becoming independent from the agency with the manager by making it a condition for the performer's transfer or independence that the manager be not concerned with the performer even if the manager retires after the performer leaves the agency.

Figure 34. What entertainment agencies' reaction to performers who wish for transfer or independence is

<Entertainment agencies>

- It is unavoidable for a performer to leave our agency. I think that ordinary companies spend various training costs for workers. It is the same story, as it is indescribable other than it is unavoidable that a worker leaves a company.
- Since our agency conducts business with a small but elite group, it is hard if a performer leaves our agency before he/she becomes popular. But I think that it is unavoidable for a performer to leave our agency because fortune connects us.
- When a performer belonging to us wishes for transfer or independence, our agency wishes him/her to belong to us for at least two years because we promote him/her. But we give up because it is unavoidable that a performer changes his/her mind.

Figure 35. Obstruction to performers who wish for transfer or independence by entertainment agencies

<Performers>

i. not permitting a performer to leave the entertainment agency at the expiration of the term of the contract contrary to an explanation given by the agency at the performer's entry into the agency;

- I in advance expressed my intention to leave the agency to which I belonged before as the provisions of the contract. However, the agency did not readily permit me to leave the agency, and I could not leave the agency until several months after the termination date of the contract.
- I expressed to the entertainment agency to which I belonged before my intention to leave the agency when the term of the contract terminated, but the agency did not accept the intention. Eventually, it took more than five years for me to leave the agency. I suffered harassment in a various way after leaving the agency.

ii. threatening that a performer will become unable to conduct show business at all afterward if he/she transfers or becomes independent from the entertainment agency;

- I told my agency my intention to leave the agency because I felt the limits in mind and body and was told that I thought that there was a person who was active after leaving the agency. Then I hesitated over leaving the agency. A situation where I could not leave the agency continued afterward. I again told my agency that I wished to leave the agency, with determination a few years later and was told that they would crush me if I left the agency and whether, although I was to retire the world of entertainment because I would become unable to conduct show business if I left the agency, I was all right.

iii. prohibiting a performer from negotiating over transfer with another agency during the term of the contract pursuant to the contract;

- It was provided in the contract that the performer should not negotiate with a third party to enter into a management contract during the term of that contract. So I could not consider an agency to which I was to transfer.

iv. circulating a bad reputation of a performer to the agency to which the performer is to transfer and the mass media; and

- While I had a talk with the entertainment agency about leaving the agency, the agency circulated a bad reputation that was not a fact, as if I was a willful performer. I think that, to prevent my leaving the agency or success after leaving the agency, the entertainment agency dared to distribute such information.
- Although I obtained consent to transfer from an entertainment agency to which I belonged before, the agency circulated my bad reputation to another entertainment agency to which I was to transfer. As a consequence, the entertainment agency to which I was to transfer proposed that I give up the idea of transfer, and canceled the transfer. I could not transfer to the latter agency and was forced to work as a freelancer.
- When I involved to announce my leaving the entertainment agency, the entertainment agency threatened that I must have told the public a scandal of the person concerned if I announced my leaving the agency. I could not understand the reason why the agency told it to the public. I was scared because I did not know what they would do if I disobeyed the entertainment agency's instructions. Then, I decided to follow the instructions.

v. although a manager in charge of a performer has his/her intention to leave the agency with the performer, prohibiting the manager from transferring to the competitive entertainment agency or preventing the performer from transferring or becoming independent from the agency with the manager by making it a condition for the performer's transfer or independence that the manager be not concerned with the performer even if the manager retires after the performer leaves the agency.

- Since a manager at that time retired when I left the entertainment agency, I intended to request said manager to take charge of management after my leaving the agency. However, the manager told me that the agency told the manager not to work in sales in the same way as before in the future and to give the agency half of his profits if the manager started new venture in the same work. Then, things did not go well.
- Since a manager at that time retired after I left the entertainment agency, I tried to request the manager to take charge of management. However, the agency, learning the details, told me that it was impossible, and put pressure on me.
- I heard that, a few years after I left my entertainment agency, a manager notified that agency of retirement and was requested to sign a written pledge specifying that the manager would not be concerned with performers with whom he/she had been concerned during his/her tenure of office.

B. Viewpoints from the Antimonopoly Act

(a) As mentioned in A, i above, an entertainment agency's not permitting a performer to leave the agency at the expiration of the term of the contract contrary to an explanation at the performer's entry into the agency is an act of obstructing the performer's transfer or independence and may prevent the performer from carrying out activities which he/she can carry out originally and has the effect of hindering transactions on a performer's own free initiative.

For that reason, if an entertainment agency whose bargaining position is found to be superior to a performer causes a disadvantage to the performer unfairly in light of normal business practices through such an act as mentioned in A, i above by using the agency's position, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, if an entertainment agency's preventing a transaction between a performer and another entertainment agency through such an act as mentioned in A, i above causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for those transactions decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

Moreover, if, in making a contract with a performer, an entertainment agency prescribes such a clause pursuant to which the term of the contract shall be extended until an operation in progress is completed, the postponement of a performer's leaving the agency for a certain period may be allowable to an extent needed to achieve that purpose.

(b) As mentioned in A, ii above, an entertainment agency's threatening that a performer will be unable to conduct show business at all afterward if the performer transfers or becomes independent from the agency is an act of obstructing the performer's transfer or independence and may prevent the performer from carrying out activities which he/she could carry out originally and has such an effect of hindering transactions on a performer's own free initiative.

For that reason, if an entertainment agency whose bargaining position is found to be superior to a performer causes a disadvantage to the performer unfairly in light of normal business practices, in such a way as an entertainment agency has a performer who wishes to leave the agency continue business relations with the

agency against the performer's will, through such an act as mentioned in A, ii above by using the agency's position, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, if an entertainment agency's preventing transactions between a performer and another entertainment agency through such an act as mentioned in A, ii above causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for those transactions decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

(c) As mentioned in A, iii above, prohibiting a performer from negotiating over transfer with another entertainment agency during the term of the contract pursuant to the contract is an act of making the performer be forced to be active as a freelancer for a certain period after leaving an agency or making the performer hesitate about transferring, because the performer cannot negotiate with other entertainment agencies while he/she is registered in an entertainment agency, and has such an effect of hindering transactions on a performer's own free initiative.

For that reason, if an entertainment agency whose bargaining position is found to be superior to a performer causes a disadvantage to the performer unfairly in light of normal business practices through such an act as mentioned in A, iii above by using the agency's position, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, if an entertainment agency's preventing transactions between a performer and another entertainment agency through such an act as mentioned in A, iii above causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for those transactions decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

(d) As mentioned in A, iv above, circulating a bad reputation of a performer to an entertainment agency to which the performer is to transfer or the mass media may be an act of restricting the performer's transfer or independence, in such a way as reversing a decision to accept the performer of an entertainment agency to which the performer is to transfer, and has the effect of hindering the performer's activities.

If an entertainment agency's preventing a transaction between a performer and other entertainment agency through such an act as mentioned in A, iv above causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for those transactions decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

(e) As mentioned in A, v above, although a manager in charge of a performer has his/her intention to leave an agency with the performer, preventing the performer from transferring or becoming independent with that manager by making it a condition for the performer's transfer or independence that the manager shall be prohibited from transferring to a competitive entertainment agency is an act of preventing the performer from securing necessary personnel and making the performer's activities difficult and has the effect of hindering the performer's activities.

If an entertainment agency's preventing a transaction between a performer and another entertainment agency through such an act as mentioned in in A, v above causes the risk of bringing about such a situation where other

entertainment agencies are excluded or their opportunities for those transactions decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

Moreover, when a manager to leave an agency holds an important post and grasps trade secrets, if the above prevention is to the extent that reasonable necessity and appropriateness of means are recognized to achieve that purpose, in such a case where the agency imposes a non-competition obligation on the manager for such a reasonable reason as keeping those secrets, it may be allowable.

(f) The acts mentioned in A, i through v above are examples of acts of obstructing a performer's transfer or independence. Acts of obstructing a performer's transfer or independence other than those acts may also come into question in the Antimonopoly Act.

(g) Based on the fact that an entertainment agency's words and deeds make a performer or an entertainment agency to which the performer transfers hesitate about transferring or becoming independent, from the point of view of the competition policy of preventing a violation of the Antimonopoly Act, an entertainment agency should not use words or perform deeds which may result in a performer's hesitating about transferring or becoming independent.

(3) Interference with performers having transferred or become independent

A. Actual conditions

There are cases where an entertainment agency pressures a business connection that provides a stage for demonstrations, such as a broadcaster, etc., to prevent a performer having transferred or become independent from appearing, or tells the business connection that it will cancel other performers' appearances belonging to that entertainment agency if the business connection associates with that performer.

In the questionnaire survey, as shown in Figure 36, a total of 0 percent of entertainment agencies answered that they "have" or "have partially" pressured a business connection in this way in connection with a performer having transferred or became independent in the most recent three years. As shown in Figure 37, a total of 4 percent of entertainment agencies answered that they "have" or "have partially" been pressured in a similar manner in connection with a performer having transferred to those agencies in the most recent three years. Most entertainment agencies answered that such pressuring is not carried out. In addition, in the hearing survey of entertainment agencies, as shown in Figure 38, some of them answered that, although entertainment agencies formerly pressured business connections in this way, such pressuring has been being gradually decreasing.

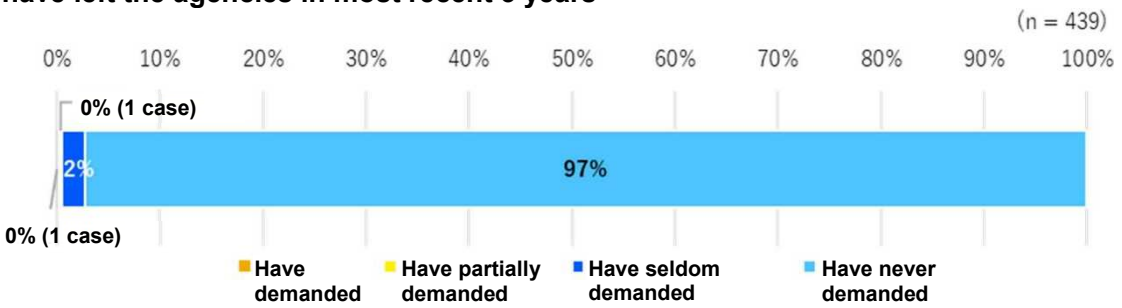
Meanwhile, according to the hearing survey of performers, as shown in Figure 39, the performers answered that entertainment agencies did the following acts to performers having left agencies:

i. pressuring broadcasters, etc., to prevent appearance by a performer having left the agency;
ii. pressuring another entertainment agency not to do business with a performer having left the agency; and
iii. giving a broadcaster, etc., the mistaken impression that a performer having left an agency is still registered in that agency, in such a way as the agency keeps information about that performer on its website, inducing a business connection to make a request to provide services to not the performer but the agency and refusing the performer's appearance, thereby taking away

an opportunity for a transaction from the performer.

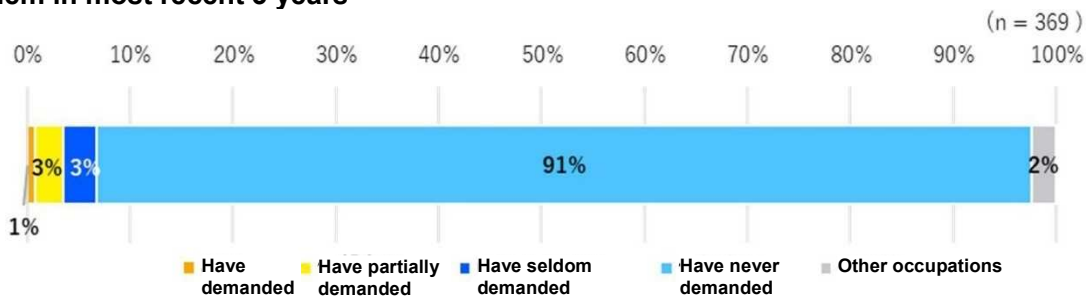
Moreover, according to the hearing survey of broadcasters, etc., as shown in Figure 40, the broadcasters, etc., answered that, even if an entertainment agency did not make a request, there are cases where a broadcaster, etc., independently refrains from making a performer appear, on its own initiative.

Figure 36. Whether entertainment agencies have pressured companies for which performers appear not to use performers having left the agencies when performers have left the agencies in most recent 3 years



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 37. Whether entertainment agencies have been pressured by the previous entertainment agencies not to use performers having transferred to them in companies for which those performers appear when performers have transferred to them in most recent 3 years[44]



Source: Created by the JFTC based on the results of the questionnaire survey.

[44] Main responses stated in the free space for "other cases" are as follows:
- We do not know because we cannot examine it.
- I have felt it from a rumor or response.
- I sometimes think that it is difficult for some performers to perform together with performers of the entertainment agency to which they have belonged before.
- I have been asked by a production company, such as a broadcaster, etc., whether the transfer was amicable one.

Figure 38. Responses about whether or not show business by performers having left agencies was obstructed, from entertainment agencies

<Entertainment agencies>

- I think that performers having left agencies being deprived of their roles is the result of the media's guessing others' feelings. I imagine that there is such a situation where, when a company wishes to use a performer of some entertainment agency, the company does not use a performer having left the agency, because the company guesses that the agency does not like his/her being used, even if the agency says nothing. Although such an atmosphere has decreased compared with before, it still remains.
- Formerly, a broadcaster might refrain from using a performer who had had trouble with the entertainment agency. However, they do not commit to "depriving" a performer of his/her role, and a performer "is not deprived" of his/her role, in the entertainment industry at least now.
- There are performers who have fewer opportunities for appearances after transfer. However, it cannot be necessarily said that entertainment agencies put pressure on the parties concerned. There are performers who could have appeared thanks to the power of the entertainment agencies although they were not able. Those performers might just be in a position according to their original abilities after they simply lost agencies' influence. I cannot tell from appearances.
- There is an ungrateful performer who becomes independent with his/her manager. In that case, I do not wish the performer to perform together with performers belonging to our agency. Our agency will not put pressure directly on broadcasters, etc. However, on site, the persons concerned may talk about not making those performers perform together with the performer.

Figure 39. Responses about obstruction by entertainment agencies to which performers have belonged before, from performers

<Performers>

i. pressuring broadcasters, etc., to prevent appearance by a performer having left the agency;

- I heard from a person in charge of the production site of a broadcaster that, although an entertainment agency to which a performer had belonged confirmed to the performer that he/she left the agency amicably, the agency abused him/her at the production site of the broadcaster and put pressure on the broadcaster by hinting not to use the performer having left the agency, to lead the broadcaster to use any of performers belonging to the agency instead of hem/her.
- A staff member of an entertainment agency to which I belonged before saw and heard that the agency put pressure on the broadcaster not to use me in a broadcast program in which my appearance was about to be decided.
- After I left an agency, my decided appearances in programs were canceled in succession just before the starts of the programs. I heard from the person concerned that it was because the entertainment agency to which I belonged before told them not to work with me. When I asked that agency if it obstructed my show business, its manager told me that there was a tacit rule that leaving an agency is retiring from the world of entertainment, in the entertainment industry.
- Recently, an entertainment agency does not put pressure by telling the person concerned not to allow a performer to appear. However, for example, an executive of an entertainment agency tells an executive of a broadcaster that a performer named XX seemed to behave badly recently at a place of feasts. After I left an agency, I seemed to be told that they should not use me because I was loose in relations with women and might cause a scandal soon.
- An entertainment agency to which I belonged before talked to broadcasters to make them guess its feelings not to use me, saying that I had trouble and was a troublesome performer. I received such harassment.
- An entertainment agency to which I belonged before sued me for harassment and leaked the details of the suit to a weekly magazine after settlement. A dispute of a performer, whatever its details are, suggests that the performer may have some problem. This constitutes a great reason for a broadcaster's not dealing with the performer. For that reason, being sued itself is a heavy blow to the performer.

ii. pressuring another entertainment agency not to do business with a performer having left the agency; and

- An entertainment agency to which I belonged before sent to other entertainment agencies and stages for performances a notice that they should not be concerned with me. Then my jobs disappeared. For example, a promoter sounded me out about an appearance, and an entertainment agency to which a performer whose appearance was decided belonged said that the performer was unable to perform together with me. Then, I became unable to appear.
- After I left an agency, even if I had gotten a job, I lost the job suddenly on the previous day, for multiple jobs in succession. I thought that it was strange and heard from the persons concerned around me. Then, I heard from a hair and makeup artist who was a good friend of mine that he/she was told by XX (the former entertainment agency) that he/she should not work with me.
- An entertainment agency to which I belonged before told business connections, such as broadcasters, etc., that the draw performer belonging to that entertainment agency could not perform together with me. In fact, an entertainment agency to which I belong now informed me that a business connection conveyed that XX (the former entertainment agency) had said that it was impossible to perform together with me.

- An entertainment agency to which I belonged before told every broadcaster, etc., that the agency would not have other performers belonging to it appear if the broadcaster, etc., has me appear, to obstruct my appearances. I heard it directly from the person concerned with a broadcaster, etc.

iii. Giving a broadcaster, etc., the mistaken impression that a performer having left an entertainment agency is still registered in that agency, in such a way as the agency keeps information about that performer on its website, inducing a business connection to make a request to provide services to not the performer but the agency and refusing that request, thereby taking away an opportunity for a transaction from the performer

- An entertainment agency to which I belonged before did not erase my information posted on its website after I left the agency. That agency told a lie to business connections, saying that I had not left the agency, and the business connections make a request to do a job to the agency. So, I cannot be informed.
- I have now no contractual relations with an entertainment agency to which I belonged before, which posts a business tie-up with me on its website without permission.
- When I left an agency, I was told by the agency that a condition for its approval of my independence is that I left my name on its website in the form of a business tie-up, and I was forced to consent to it. When the business tie-up is left on the website, I am not recognized by the public as having become independent, and business connections recognize the former entertainment agency as a contact for me. I am concerned about being deprived of jobs for which I am appointed in such a way as the former entertainment agency tells a business connection about other performers belonging to it, not me.

Figure 40. Responses about relations with entertainment agencies from broadcasters, etc.

<Broadcasters>

- Which performer we wish to appear depends on the characteristics of a performer. We do not decide a performer, keeping an entertainment agency to which the performer belongs in mind.
- We do not receive a request to refrain from using a performer having transferred or become independent or from having that performer perform together with performers belonging to that agency.
- After a performer has transferred, the former entertainment agency does not visibly tell us to drop that performer from the program, but sometimes tell us that they will not have their performers appear if the performer appears.
- We sometimes hesitate to use a performer, depending on the reason for transfer or independence, in such a case as the performer has committed a crime. In addition to the above, if an entertainment agency gives a negative explanation for the reason for transfer or independence, we sometimes hesitate to use the performer. The audience of a program sometimes make a complaint to the sponsor of the program in which that performer appears. Our broadcasting is a commercial one, so we consider such a complaint.
- Since the number of performers who transfer is increasing, I do not feel an influence especially on the use of a performer having transferred or having become independent, but some persons in charge guess the agency's feelings. In addition, I am sometimes worried whether a performer having become independent can respond properly when something happens.
- Even when the reason for leaving an agency is a quarrel with that agency or when there is a malicious rumor about a performer, it will not have an influence on the use of the performer. Firstly, I recognize that a performer leaves an agency amicably in few cases, because he/she transfers or becomes independent from the agency.
- It is difficult to use a performer having transferred if I hear that the performer has trouble with the former entertainment agency. Since I consider relations with the former entertainment agency, I guess the agency's feelings. Meanwhile, I can freely use a performer about whom I have not heard that he/she has had trouble with the former entertainment agency after transfer or independence.
- When the stage name of a performer having left an agency has been changed, I imagine that the performer has had "trouble" with the former entertainment agency. In addition, regarding a performer about whom there is a rumor that he/she has trouble, although I do not swallow the contents of a report, I sometimes check out the facts with the entertainment agency. If it is just "transfer," the transfer will have no special influence.

<Program production companies>

- A broadcaster should guess a powerful entertainment agency's feelings, because it balances other programs of its own station, contrary to production companies. I suppose that, considering relations with an entertainment agency to which a performer at the level of the leading role belongs, a broadcaster may worry about the influence of using a performer having left that entertainment agency.
- If the stage name of a performer has been changed, I imagine that the performer has had trouble with the agency to which he/she has belonged. It was formerly said that, when a performer became independent, the performer could not appear in programs for several years and that he/she had to change the expression of his/her stage name. However, now, performers who "must not to be used" are not more easily understood than before.

B. Viewpoints from the Antimonopoly Act

(a) As mentioned in A, i above, an entertainment agency's pressuring a broadcaster, etc., which is its business connection, not to have a performer having left the agency not appear is an act which may prevent the performer from doing a job which he/she could do originally, and this has the effect of hindering the performer's activities. Moreover, even if that pressuring is not a direct act, such as requesting a broadcaster etc., not to use a performer but conveying a bad reputation of that performer or the performer's having trouble with an entertainment agency to which the performer has belonged before, it is an act which may have the effect of prompting the broadcaster, etc., not to use the performer and has the effect of hindering the performer's activities.

For that reason, if an entertainment agency's preventing a transaction between a performer or other entertainment agency and a broadcaster, etc., through such an act as mentioned in A, i above causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for those transactions decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

(b) As mentioned in A, ii above, pressuring another entertainment agency, a stage for performances, or a related operator[45] not to do business with a performer having left an agency has the effect of hindering the performer's activities, in such a way as making it difficult for the performer to do business by preventing the performer from doing business which he/she can do originally or preventing a performer having left an agency from securing necessary personnel.

For that reason, if an entertainment agency's preventing a transaction between a performer and other entertainment agency through such an act as mentioned in A, ii above causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for those transactions decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

Moreover, working on a business connection not to have a performer belonging to an agency play together with a performer having left the agency also has the effect of hindering the activities of the performer having left the agency. So if an entertainment agency obstructs a transaction between a performer or other entertainment agency and a broadcaster etc., through that act, it comes into question in the Antimonopoly Act as obstruction of transactions.

(c) As mentioned in A, iii above, refusing a request for a performer having left an agency to appear through such an act of pretending that the performer is registered in the agency though he/she does not belong to the agency is an act of preventing the performer from doing business which he/she could do originally and has the effect of hindering the performer's activities.

For that reason, if an entertainment agency's preventing a transaction between a performer or other entertainment agency and a broadcaster, etc., through such an act as mentioned in A, iii above causes the risk of bringing about such a situation where other entertainment agencies are excluded or their opportunities for that transaction decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

(d) The acts mentioned in A, i through iii above are examples of acts of obstructing the activities of a performer having transferred or having become independent. Acts of obstruction other than those acts may also come into

[45] e.g. hair and makeup artists, stylists, and broadcasting writers.

question in the Antimonopoly Act.

(e) Based on the fact that there are cases where a performer's activities are hindered through an entertainment agency's pressuring a business connection, such as a broadcaster, etc., or a related operator, from the point of view of the competition policy of preventing a violation of the Antimonopoly Act, an entertainment agency should pay attention to its words and deeds so that it will not only commit such acts of obstruction as mentioned in A, i through iii above but also will not make a business connection guess its feelings or postpone using a performer because there is a possibility of trouble.

(4) Concerted restriction of transfer by several entertainment agencies or a trade association

A. Actual conditions

According to the hearing survey of entertainment agencies, we did not result in grasping the actual conditions in which several entertainment agencies jointly restrict or a trade association restricts performers from transferring from their agencies, expressly.

Meanwhile, according to the hearing of entertainment agencies, as shown in Figure 41, several entertainment agencies answered that they have an understanding that transfer from an entertainment agency to another entertainment agency is not permitted, including answers that poaching is forbidden in the entertainment industry, that there is a rule that performers shall not transfer their registrations within an association, that if the management of an entertainment agency to which a performer is to transfer learns that the performer is to transfer to the agency, the performer will contact the agency to which he/she belongs and tell the agency that he/she will not transfer. In addition, some entertainment agencies answered that, not only cases where another entertainment agency pressures a performer to transfer to it during the term of an exclusive contract, including cases where a performer transfers after the expiration of the term of an exclusive contract, if an agency accepts a performer's transfer, the agency having accepted the transfer will be put in a severe situation or will have the performer work as a freelancer for a certain period so that the agency does not appear to have poached the performer.

Similarly, in the hearing survey of performers, as shown in Figure 42, the performers answered that, since a new agency having accepted a performer is to make an enemy of the former entertainment agency, an agency cannot accept transfer and that a performer cannot transfer to another entertainment agency for a certain period after leaving an agency.

Figure 41. Responses about transfer from entertainment agencies

<Entertainment agencies>

- Poaching a performer by an agency is forbidden in the world of entertainment (several answers).A difference between transfer and poaching is mainly a matter of the time when an agency invites a performer.
- If an agency invites a performer before the performer leaves the agency to which he/she belongs, even when the term of his/her contract has expired, it is poaching.
- Conduct against a moral way of life, such as sudden poaching, is not acceptable. The entertainment industry is formed with coexistence and co-prosperity. Entertainment agencies are close together. If an agency accepts a performer despite having trouble, the agency is to be put in a severe situation. Poaching a performer is forbidden in the whole entertainment industry. Specifically, there is an old common understanding that poaching a performer is forbidden within a trade association.
- Although it is a kind of a gentleman's agreement in the entertainment industry, based on training costs invested, poaching a performer from another entertainment agency is forbidden. However, if there is no contractual problem, an agency sometimes accepts a performer after doing its duty to the former agency.
- Not poaching a performer is a custom in the entertainment industry in entertainment agencies' having been friendly with each other, and a tacit rule. However, if not an agency in a trade association, talking with each other may make it possible to poach a performer.
- If an agency whose scale is equivalent to ours poaches a performer, the agency will be crushed immediately. I think that there is such a rule in the entertainment industry.
- There is a rule that a performer shall not transfer within a trade association. Management recognizes a natural rule that performers shall not transfer from and to agencies. A person in charge on site sometimes proceeds transfer without knowing the situation in the entertainment industry. However, at the stage where transfer is conveyed to the management of an entertainment agency to which a performer is to transfer, that management will immediately apologize to the agency to which the performer belongs and will forget the transfer ever existed. It is natural not to transfer within their circle.
- We report to and make sure with the former agency of a performer having transferred from that agency to our agency. Since the world of entertainment is small, we are very careful about a transferring person, especially from an agency deeply connected with us.
- From the aspects of relations between entertainment agencies and of humanity and justice, I talk with an agency to which a performer has transferred about the reason for leaving us. For example, when a performer having belonged to our agency is to belong to other entertainment agency, our agency had a talk with that other entertainment agency. I felt as if the entertainment agency to which the performer had transferred considered our agency, to avoid a situation being seen as though the performer did not like our agency and transferred from our agency.
- Poaching a performer by an entertainment agency from another entertainment agency is forbidden. Direct transfer is liable to be seen as poaching a performer, so our agency does not accept it. I think that, if a performer wishes to transfer to our agency, I wish the performer to work as a freelancer for about three months after leaving the previous agency.
- In order for our agency not to appear to make a performer be poached, although the performer transfers of his/her own will, we adjust with the former agency for the performer to work as a freelancer for about a few months after leaving the former agency. There are cases where that performer participates in a meeting for adjustment, and other cases where a performer does not participate. Caring about how we are seen and our reputation in the entertainment industry, we do such adjustments. Not only our agency but everyone makes similar adjustments in the voice actor industry.

Figure 42. Responses about transfer from performers

- When a performer has left a major entertainment agency, there may exist an entertainment agency which accepts the performer as an agency to which the performer transfers. However, if the agency accepts the transfer, the agency to which the performer has transferred is to make an enemy of the trade association or the former entertainment agency.
- I recognize that, when a performer leaves an entertainment agency which is a member of a trade association, the performer may not transfer to an entertainment agency which is a member of another trade association.
- In the entertainment industry, there is an unwritten rule that a performer shall go through a period of one year in which he/she is active as a freelancer when he/she transfers an agency. That unwritten rule exists not only formerly but now actually.

B. Viewpoints from the Antimonopoly Act

Choosing which performer an entertainment agency deals with is one of its business activities. Several entertainment agencies' jointly restricting or a trade association's restricting a performer from transferring prevents the performer from freely choosing an entertainment agency to which he/she belongs and prevents and stops competition among entertainment agencies in such a market in which the agencies gain performers. So, it has the strong effect of restricting competition.

As mentioned in the actual conditions referred to in A above, in addition to the fact that entertainment agencies that state an understanding that a common understanding that transferring from and to entertainment agencies is prohibited is formed in the entertainment industry, including cases where a performer transfers after the expiration of the term of an exclusive contract, are seen entertainment agencies which are to be put in a severe situation if they accept transfer or which will have a performer be active as a freelancer for a certain period so that the agencies do not appear to have poached the performer were seen. A situation where there is a sense of avoidance widely regarding the whole transfer by performers in the entertainment industry, mainly in entertainment agencies, is supposed.

In the Survey, we did not result in grasping the actual conditions in which several entertainment agencies jointly restrict or a trade association restricts a performer from transferring, expressly. However, a situation where there is a sense of avoidance of a performer's transfer widely in the entertainment industry is seen as mentioned above. If several entertainment agencies' joint restriction of a performer from transferring substantially restricts competition in a certain field of trade, it comes into question in the Antimonopoly Act as unreasonable restraint of trade. In addition, if a trade association restricts a performer from transferring, it comes into question in the Antimonopoly Act[46].

Furthermore, if several entertainment agencies jointly refuse to make a contract with a performer who wishes for transfer, even when the refusal does not result in competition's being substantially restricted in a certain field of trade, it would be generally liable to impede fair competition and comes into question

[46] The Survey verified that there exists an entertainment agency which answered that, if it poaches a performer, it would be crushed immediately and was concerned about obstruction by the former entertainment agency of the performer owing to the performer's transfer. If an entertainment agency commits such an act of making it difficult for another entertainment agency to which a performer has transferred to carry out business activities for the reason that the performer having belonged to the agency has transferred, it comes into question in the Antimonopoly Act as obstruction of transactions (for acts to performers, see (2) or (3) above).

in the Antimonopoly Act as concerted refusal to deal, as a rule[47].

5. Acts to performers' rights

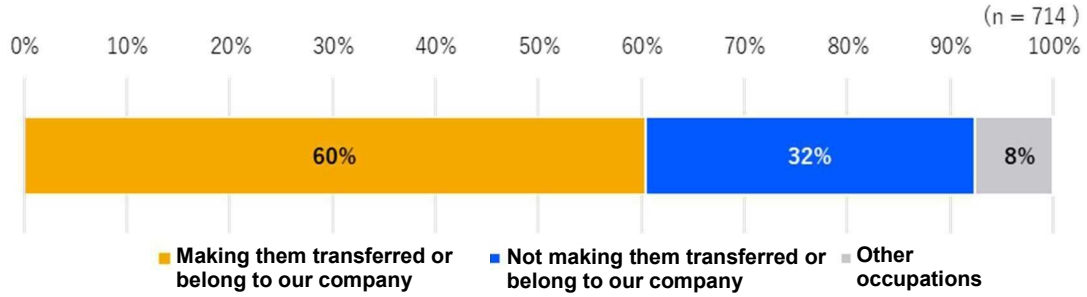
(1) Actual conditions of belonging of rights

As mentioned in II, 2, (1) above, there are cases where ownership of various rights which a performer acquires is specified in a contract with the entertainment agency.

As a result of the questionnaire survey, the state of transfer and ownership of intellectual property rights (e.g. copyrights and neighboring rights) and publicity rights is as shown in Figures 43 and 44. About 60 percent of performers answered that they transferred those rights to or made them belong to their entertainment agencies. In addition, of entertainment agencies that have either or both of intellectual property rights and publicity rights transferred or belong to them, 36 percent of them answered that they transfer all of various rights to deliverables created while a performer has belonged to them (e.g. rights to authorize a third party to use part of video of a TV program in which the performer appeared in the past) to the performer having left the agency, as shown in Figure 45, and it was the most common answer.

In the hearing survey of entertainment agencies, as shown in Figure 46, some of the agencies answered that they transfer the various rights of a performer having left the agency to the performer if he/she requests to do so, as a rule. Meanwhile, other agencies answered that they sometimes continue to hold those rights. In addition, the agencies answered that they transfer the rights either free of charge or for a consideration.

Figure 43. State of transfer and ownership of intellectual property rights (e.g. copyrights and neighboring rights) created to performers[48]

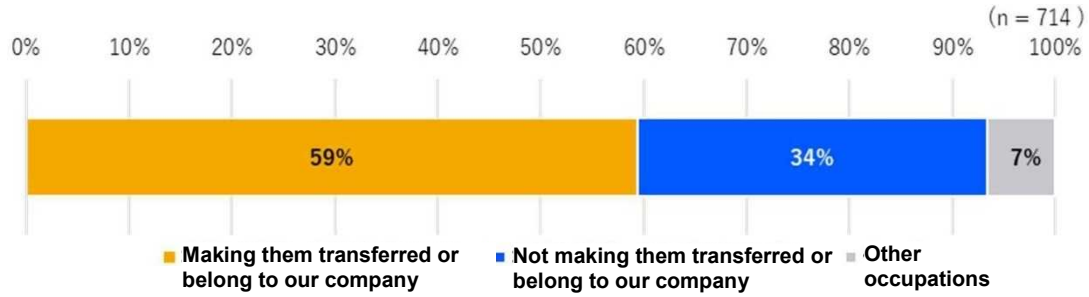


Source: Created by the JFTC based on the results of the questionnaire survey.

[47] "Concertedly" in unreasonable restraint of trade or concerted refusal to deal is not limited to an express agreement among several operators, but includes a tacit understanding or the formation of a joint intention.

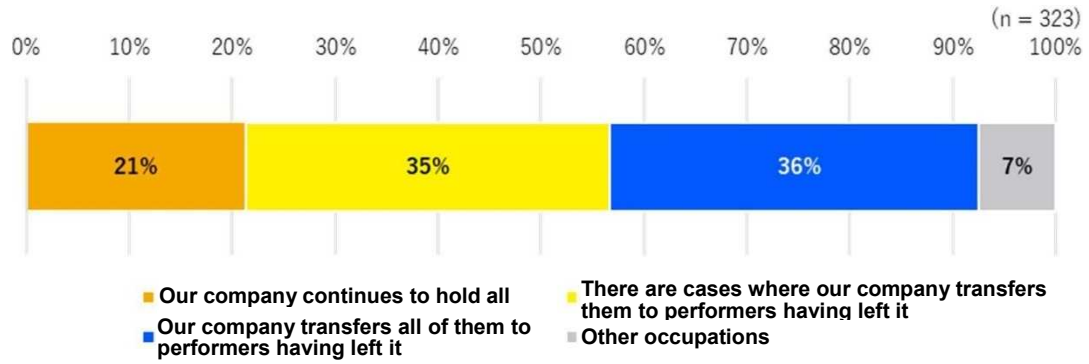
[48] Main responses stated in the free space for "other cases" are as follows:
• Make a decision each time through consultations with a performer.
• Our agency is entrusted by a performer with managing the rights, not transfer or ownership.
• Our agency classifies the rights into those belonging to it and those belonging to a performer.

Figure 44. State of transfer and ownership of publicity rights created to performers[49]



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 45. Handling of various rights after performers leave agencies[50]



Source: Created by the JFTC based on the results of the questionnaire survey.

[49] Main responses stated in the free space for “other cases” are as follows:
• Make a decision each time through consultations with a performer.
• Our agency is entrusted by a performer with managing the rights, not transfer or ownership.
• Basically, our agency have the rights belong to itself, but actually performers use the rights freely.
• Our agency has the right to group names belonging to it.

[50] Main responses stated in the free space for “other cases” are as follows:
• The handling varies with the case.
• Our agency will continue to hold part of the rights.

Figure 46. Responses about transfer of various rights to performers having left agencies, from entertainment agencies

<Entertainment agencies>

- Basically, intellectual property rights created while a performer belongs to our agency belong to the agency. If a performer requests our agency to have those rights belong to him/her when he/she leaves our agency, our agency will grant that request, as a rule. When our agency transfers all of various rights to a performer, there will be cases where our agency requests the performer to pay a certain amount of money or agree on a sunset clause.
- There are cases where those rights will belong to our agency and where an agency to which a performer transfers will accept the rights. Our agency sometimes transfers free of charge all the rights to an agency to which a performer transfers.
- Our agency had trouble with a performer having left us about handling of various rights after he/she left us. Contractually, all the rights shall be transferred to our agency. However, that performer demanded the transfer, and our agency transferred the rights to him/her because we did not wish to have trouble with him/her.

(2) Authorization to exploit various rights to deliverables

A. Actual conditions

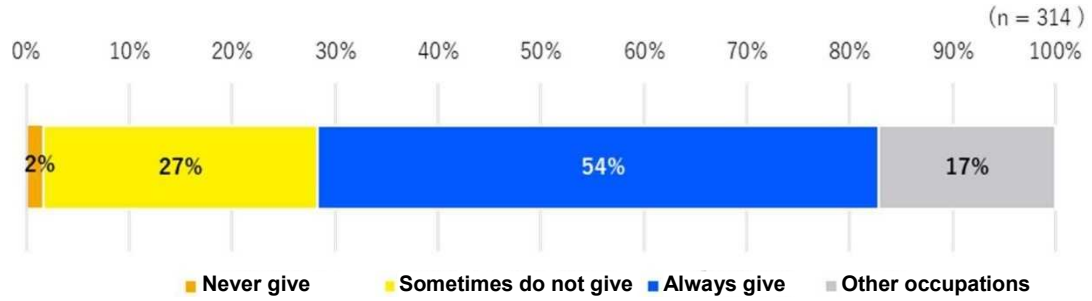
We conducted a questionnaire survey of cases where an entertainment agency continues to own the various rights of a performer having left the agency and responses when the performer requests authorization to exploit those rights. As shown in Figure 47, a total of about 30 percent of the agencies answered that they sometimes do not give the authorization or that they never give the same.

In addition, we questioned the entertainment agencies that answered that they never give the authorization and those that answered that they sometimes do not give the same about whether they sound out performers in advance about their not giving the authorization, as shown in Figure 48, about 80 percent of the agencies answered that they sound out the performers, and most of the agencies answered so.

In the hearing survey of entertainment agencies, almost all the agencies answered that they basically give the authorization. Meanwhile, as shown in Figure 49, the agencies answered that there are cases where they do not give the authorization in a malicious case, such as the rights being used to defame someone.

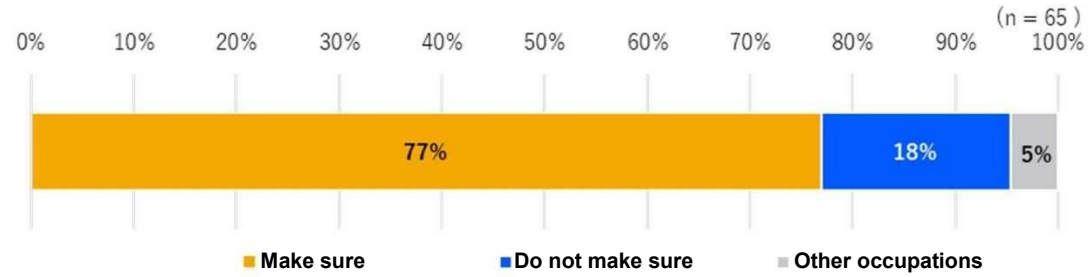
In the hearing survey of performers, as shown in Figure 50, some of the performers answered that there were cases where authorization to exploit past materials was not given without reasonable grounds and that an agency obstructed a performer’s activities after he/she left the agency by not giving authorization to exploit past materials.

Figure 47. Responses when agencies were requested to give authorization to exploit the various rights of performers having left them[51]



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 48. Whether or not agencies make sure of not giving authorization to performers[52]



Source: Created by the JFTC based on the results of the questionnaire survey.

[51] Main responses stated in the free space for “other cases” are as follows:
- Our agency has not been requested to give authorization to exploit the various rights of a performer having left it.
- Because we are a private agency.
- Our agency consults with a performer having left us to make a decision.
- Our agency hands over responses to the performer or an entertainment agency to which the performer belongs now.
- Responses vary with the various rights.

[52] Main responses stated in the free space for “other cases” are as follows:
- There are cases where our agency gives a prior explanation, and cases where our agency has no time to explain.

Figure 49. Reasons why agencies do not give authorization to exploit the various rights of performers having left them

<Entertainment agencies>

- We sometimes do not give the authorization when there is a possibility of harming the image of either or both parties.
- Our agency will decide availability of the past materials of a performer having left us. For example, when our agency incurs a debt on behalf of a former performer who has committed a crime, if the debt has not been paid off, there may be a case where our agency does not give the authorization.
- We basically give the authorization for the secondary use of video. Exceptionally, we will not give the authorization if video is simultaneously broadcast in a broadcast program on another station.
- We give the authorization except for such a malicious case where the rights are used to defame someone excessively.
- Each time we confirm to the performer having left us whether or not we may give the authorization. The task of the confirmation does not cause a huge burden of office work.
- We contact an agency to which the performer has transferred, and the agency is to make a decision. We sometimes do not give the authorization, for the reason that we cannot confirm to the performer if we do not know the contact address of an agency to which the performer has transferred.

Figure 50. Responses about authorization to exploit various rights, from performers

<Performers>

- I heard from a person in charge of a broadcast program in which I appeared in the past that a plan related to that program was being made, but that it seemed that he could not use the past video. I also heard that the person in charge made confirmations to the entertainment agency to which I belonged before several times, but that he/she was refused to use part of the video by that agency's judgment alone.
- An entertainment agency to which I belonged did not obstinately accept the transfer of the rights to the past materials during my belonging to that agency to another entertainment agency to which I had transferred. However, the former agency told me that I did not need to worry because it would give the authorization for secondary use, as a rule. Nevertheless, actually, cases where the former agency does not give the authorization without reasonable grounds, saying that the authorization even after a performer leaves an agency will injure his/her value, are seen. From the point of view of recovering investments, it is appropriate to give the authorization, because it will yield income to the entertainment agency. The agency does not give it, so performers having left the agency are restricted from appearing in broadcast programs, and their activities are obstructed.
- I was requested by an entertainment agency to which I belonged before to purchase my account for SNS after I left the agency, although the purchase was not prescribed in the contract and I was given no explanation for it orally. Since I entirely managed the account for myself, firstly, I feel a question whether the agency has the right to the account. Partly because the number of the followers of the SNS is set for a necessary condition for entry for an appearance, the number of the followers of the SNS is important for performers.

B. Viewpoints from the Antimonopoly Act

There are cases where various rights, such as copyrights, transferred to an entertainment agency from a performer during the period of being registered in the agency belong to the entertainment agency even after the performer has left the agency. Making various rights belong to an entertainment agency in that way generally may have competition promotion effects, in such ways as allowing the entertainment agency to make profits from the various rights, promotes training the performer and develops the performer's ability, and unifying the rights into the entertainment agency makes it easier to manage them. For that reason, in that way, even if an entertainment agency unifies the rights into it and does not give authorization to exploit the rights when the agency is requested to give the authorization, it does not immediately come into question in the Antimonopoly Act.

However, for example, when an entertainment agency is requested to give authorization to exploit the various rights from a business connection, such as broadcasters, etc., a performer having left the agency, or another entertainment agency to which the performer transferred, if the former agency does not give the authorization as means of achieving an unfair purpose under the Antimonopoly Act[53], such as excluding the performer having left the agency from the market, thereby causing the risk of making it difficult for the performer to carry

[53] Whether it is a means of achieving an unfair purpose under the Antimonopoly Act, such as excluding a performer from the market, will be decided by considering an individual and specific situation comprehensively. It is conceivable that, if there is no reasonable reason, such as the rights are liable to be used for defamation, or in such a case where an agency does not permit the use without fully consulting about a rental fee to a reasonable extent, it may be decided as an unfair purpose under the Antimonopoly Act.

out normal business activities, it comes into question in the Antimonopoly Act as individual refusal to deal.

Furthermore, from the point of view of the competition policy of preventing a violation of the Antimonopoly Act, when an entertainment agency does not give authorization to exploit the various rights, the agency should fully explain the reason why it does not give it to the person who has requested the authorization, and if the agency does not have a special reasonable reason for not giving the authorization, the agency should give authorization to exploit the various rights.

(3) Restriction of using stage names and group names

A. Actual conditions

There is a case where it is provided in a contract between an entertainment agency and a performer that a stage name or group name (hereinafter collectively referred to as “stage name, etc.”) given during the period of a performer’s belonging belongs to that agency even after the performer leaves the agency.

In the questionnaire survey, as shown in Figure 13 (page 25), 3 percent of entertainment agencies answered that they restrict performers who have left them from using their stage names in the most recent three years, and 2 percent of them answered that they restrict those performers from using their group names.

In the hearing survey of entertainment agencies, as shown in Figure 51, some of the agencies answered that they have the right to use stage names, etc., given to performers and groups during the period of their belonging. In addition, some of the agencies answered that a group name belongs to them when the group name is continuously used while part of the members of the group is being changed and that they may use (even a stage name, etc., given after a performer has belonged to them) freely without restriction even after the performer leaves them.

In the hearing survey of performers, as shown in Figure 52, a performer answered that he/she was made to change his/her name without reasonable grounds, and another performer answered that being restricted from using his/her stage name, etc., and changing his/her name caused a hindrance to his/her show business. A performer answered that the agency obstructed his/her activities after he/she left the agency by not giving authorization to exploit his/her stage name, etc.

Figure 51. Responses about restriction of using stage names, etc., from entertainment agencies

<Entertainment agencies>

- We think that a stage name, etc., falls within a work of joint authorship of an entertainment agency and a performer. In the case of a stage name or group name given after a performer has belonged to our agency, our agency has the right to it. Meanwhile, use of his/her real name by a performer having left us is no problem.
- The stage name, etc., used at out agency (including real names) may be freely used without restriction after a performer leaves us. Prohibiting the use of a stage name after a performer leaves an agency may occur in such a case where an entertainment agency wishes the performer not to use the stage name because the agency feels deeply attached to the stage name.
- Handling a stage name is very different from handling a group name. I grasp a group name as a name to which an entertainment agency has made a considerable contribution.
- Since we continue using a group name while we are changing part of the members of the group, it is natural for us not to permit a performer having left us to use the group name. We do not wish the group name to be used without permission even in such a form as the “former XX.”

Figure 52. Responses about restriction of using a stage name, etc., from performers

<Performers>

- Although nothing was mentioned in the contract about the stage name of the individual performer, after I left the agency to which I belonged before, that agency told me why I used the stage name when I belonged the agency and that the agency had the rights to the stage name, so I changed my stage name.
- Since the agency to which I belonged before obstructed my activities by using the group name after leaving the agency, I changed the group name.
- It is extremely important for a performer to be allowed to continue using the stage name immediately after leaving an agency. Since there is an image of transfer or independence being forbidden in the world of entertainment, firstly a business connection, such as a broadcaster, etc., often takes transfer or independence negative. There is a possibility that I would be regarded as a “performer who had trouble with the previous agency” if I change my stage name after I transferred or became independent, and it has an influence on my use in a broadcast program.

B. Viewpoints from the Antimonopoly Act

There is a case where the stage name, etc., of a performer belongs to an entertainment agency to which the performer belonged even after the performer leaves the agency[54]. An entertainment agency sometimes restricts a performer leaving the agency from using his/her stage name, etc., which he/she has used until then. Making a stage name, etc., belong to an entertainment agency may have competition promotion effects, in such ways as making it easier for the entertainment agency to manage the stage name, etc., as well as encouraging the entertainment agency to invest to increase the value of the stage name, etc., such as the power to attract customers[55]. Meanwhile, an entertainment agency's act of restricting a performer leaving the agency from using his/her stage name, etc., makes the performer unable to use the stage name, etc., with the power to attract customers after leaving the agency and lowers the degree of name recognition of the performer. As a consequence, the act may cause a disadvantage to the performer, such as a decrease in the proceeds of the performer afterward.

For that reason, for example, when it is provided in the terms of a contract between an entertainment agency and a performer that the stage name, etc., shall belong to the entertainment agency after the performer leaves the agency, if the agency does not give authorization to exploit the stage name, etc., as a means of achieving an unfair purpose under the Antimonopoly Act[56], such as excluding the performer having left the agency from the market, thereby causing the risk of making it difficult for the performer to carry out normal business

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[54] In the Survey, when a performer carries out activities by using his/her real name (when his/her real name is used as his/her "stage name") and uses a stage name which he/she has used since before entry into an agency, the stage name is generally found not to belong to the entertainment agency. It is conceivable that, if an entertainment agency assert that the stage name, etc., which a performer has used since before entry into the entertainment agency belongs to the entertainment agency (will not give authorization to exploit the name after leaving the agency) although the entertainment agency does not make a special investment in increasing the value of the stage name, etc., it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

Moreover, there exists a precedent in which a contract clause to restrict the use of a stage name, etc., which a performer has begun to use after entry into the agency, after leaving the agency, was found invalid because the clause is against public order and morals (Intellectual Property High Court Ruling (Ne) No. 10059 of 2022 on December 26, 2022).

[55] It is conceivable that, when an agency makes a stage name, etc., belong to a performer or shares a stage name, etc., with a performer, the performer may use the stage name,
etc., freely after leaving the agency and will make transfer or independence easier, but there is a possibility that it will make it more complicated to manage the stage name, etc., and will lower an incentive for the entertainment agency to invest in the stage name, etc.

Moreover, when a stage name, etc., belongs to an entertainment agency even after a performer left the agency, except in such a case where the agency transfers the stage name, etc., or gives authorization to exploit the stage name, etc., to the performer having left the agency or uses the stage name, etc., for a different performer (e.g. in the case of a group name, members are replaced), it is generally conceivable that opportunities for the stage name, etc., to be used will decrease and that an incentive to make additional investments in the stage name, etc., will lower. It is conceivable that, when a stage name, etc., uniformly belongs to the performer after leaving the agency (or an agency approves of the use of a stage name, etc., free of charge), including a case where an agency has not recovered investments to increase the value of a stage name, etc., during a period of the performer's being registered in the agency, there is a possibility that it would lower an incentive for the entertainment agency to invest in the stage name, etc., during a period of the performer's being registered in the agency.

[56] Whether it is a means of achieving an unfair purpose under the Antimonopoly Act, such as excluding a performer from the market, is decided by considering an individual and specific situation comprehensively. It is conceivable that, if there is no reasonable reason, such as the entertainment agency continues to use a group name or has not recovered costs invested by it to increase the value of the stage name, etc., or in such a case where, although an agency needs to recover costs invested by it, the agency does not permit the use at all without sufficient consultations about a rental fee to a reasonable extent, it may be decided for an unfair purpose under the Antimonopoly Act.

activities, it comes into question in the Antimonopoly Act as individual refusal to deal[57].

In addition, as mentioned in Note 54 above, even when a stage name, etc., belongs to a performer having left an agency, requesting that performer not use the stage name, etc., causes the risk of bringing about such a situation where the performer is excluded or opportunities for the performer to deal with other entertainment agency or a broadcaster decrease, it comes into question in the Antimonopoly Act as obstruction of transactions.

And, if, in making a contract with a performer, an entertainment agency does not give a full explanation for or gives a false or exaggerated explanation for making the stage name, etc., belong to the entertainment agency, thereby making the performer mistake the provisions of the contract for those of a significantly superior or advantageous one to the actual contract, and unfairly asks the performer who may deal with other entertainment agency to make a contract with itself, it comes into question in the Antimonopoly Act as deceptive customer inducement.

Furthermore, from the point of view of the competition policy of preventing a violation of the Antimonopoly Act, an entertainment agency should not restrict the use of a stage name, etc., unless it has special reasonable grounds. If an agency restricts that use, the agency should explain the grounds for the restriction and should consult about them, sufficiently.

6. Acts relating to the treatment of performers

(1) Unilateral decision on fees

A. Actual conditions

Generally, an entertainment agency receives a consideration from a business connection to which a performer has provided a demonstration, and the agent pays a fixed amount or an amount calculated at a certain distribution rate from the consideration to the performer. A performer earns fees through show business in that way. Regarding the form of paying fees and the calculating method, we conducted the questionnaire survey of entertainment agencies. As shown in Figure 53, about 60 percent of the agencies answered that they pay fees on a commission basis to all performers. Thus, many entertainment agencies use a commission basis. Meanwhile, about 10 percent of the agencies answered that they pay fees on a fixed salary basis to all performers. Thus, a small number of entertainment agencies use a fixed-salary basis. In addition, as shown in Figure 54, of entertainment agencies using a commission basis, about 40 percent of the agencies answered that they distribute “70 percent” of considerations to performers, and it was the most common answer.

In addition, in the Survey, as fees to be paid to performers on a commission basis, in addition to fees for individual demonstrations for business connections, such as broadcasters and show places, the following were verified as fees to be paid according to demonstrations by or rights of performers[58] (see the results of

[57] Article 21 of the Antimonopoly Act prescribes that the provisions of this Act do not apply to an act which is found to constitute the exercise of rights under the Copyright Act, Patent Act, Utility Model Act, Design Act, or Trademark Act. An entertainment agency’s act of registering the stage name, etc., of a performer to leave the agency as a trademark to restrict the use of the stage name, etc., by the performer after leaving the agency is regarded as the exercise of the trademark right in appearance. However, if the act is not found the exercise of the right substantially; that is, after taking into account the purpose and mode of the act as well as to what extent the act has an influence on competition, when the act is found to deviate from the purport of the intellectual property system or to be against the purpose of the said system, the act cannot be found an “act found the exercise of the right” as prescribed in Article 21 of the Antimonopoly Act, and the Antimonopoly Act applies to the act (II, 1 of Guidelines on Use of Intellectual Property, in Antimonopoly Act).

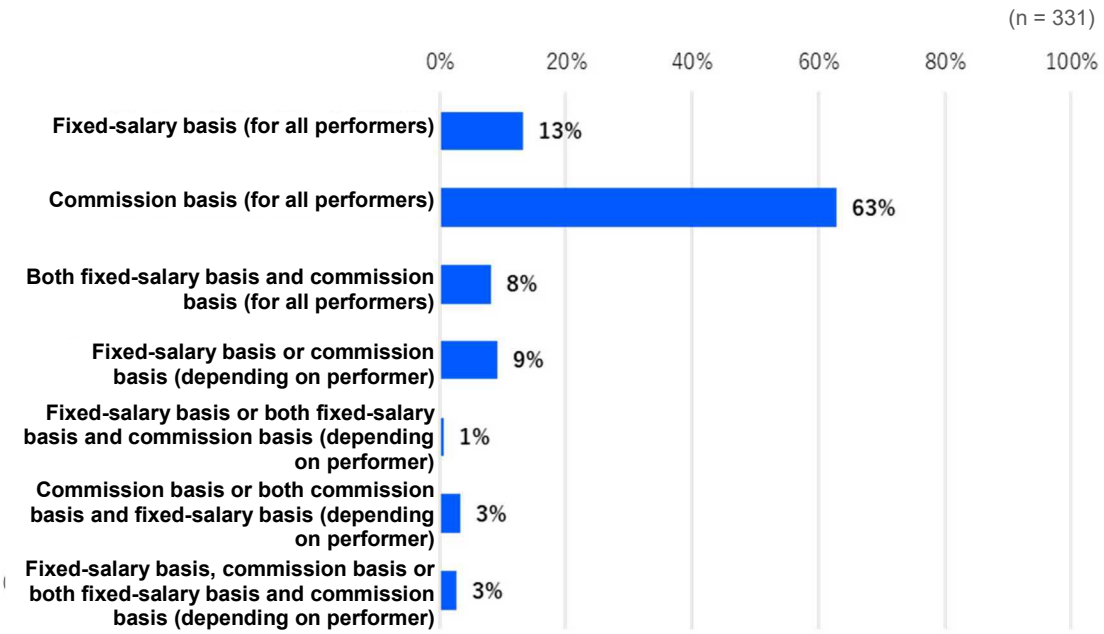
[58] Regarding those fees, distribution rates and methods vary with the profitability and the provisions of

the hearing of entertainment agencies (Figures 55 and 56)).

i. Secondary use fees pertaining to demonstrations given to broadcasters, etc.
ii. Proceeds from the operation of SNS and fan clubs
iii. Of money paid by record companies to entertainment agencies, such as contract money, considerations for tying down performers according to an obligation under exclusive contract and those for giving demonstrations

Meanwhile, in the hearing survey of performers, as shown in Figures 57 through 59, regarding fees, the performers answered (i) that, although the performer made a request to change the amount of a fee, the commission rate, or the payment form (e.g a fixed-salary basis and a commission basis) because fees are small, the agency did not accept negotiations, (ii) that, although the performer did not receive a prior explanation, the entertainment agency deducted expenses from the performer's share and so the distribution rate was lower than that under the contract, and (iii) that fees other than those for demonstrations, such as those for a rebroadcast of a program and the proceeds from the sale of goods, were not paid to the performer.

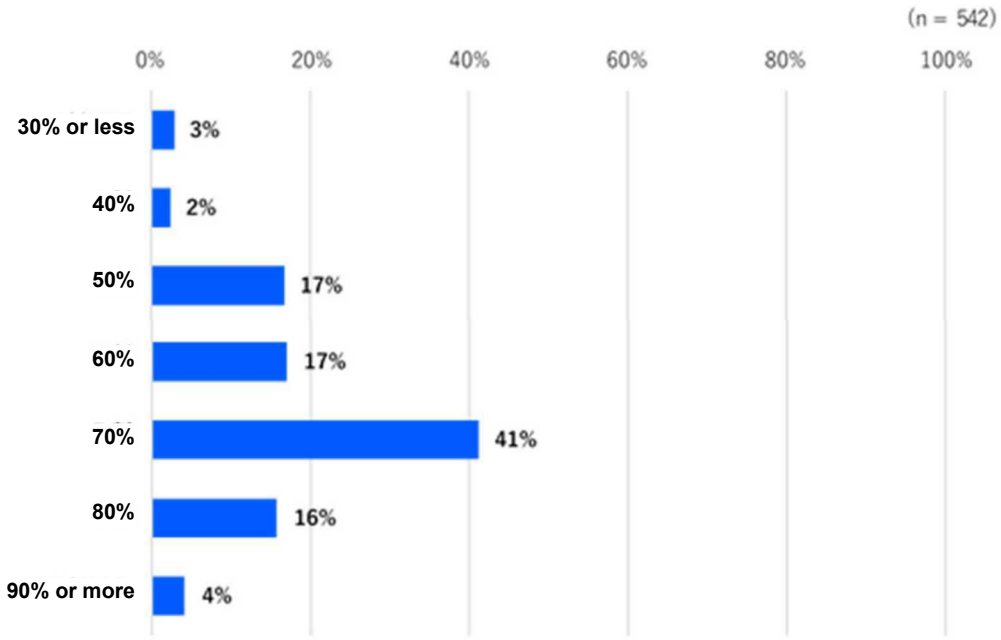
Figure 53. Proportions of performers by payment form of fees



Source: Created by the JFTC based on the results of the questionnaire survey.

contract in each entertainment agency. In addition, in the hearing survey of entertainment agencies, several entertainment agencies answered that they pay extra pay to performers when they create a great hit.

Figure 54. Most often used distribution rates for performers when commissions are used



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 55. State of paying contributions for something other than demonstrations to performers

<Entertainment agencies>

i. Secondary use fees

- We pay secondary use fees for the secondary use of various rights to performers at the same distribution rate as that for fees for demonstrations.

ii. Profits gained from sale of goods and operation of SNS and fan club by using the degree of name recognition of performers

- We distribute the proceeds from fan clubs and goods pursuant to the contracts in the same way as appearance fees.
- Whether we distribute the proceeds from a fan club to the performer depends on their details. When the proceeds are yielded in the title of appearance fees, such as in live streaming, we distribute them to the performer. Meanwhile, we allot membership fees for fan clubs from fans for operating expenses (photographing expenses and the cost of making reports). So, we do not distribute them to the performers.

iii. Of money paid by record companies to entertainment agencies, such as contract money, considerations for tying down performers according to an obligation under exclusive contract and those for giving demonstrations

- To what extent we distribute contract money paid by a record company varies depending on the case. Contract money has a strong shade of meaning of a consideration for contracts and training, so we do not pay the full amount of the money to a performer. After our agency receives an adequate amount of the money, we allot the rest of it for training costs for the performer.
- Contract money paid by a record company is a consideration to tie down a performer, so after deducting advertising expenses, lesson fees, and styling fees from the money, we distribute the rest to the performer. We give a statement containing total transaction amounts, costs deducted, and the amounts of fees distributed by job. So a performer should be able to grasp the total amount of contract money.
- We understand that training money paid by a record company is part of a consideration for promotion. So we do not distribute the money to the performer. We use training money as a fund for our agency's advertising and promoting a performer to broadcasters, etc.

Figure 56. Responses about negotiation over fees, from entertainment agencies

<Entertainment agencies>

- We basically consider a distribution rate for and the method of paying fees with a performer every year regardless of the term of the contract. We think that working at the same fees for many years, although a performer has become popular, makes the performer feel a sense of incongruity. So we make it a rule to review fees at least once a year. If a performer has been very much in the public eye last year, we are to raise his/her fees on that occasion (several agencies).
- We can raise a fee rate based on achievements until now about once every three years for some performers but cannot raise it for other performers.
- If a performer requests negotiations, we accept the negotiations to change his/her fees. In fact, there was a case where we negotiated at the request of a performer and increased his/her share of distribution of some fees.
- We have never negotiated with any performer who sought a pay raise until now.

Figure 57. Responses about negotiations over fees, from performers

<Performers>

- At the renewal of the contract with the entertainment agency, the agency decided the amount of fees unilaterally without negotiations. I felt the amount of fees small, but the agency told me that I should be grateful just for a pay raise, looking down on me. Jobs are gradually not assigned to complaining performers.
- I received a fixed salary from the entertainment agency, and the salary had been frozen for as long as ten years. I had made a request for transition to a commission basis for a long time, but the request could not be readily granted.
- I felt my fees small but sometimes heard that I had considerable sales actually. Payment was made semiannually based on the result of demonstrations. Although I proposed changing the payment method, the entertainment agency to which I belonged told me that they did not think of it and did not accept negotiations.

Figure 58. Responses about burden of expenses, from performers

<Performers>

- An amount obtained by subtracting expenses from the proceeds is distributed between a performer and the agency as fees. In deducting expenses, a deficit is also added in calculation. So initially the sum is small. Although expenses are deducted, the agency further collects a management fee. So I feel a share of the entertainment agency too large.
- The entertainment agency uses a commission basis but deducts expenses before distribution. So I actually receive fees calculated at a smaller distribution rate.
- In the contract, it is provided that, in addition to a certain fixed amount, the additional proceeds shall be distributed between the entertainment agency and me, if any. However, it is also provided that expenses incurred until my debut shall be offset by subsequent fees. So after I belonged to the agency, I had worked substantially without pay for several years. I bore monthly lesson fees and traveling expenses to the lesson site and my place of work. I could not imagine costs incurred by the entertainment agency until my debut and confirmed those costs with that agency, which dodged my question.

Figure 59. State of paying considerations for services other than demonstrations

<Performers>

- Firstly, a consideration for the reuse of a broadcast program in which I appeared is not prescribed in the contract. So the consideration is not distributed by the entertainment agency to me.
- The proceeds from distribution for the fan club were not distributed to me at all by the entertainment agency to which I belonged before. Since the club had a considerable number of fans, fees should be gained according to the number of members registered. I also have not received fees for the sale of goods.
- The proceeds from the sale of goods which I planned were distributed to me only at a rate of 10 percent although the entertainment agency played little role in the planning.
- The operation of the fan club should yield a profit, which is not informed to me, and I do not receive fees for the operation.
- From the entertainment agency to which I belonged before, I did not receive fees for the operation of the fan club at all. According to the entertainment agency, after deducting operation costs, little profit is yielded. So the agency told me that it did not distribute the profit. However, a considerable number of fans were registered in the club. So I felt that it is strange that its operation yields no profit even after management and operation costs are deducted from the proceeds.

B. Viewpoints from the Antimonopoly Act[59]

If an entertainment agency whose bargaining position is found to be superior to a performer causes a disadvantage to the performer unfairly in light of normal business practices because of the performer's fees going significantly low through the agency's committing the following acts by using its position, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

(i) An act of unilaterally setting significantly low fees without giving a full explanation to and sufficiently consulting with the performer upon entering into or renewing the contract

(ii) An act of paying fees to a performer after deducting expenses from the amount of a contract with a business connection although it is not specified in the contract or the agency did not give a full explanation for to it or sufficiently consult with the performer about it upon the execution of the contract

(iii) An act of not paying to a performer the following fees to be paid to the performer according to the performer's rights although it is not specified in the contract or the agency did not give a full explanation for it to or sufficiently consult with the performer about it upon the execution of the contract

i. A secondary use fee for a demonstration

ii. Profits gained from the sale of goods and the operation of SNS or the fan club which use the degree of name recognition of a performer

iii. Of money paid by record companies to entertainment agencies, such as contract money, considerations for tying down performers according to an obligation under exclusive contract and those for giving demonstrations

(2) Compulsion of job

A. Actual conditions

A performer and an entertainment agency are independent operators, and are not in employment relationship. So an entertainment agency is not in a position to direct or order a performer. Generally, an entertainment agency makes a proposal to or persuades a performer but does not force a performer into something. A performer may refuse a demonstration proposed by the entertainment agency if the demonstration is against his/her will[60].

In the hearing survey of performers, as shown in Figure 60, some of the performers answered that the entertainment agency told the performer the details of and fees for a job when they turned out and that the performer may designate an impossible job. Meanwhile, some of the performers answered that the performer is sometimes forced to do an undesirable job.

[59] There is a possibility that a "unilateral decision on fees" may be in violation of not only the Antimonopoly Act but also the Subcontract Act or the Act on Improvement of Transactions between Freelancers and Companies (see III, 1 above).

[60] FAQ about Talent Agency Business "Q: Does a talent agency sometimes force a personality to do a job?" (Japan Association of Music Enterprises)

Figure 60. Responses about whether or not a performer is forced to do a job, from performers

<Performers>

- The entertainment agency conveys the details of and fees for a job to me when they become clear.
- I may designate the details of an impossible job to the entertainment agency. So I understand that the agency makes a request for a job other than the impossible one to me.
- Since a plan which the entertainment agency to which I belong makes is ranked as a stage at which I gain experience, I am almost forced to participate in the plan although no appearance fee is paid to me. I told the agency that I wished to cancel it and to participate in another plan with a greater chance, but the agency does not agree with me.
- Although I do not so desire, I am sometimes forced to do a job in which I must expose my body excessively.
- A performer who works mainly in TV and shows is afraid that a next job will not come and is forced to undertake an undesirable job. In fact, a performer who belonged to the same agency was told by his/her manager that, if he/she did not do XX (a specific job), the manager would not have him/her appear in other jobs, and was forced to do jobs that he/she did not wish to do.

B. Viewpoints from the Antimonopoly Act

Generally, after an entertainment agency confirms in advance which job a performer wishes for or does not wish for, the agency carries out business activities according to the performer's wishes and presents a job requested to the performer to confirm whether the performer undertakes the job finally. However, for example, it seems that, as a performer at the training stage, there is such a case where, from the point of view of training which makes sure of the future and promotion, the entertainment agency encourages the performer to take on a job even though the performer does not desire the job. In that case, if the entertainment agency gives a full explanation to and sufficiently consults with the performer for and about the point of view of development of his/her ability for the future, it does not immediately come into question in the Antimonopoly Act[61]. In such a case where an entertainment agency in a superior position in bargaining power forces a performer to do a job although the performer refuses the job, it causes the effect of hindering transactions on a performer's own free initiative to the performer essentially in a position to choose a job as a sole proprietor.

For that reason, for example, if an entertainment agency whose bargaining position is found to be superior to a performer causes a disadvantage to the performer unfairly in light of normal business practices in such a way as forcing the performer to do a job by using the agency's position[62], although the performer refuses the job, resulting in shaping his/her direction in a certain form to prevent a request for a demonstration in his/her desirable direction from coming to him/her, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

[61] There is a possibility that a "compulsion of a job" may be in violation of the Subcontract Act or Act on Improvement of Transactions between Freelancers and Companies (see III, 1 above).

[62] If an entertainment agency's committing an act of lowering the value of a performer, for the reason that the performer refuses a job, to retaliate against the performer or make an example of the performer to other performers belonging to the agency and to make it difficult for the performer or those other performers to refuse a job afterward and to force the performer and others to do an undesirable job causes disadvantage to the performer unfairly in light of normal business practices, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

7. Acts of impairing transparency of contracts

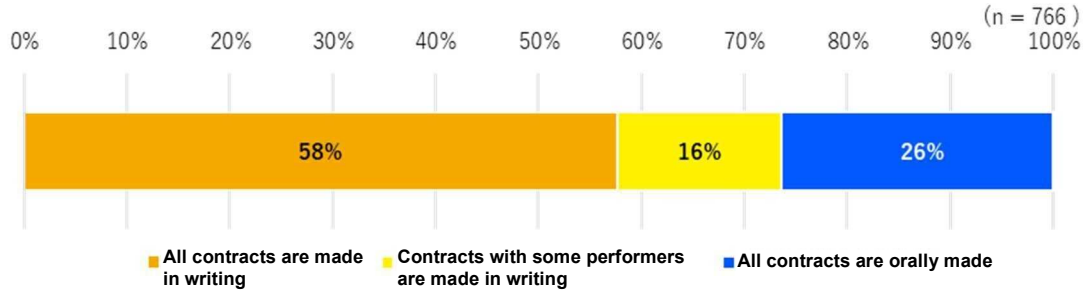
(1) Not making a contract in writing or not giving a full explanation for the provisions of a contract

A. Actual conditions

(a) Whether or not a contract is made

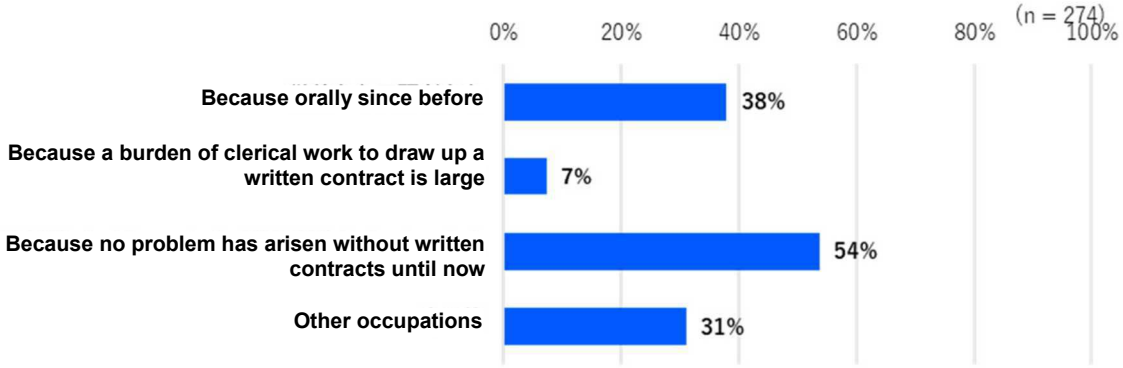
In the questionnaire survey of entertainment agencies, as shown in Figure 61, regarding the state of entering into a contract with a performer belonging to the agency in writing, about 60 percent of the agencies answered that they make all contracts with performers “in writing,” and about 30 percent of the agencies answered that they make all contracts with performers “orally.” In the questionnaire survey, as shown in Figure 62, regarding the reason for not making a contract in writing, about 50 percent of entertainment agencies answered that it is because no problem has arisen without written contracts until now. It was the most common answer. In addition, in the hearing survey of entertainment agencies, as shown in Figure 63, it was supposed that there was a case where a contract was not entered into in writing because of a performer’s response, in such a case where the agency wishes to make a contract in writing, but a performer does not sign the contract.

Figure 61. Whether or not a contract is entered into in writing



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 62. Reasons when all contracts are not made in writing (multiple answers allowed)[63]



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 63. Responses from entertainment agencies that sometimes do not enter into a written contract

<Entertainment agencies>

- There exists no written contract between our agency and a performer. We have carried out the same operation since before. Firstly, we do not have any idea of what are rules to be confirmed in particular in a "written contract."
- Actually, we do not exchange a written contract. We have a fiduciary relation with a performer based on a "tacit understanding," and no problem has arisen practically. However, recently, we make it a rule to exchange a memorandum for an explanation on entry into our agency with a performer.
- Our agency wishes to exchange a contract with all performers, but performers sometimes do not sign a contract given by our agency. So our agency cannot exchange a contract with some performers.
- We had no contract before but felt a contract necessary, considering the world, and drew up a contract a few years ago. Exceptionally, we have not made contracts with experienced performers who have belonged to us before we have drawn up a contract. It is difficult for our agency to tell a written contract to those performers now.
- We proposed to make a contract in writing, but a performer did not wish to make a contract in writing. So we have not exchanged a contract with the performer in writing.

(b) Explanation of provisions of a contract

In the questionnaire survey of entertainment agencies, we questioned the agencies about matters which they orally explain to a performer to newly enter the agencies before entry into them. As shown in Figure 64, 50 to 70 percent of the agencies answered that they explained matters which may come into question during the term of the contract[64], and the answers were many. Meanwhile, 20 to 40 percent of the agencies answered that they explained

[63] Main responses stated in the free space for "other cases" are as follows:
• It is because we are a private agency with only performers, and performers do all clerical work personally.
• It is because we proposed to make a contract in writing, which was refused by performers.

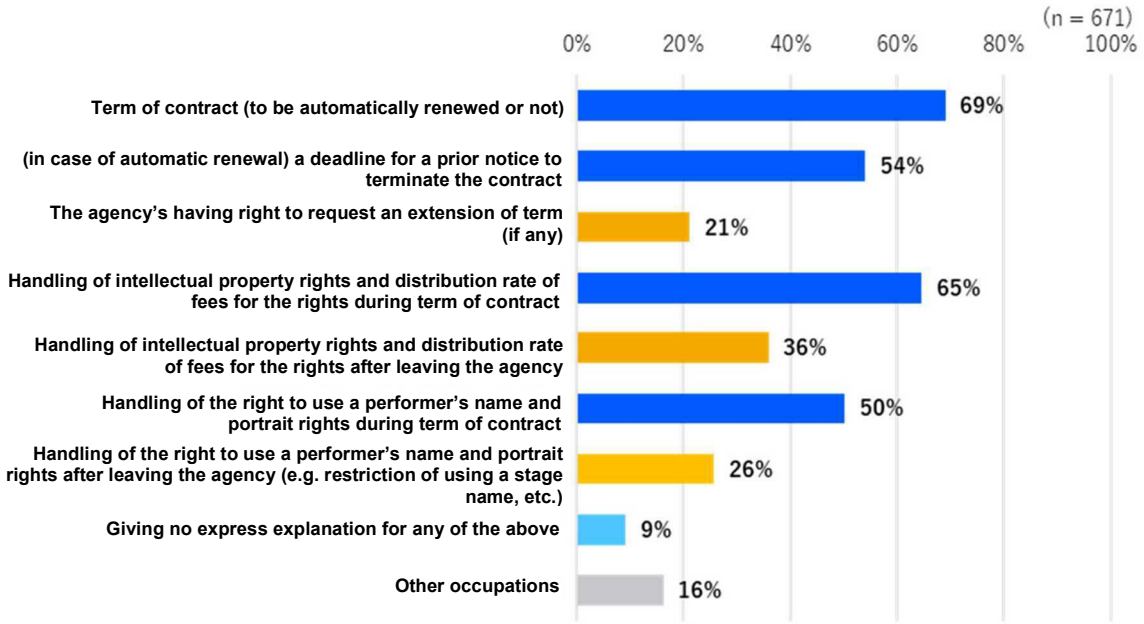
[64] "Term of the contract (to be automatically renewed or not)," "whether or not a prior notice of the termination of the contract will be given," "handling of intellectual property rights during the term of the contract (e.g. transfer and belonging) and the distribution rate of fees for the rights," and "handling of the right to use a performer's name and portrait rights during the term of the contract"

matters which may come into question after leaving agencies[65], and the number of the answers was limited to relatively few. In addition, about 10 percent of the agencies answered that they do not give an express explanation of the provisions of the contract.

In addition, in the hearing survey of entertainment agencies, as shown in Figure 65, some of the agencies answered that they give a certain period in which a performer checks the provisions of a contract by giving a draft of the contract in advance when they enter into the contract with the performer.

Meanwhile, in the hearing survey of performers, as shown in Figure 66, some of the performers answered that, although the performer appealed for the necessity of a contract, a contract had not been drawn up for a long time and that they entered into a contract although they remained unclear about the provisions of the contract because of those provisions not being explained.

Figure 64. Items of an explanation for performers who newly enter agencies before entry into the agencies (multiple answers allowed)[66]



Source: Created by the JFTC based on the results of the questionnaire survey.

[65] "There being the right to request an extension of term," "handling of intellectual property rights after leaving the agency and the distribution rate of fees for the rights," and "handling of the right to use a performer's name and portrait rights after leaving the agency (e.g. restriction of using the stage name, etc.)"

[66] Main responses stated in the free space for "other cases" are as follows:

- Initially, we do not meet with such an occasion because we take no performer newly entering us.
- If we are asked by a performer when we check a contract, we will explain the matters so asked orally to the performer.

Figure 65. Responses about explanations at contracting, from entertainment agencies

<Entertainment agencies>

- We read a contract together with a performer upon entry into us. Specifically, we intensively explain fees and compensation for loss or damage.
- We give a careful explanation when we exchange a contract for the first time, but do not explain the distribution rate of secondary use fees for works after leaving us that is not contained in the contract.
- We give an explanation individually to a performer or jointly to performers and exchange a contract with each of them every year.
- Whenever we make a contract with a minor performer, we make a person who has parental authority (statutory agent) attend. Furthermore, we do not have the minor performer sign the contract then and there and limit the first-time meeting to an explanation of the provisions of the contract and have the performer take the draft of the contract home to check it. Some performers show a draft of a contract to their lawyer, and I think that it is natural for them to do so. We make it a rule for a performer to submit a contract signed by him/her after he/she sufficiently understands and is convinced of the contract.
- We give a draft of a contract in advance to a performer to enter us and request the performer to take the draft home once and sign it after checking it and return it to us. I think that persons who have parental authority of minor performers wish to check the provisions of the contract (several answers).

Figure 66. Responses about explanations at contracting, from performers

<Performers>

- When I made the first contract, I just received a brief explanation of the provisions of the contract. It is hard to say that I, being young then, understood those provisions sufficiently and signed the contract after I was convinced of the provisions. At the renewal, I just signed the contract as I was requested.
- There was not much time to understand the provisions of a contract. Firstly, I entered into the contract when I was young, and did not know the going fees. So I signed the contract without having questions.
- At an explanation given by the entertainment agency for the provisions of a contract, the agency vaguely said that a contract was like this. I did not know much about contracts and signed the contract as it was being carried away by the talk.
- Although I received a partial explanation of the contract, I signed the contract without reading it thoroughly enough. I especially wished to recognize in advance ownership of copyrights and restriction of activities after leaving the agency. I think that the entertainment agency should give a proper explanation for them upon entry into the agency.
- An entertainment agency will not give a detailed explanation for the words of a contract. It is the actual conditions that a performer signs a contract although he/she does not understand it enough.
- Since I did not make a contract, I appealed for the necessity of a written contract. However, the entertainment agency told me that we had better not to make a contract for the reason that there being no contract was proof of a fiduciary relation between us. Afterward, a contract became necessary in relation to a tax office. A contract which had not been made originally was falsified without my knowledge.
- Before contracting, the amount of fees were not presented to me. An ordinary company may present the amount of salary in advance, but it is not presented in the world of entertainment. A performer will learn the specific amount of fees for the first time after entry into an agency.

B. Viewpoints from the Antimonopoly Act

When an entertainment agency makes a contract with a performer who wishes to belong to the agency, the agency sometimes makes the contract orally without exchanging a written contract or sometimes does not give a full explanation for the provisions of the contract. Not exchanging a written contract itself does not immediately come into question in the Antimonopoly Act[67]. However, generally, it is conceivable that there are not a few cases where a performer has less experience, knowledge, and information and has weaker bargaining power compared with those which an entertainment agency has. For example, it is conceivable that a performer becomes liable to fall in such a situation where a performer enters into a contract although he/she does not understand the provisions of the contract because he/she is not conscious of important clauses which may become effective in the future (e.g. upon leaving the agency) or it is difficult for him/her to question the manager of an entertainment agency who is his/her senior[68].

For that reason, an entertainment agency's not exchanging a contract or its not giving a full explanation for the provisions of a contract will result in a performer's providing services in a situation where he/she does not have a clear understanding of those provisions. So that act may be the cause of inducing an act that constitutes abuse of superior bargaining position[69], in such a way as hindering transactions on a performer's own free initiative.

In addition, if, in making a contract with a performer, an entertainment agency does not give a full explanation or gives a false or exaggerated explanation for important matters, such as matters connected with payment and charging of money, matters which may hinder a performer's activities (including those after leaving the agency), and matters connected with belonging of various rights, thereby making the performer mistake the provisions of the contract for those of a significantly superior or advantageous contract to the actual one, and unfairly ask the performer who may deal with other entertainment agency to be contracted with itself, it comes into question in the Antimonopoly Act as deceptive customer inducement.

Furthermore, from the point of view of the competition policy of preventing a violation of the Antimonopoly Act, when an entertainment agency enters into or renews a contract with a performer (especially those in the young-age group), the agency should make a contract in writing[70] after it clarifies the provisions of the contract and should give a full explanation for important matters, including their purposes.

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[67] There is a possibility that a "not giving a full explanation for the provisions of a contract" and "not making a contract in writing" may be in violation of the Subcontract Act or the Act on Improvement of Transactions between Freelancers and Companies (see III, 1 above).

[68] It is conceivable that a performer especially in the young age group tends to make a contract although he/she does not understand the provisions of the contract perfectly.

[69] It is conceivable that, if an agency gives an insufficient explanation especially for the provisions of a contract which are found important, such as a period of being under exclusive contract, the right to request an extension of term, a non-competition obligation, ownership of rights, and fees, it is further liable to induce that act.

[70] In the Guidelines for Building of Proper Contractual Relations in Fields of Culture and Art (Summary of Consideration) made public as the result of consideration at the Review Meeting for Building of Proper Contractual Relations in Fields of Culture and Art by the Agency for Cultural Affairs, exclusive management contracts are not mentioned. However, entertainment agencies should consider useful matters in the Guidelines, such as pushing on with documenting of contracts and promotion of improvement of transactions.

(2) Clearly showing the details of a transaction of a demonstration to a performer

A. Actual conditions

In the hearing survey of performers, as shown in Figure 67, some of the performers answered that, because the performer was not informed in advance of the details of a transaction pertaining to a demonstration (e.g. the details of a job and its terms, such as fees), he/she was forced to do such a job which he/she had not expected or a job whose fee was low.

Figure 67. Responses about clear showing of details of transactions from performers

<Performers>

- If a request for an appearance comes, a manager will contact me, and I can check the details of a transaction in advance. However, basically, I have not known the amount of a fee until I receive a statement. I sometimes feel that fees are small although I have worked rather hard.
- The entertainment agency early informed me of the details of a broadcast program, but some performers are informed of nothing until immediately before a program. So I think that there may be cases where they may do a job which they are not expected.
- Since a condition of the contract is that the performer shall pay expenses for appearances such as the cost of costume, I need to keep down costs, including the cost of costume, within an appearance fee. So I wished to learn a rough appearance fee in advance. I requested the entertainment agency to which I belonged to inform a rough appearance fee in advance. Because agencies may often negotiate over the amount of a fee after an appearance according to customs in the entertainment industry, the agency was negative about prior negotiations with a business connection over money. So it was difficult for me to check the terms of a transaction in advance.

B. Viewpoints from the Antimonopoly Act

An entertainment agency sometimes has a performer do a job although the agency has not informed the performer of the details of a transaction pertaining to the performer. Not informing a performer of the details of a transaction does not immediately come into question in the Antimonopoly Act[71]. However, generally, it is conceivable that, through not being informed in advance of the details of a transaction, a performer who is in a position to choose a job as a sole proprietor becomes liable to fall into a situation where he/she cannot choose a job freely.

For that reason, an entertainment agency's not clarifying the details of a transaction which the agency may learn when the agency requests a performer to do a job will result in a performer's providing services although he/she has not gotten a clear piece of information about the details of the transaction. So the above conduct may be the cause of inducing an act which constitutes abuse of superior bargaining position in such a way as hindering transactions on a performer's own free initiative.

[71] There is a possibility that "not clearly showing the details of a transaction pertaining to a performer to the performer" may be in violation of the Subcontract Act or Act on Improvement of Transactions between Freelancers and Companies (see III, 1 above).

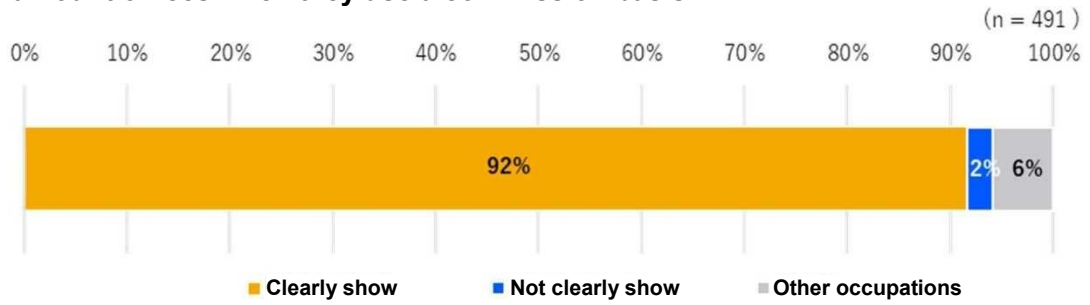
(3) Clearly showing statements pertaining to performers' fees

A. Actual conditions

In the questionnaire survey of entertainment agencies, as shown in Figure 68, about 92 percent of the agencies answered that they "clearly show a statement which is grounds for calculation of the amount of a performer's fees in the case of a commission basis," and about 2 percent of the agencies answered that they do "not clearly show" that statement. Almost all the entertainment agencies answered that they notify a performer of the amount of a contract with a business connection.

Meanwhile, in the hearing survey of performers, as shown in Figure 70, several performers answered that they are not informed of the amount of a contract between an entertainment agency and a broadcaster, etc., or a breakdown of costs which they are requested to pay and that they are worried whether profits are properly distributed actually.

Figure 68. Whether agencies clearly show a statement which is grounds for calculation of amount of fees when they use a commission basis[72]



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 69. State of clearly showing grounds for calculation of fees

<Entertainment agencies>

- We show sales by demonstration and the distribution rate or amounts between us and a performer in a payment statement. Accordingly, a performer can check the total of transactions by demonstration and to what extent payments are made from that total (several answers).
- We state a breakdown of total payments by demonstration in a payment statement. So a performer can check what amount of fees he/she gains from what demonstration (several answers).
- We cannot issue a statement by demonstration because it is too small, so we inform a performer of only total payments.
- We do not explain fees by demonstration to a performer. However, so that we can give an answer when we are asked, we manage those fees as data.

[72] Main responses stated in the free space for "other cases" are as follows:
• Responses vary depending on the performer and the project.
• If an agency is requested by a performer to clearly show it, the agency will do so.
• Our agency grasps the amounts of transactions because it is a private agency.

Figure 70. Responses about clear showing of grounds for calculation of fees, from performers

<Performers>

- I work on a commission basis. Since I cannot check contracts between business connections and the entertainment agency, whether profits are actually distributed as the distribution rate agreed on is unknown. I have heard that an entertainment agency makes others consider the total amount of transactions to be low by contracting its affiliated company to do part of its business to reduce the amount of payment for fees to a performer.
- Since a breakdown is not mentioned in a statement, actual individual sales are unknown. In addition, expenses are mentioned all together, so to what extent costs incurred in what item is like a “black box.”
- I receive commission-only remuneration. Only the total amount of fees to me is mentioned in a statement. It is uncertain. I sometimes think that it is strange that my fees are too low this month, although I worked considerably.
- The total amount of transactions which the entertainment agency received from business connections was not mentioned in a statement before. However, the total amount of transactions before deducting costs has come to be mentioned in a statement to a performer since a certain time. Previously, I could not grasp the amount of expenses. So I sometimes wondered that some amount was taken away unfairly from profits. If the total amount of a transaction with a broadcaster, etc., is mentioned in a statement, it allows a performer to check whether he/she receives a proper fee, and so it is sound.

B. Viewpoints from the Antimonopoly Act

When an entertainment agency pays a fee to a performer, the agency sometimes does not show a statement of the fee sufficiently. Not showing a statement of fees sufficiently to a performer does not immediately come into question in the Antimonopoly Act. However, if an entertainment agency shows only fees for a performer to receive to the performer and does not clarify the total of the amounts of contracts with broadcasters, etc., it will become difficult for the performer to check the appropriateness of the fees. So the above conduct may be the cause of inducing an act which constitutes abuse of superior bargaining position, such as a transaction which yields a remarkably low consideration.

V. Actual conditions of transactions between a broadcaster, etc., and an entertainment agency or performer and promotion of fair competition

1. Not making a contract in writing, not giving a full explanation for the provisions of a contract, and not accepting negotiations

(1) Actual conditions

We conducted the questionnaire survey of entertainment agencies regarding transactions with broadcasters, etc. As shown in Figure 71, as to whether a contract was made or not, a total of 78 percent of the agencies answered that they do “not make a contract at all” and that they do not make a contract except where either party requests to enter into a contract in writing. So it was supposed that a contract between a broadcaster, etc., and an entertainment agency is basically not made in writing.

In addition, regarding the state of clearly showing the conditions, such as fees, in advance, as shown in Figure 72, a total of 54 percent of the agencies answered that the conditions are “always not clearly shown in advance” and that there are some cases where the conditions are “not clearly shown in advance.” It was supposed that a job is ordered, although the conditions for an individual demonstration have not been set (or adjusted) between a broadcaster, etc., and an entertainment agency in advance.

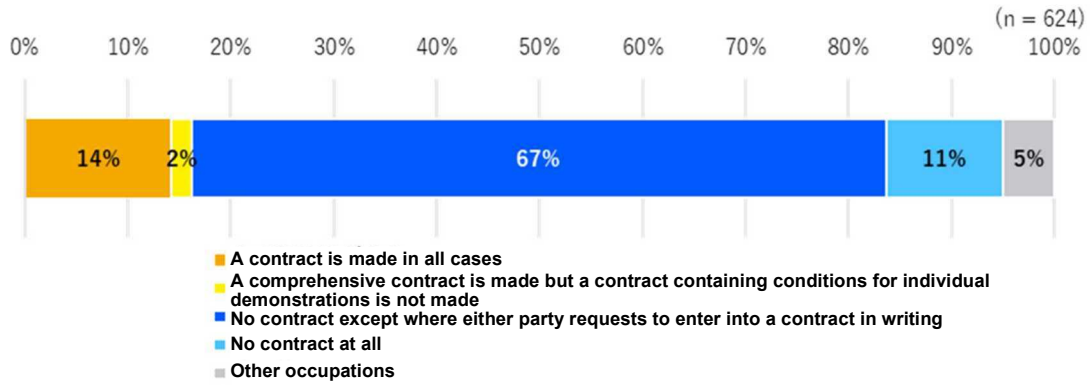
Furthermore, in said questionnaire survey, as shown in Figure 73, regarding the trend of the amounts of transactions in the most recent three years, it was supposed that fees for jobs tend to decrease or remain largely unchanged.

In addition, as a result of the hearing survey of entertainment agencies, as shown in Figure 74, regarding the state of clearly showing the terms of a transaction in advance from and negotiations with broadcasters, etc., the following answers were given:

i. the terms of a contract were not presented in advance;
ii. I am in a weak position, and jobs will not be offered if I express my opinion about the terms of a contract. I cannot negotiate (the broadcaster, etc., will not accept negotiations even if I request them);
iii. even where my schedule is secured for a long time, when a request for a job is made, I do a job on limited days and cannot do jobs which I could do originally on days other than those limited days; and
iv. I cannot receive compensation even if a job is canceled immediately before its start because of the business connection’s situation.

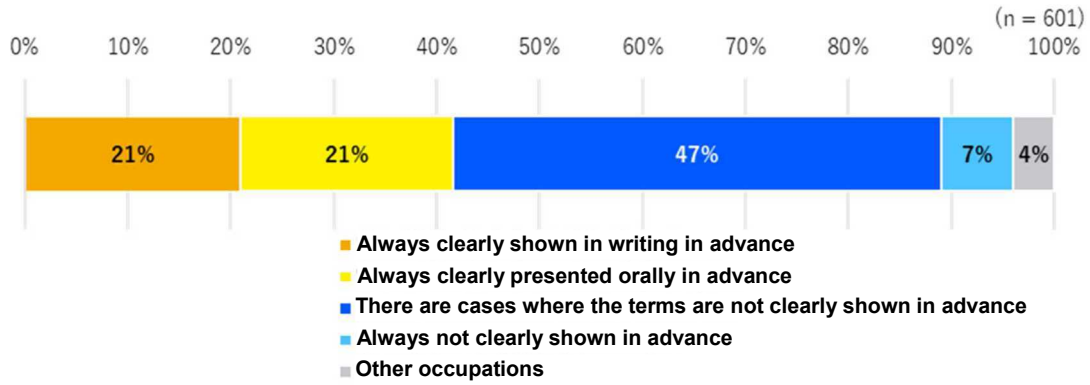
According to the hearing survey of broadcasters, etc., as shown in Figure 75, regarding presentation of the terms of a transaction and the method of setting the amount of fees, broadcasters, etc., they answered that they do not exchange a contract in many transactions except for some broadcasters, etc.

Figure 71. Whether or not a contract is made[73]



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 72. State of clearly showing conditions for individual demonstrations in advance[74]

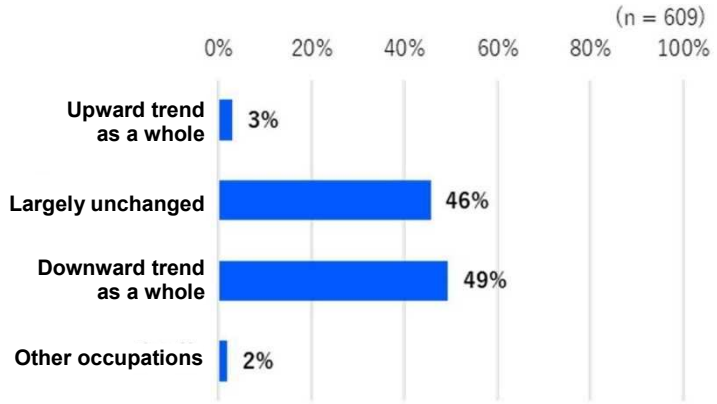


Source: Created by the JFTC based on the results of the questionnaire survey.

[73] Main responses stated in the free space for "other cases" are as follows:
- There are cases where a contract is made, but no contract is made in more cases.
- We make a contract with almost all broadcasters, etc., in writing, but there are cases where no contract is made.

[74] Main responses stated in the free space for "other cases" are as follows:
- There is a rough standard, but there are cases where we negotiate after filming finishes.
- Our agency makes it a rule to clearly show the terms of a transaction because those terms are often not shown clearly in advance.

Figure 73. Trend of amount of fees received from broadcasters, etc., in most recent 3 years[75]



Source: Created by the JFTC based on the results of the questionnaire survey.

Figure 74. Responses about transactions with broadcasters, etc., from entertainment agencies and trade associations

<Entertainment agencies[76]>

i. the terms of a contract were not presented in advance;

- We do not exchange a contract in 80 to 90 percent of transactions. A contract has often not been delivered and an amount has often not been set in advance since before in the business practices. An entertainment agency lies at the terminal of trade, and it is difficult for the agency to resist those practices.
- It is not rare for us to exchange a contract with a broadcaster one or two years after the appearance. We are very dissatisfied with that point. A broadcaster sets an appearance fee through a verbal promise in advance and pays the fee about one month after the appearance. Even when we request the broadcaster to amend the terms of a contract which are advantageous unilaterally to the broadcaster, the broadcaster sometimes turns a deaf ear to our request, saying that the contract has been already settled.
- There are many cases where the terms of a transaction are presented in a situation where we cannot refuse the transaction after we have been asked about a schedule and where those terms are presented after provision of services.
- A contract is hardly ever exchanged in the whole entertainment industry. The lack of clarity and risk of the terms of a transaction are often not clarified. For example, an appearance fee for appearing in a program is often not set in advance.
- I think that a demonstration should be given after fee conditions are set in advance and a contract is exchanged. The entertainment industry is in a situation where a talk about fees starts at last after filming, in industry practices peculiar to Japan.
- An appearance fee is sometimes set after appearing, for a performer who is not a main

[75] Main responses stated in the free space for “other cases” are as follows:

- We pay money conversely when a performer appears in a broadcast program.

[76] In addition to answers referred to in i through iv, the following answers were given.

- In many cases, we accept an appearance, expecting a standard for an appearance fee, and a specific amount becomes clear after a demonstration (several answers).
- I think that an appearance fee may rise for a popular performer, from supply-demand balance. If a low appearance fee is offered, the performer just should not appear.
- An appearance fee for a broadcast program is fixed, and firstly the fee is not to be negotiated. As a performer’s degree of name recognition rises, a role for which the performer can appear ascends, and his/her appearance fee will also rise.

actor or actress. Some appearance fee conveyed after appearing was about one-fifth of that which I expected.

- There is a case where it is not until after recording that an entertainment agency confirms the terms of a transaction. Not setting an appearance fee irrevocably makes it easier to negotiate over the fee later, in such a case where there is a contradiction between prior expectation and actual details.
- Fees are one of key terms to consider an appearance. It is strange that the fees have not been set in advance.

ii. I am in a weak position, and jobs will not be offered if I express my opinion about the terms of a contract. I cannot negotiate (the broadcaster, etc., will not accept negotiations even if I request them);

- An entertainment agency gives priority to securing appearances rather than terms. We hesitate to negotiate in advance because there is a possibility that a request for an appearance may be refused.
- In the present situation, an entertainment agency does just as a broadcaster tells it to. If I express my opinion, we are liable to lose transactions.
- Since an appearance fee is set later, it is difficult to negotiate over the fee although we wish to raise it.
- Appearance fees nowadays in connection with broadcasters, etc., are based on the past performance and are not negotiable in most cases. We cannot negotiate even in the case of tying down for a long time or when the details of a transaction are hard. So the business is hard.
- In a transaction with a broadcaster, the terms of a past transaction are referred to. So we have no choice but to undertake the transaction at an amount the broadcaster tells. When a performer is active especially as a freelancer, the performer is in a weak position, and it is difficult for the performer to demand a pay raise.
- A broadcaster, etc., rarely gives an opportunity to consult about the terms of a transaction and often shows a high-pressure attitude as if it does not mind the performer's not appearing if he/she says something troublesome. In addition, an appearance fee is often nothing or a small sum, for the reason that the appearance may function as promotion. I feel that this is a problem.
- A fee paid by a broadcaster is low. Specifically, even when we negotiate with some broadcaster, the broadcaster has never accepted a pay raise since several decades before until now, saying that the fee has already been set. It has been decided that a performer should pay costume costs and makeup costs out of his/her own pocket, and the fee is low. So there are cases where only necessary expenses are bigger than the fee, depending on the program.

iii. even where my schedule is secured for a long time, when a request for a job is made, I do a job on limited days and cannot do jobs which I could do originally on days other than those limited days; and

- There is a business practice called "keep" in which a performer is not to take on another job during the filming period, but there is a case where actually necessary days are only at the longest a few days. This has a great influence on a performer's income.
- Although an appearance is decided, its schedule is not set, and a performer cannot take on another job during the time. Even when a schedule is presented just before a job, if a performer refuses the job for reasons of another job, the performer will naturally not be offered a job next time. Either a performer or an entertainment agency has no choice but to keep time open, because it is afraid of not being offered a job.

iv. I cannot receive compensation even if a job is canceled immediately before its start because of the business connection's situation.

- A job is canceled because of a business connection's situation a great many times, in

such a case where an initially planned role is deleted because of the plan being changed. I feel that I have suffered a loss, thinking that I could take on another job originally. It may be good if a cancellation fee is set in a contract, but I have never heard of such a contract.
- The problems are that there is no room for negotiations, that binding hours are long and an appearance fee is not presented in advance, and that a cancellation arises just before a job depending on the progress of a program.

<Trade associations>
- A contract is made only when a performer acts as a master of ceremonies on a regular basis or plays the leading role in a drama, but in other cases, a written contract is not delivered basically. Some entertainment agencies consider it desirable to document the terms of a contract, and other agencies say that a written contract makes it difficult to negotiate. Their opinions vary.
- Even when we exchange a contract, a broadcaster tells us that it cannot amend any of the provisions of the contract at all. A broadcaster, etc., shows an attitude in which it "uses" performers other than those at the level of the leading role. Many performers wish to appear in a broadcast program even at an appearance fee of 0 yen and cannot do negotiations for higher fees.
- If I demand a raise in fees, I may become unable to get an appearance contract. A performer wishes to get actual results even through small profits and quick returns. Since competition is keen among entertainment agencies, it is difficult to demand an increase in fees. Some broadcasters give an opportunity to have a talk, but appearance fees tend to fall in connection with other broadcasters, etc.

Figure 75. Responses about transactions with entertainment agencies, from broadcasters, etc.

<Broadcasters, etc.>

i. Presentation of terms of transactions (whether or not a contract is made, and time at which an appearance fee is set)
- We follow an oral contract which we have used in long years of practices, but when we are requested by an entertainment agency, we will exchange a contract.
- We do not exchange a contract with all performers. Some performers have ten-odd regular programs. If we exchange individual contracts for all the programs, both we and the entertainment agency have to bear a heavy load of work. In addition, even when we exchange a contract, it is often after filming. It is because a period from a decision on an appearance to filming is short, and it is difficult to set an appearance fee during that period. When a performer has appeared at our company, the time to set an appearance fee is generally after broadcast, because the entertainment agency can recognize the going rate, as the case may be (several answers).
- In the case of a performer at the level of the leading role, we exchange a contract with his/her entertainment agency (or personally with the performer if he/she is a freelancer) but exchange no contract in the case of a single appearance. Firstly, it does not make sense to exchange a contract for an appearance in a program other than drama programs for which secondary use is not expected. When we exchange a contract, we will not do so after appearing. In addition, we in advance set an appearance fee before appearing.
- With a major entertainment agency with which we carry out many transactions, we have entered into a comprehensive contract with it in writing but enter into oral contracts for individual programs in most cases. No trouble has arisen until now. We do not feel the necessity of exchanging individual contracts. In addition, an appearance fee is basically set before recording, but if binding hours are prolonged, we sometimes change the time

to set the fee to after recording.

- We make no contract for appearing in a program with an entertainment agency. We convey the terms of appearing orally or by e-mail to an entertainment agency.
- We exchange a contract after filming in most cases. It is because, even when we in advance deliver a contract to an entertainment agency, which will be too late in returning the contract because other broadcasters, etc., do not draw up a contract and the entertainment agency may not be used to the contract.
- We exchange a contract with an entertainment agency for an individual program. Especially in the case of a drama, we exchange a contract with all performers, including supporting actors and actresses, before the start of filming. However, if it takes a long time to negotiate over an appearance fee or secondary use, we will sometimes exchange a contract containing only the provisions set before the start of filming and will exchange a memorandum containing additional provisions settled through the negotiations later after the start of filming.
- As a rule, we exchange a contract with all performers for each of individual programs, at the latest before the start of filming. Although it is practically a little hard, our company, being large in scale among broadcasters, can respond to it thanks to its scale.

ii. Method of setting the amount of a fee

- We use a system in which, if a performer's degree of contribution (demonstration history) to our company rises, his/her appearance fee will also rise. We give an opportunity to change a rank of the degree of contribution every year.
- Appearance fees vary depending on the time zone of a program, the length of the same, and the form of a demonstration (e.g. location or at a studio). Our company manages the state of a performer (e.g. past performance, appearance fees when he/she appeared in the past, and his/her degree of contribution to it) and often sets an appearance fee based on that state. In addition, an appearance fee may change according to negotiations with an entertainment agency. When a performer's performance is unknown, we will refer to the state of other performer at the same level.
- We set an appearance fee based on a performer's past performance at our company (an appearance fee when he/she appeared in the past) through negotiations. Since a performer works in an occupation heavily dependent on popularity, in terms of whether a higher degree of name recognition is being formed, a pay raise will be considered (several answers).

iii. Change of binding hours

- There are some cases where binding hours are different from expected ones depending on recording. For example, in the case of a variety show, binding hours for performers who appear at a studio are as expected, but those hours for performers who are on location on site will not be known until filming finishes.
- We specify filming dates in a contract. We sometimes present several dates proposed because of the location's situation but do not unnecessarily secure the schedule for a long time.

iv. Sudden cancellation of a transaction

- We rather often change the cast decided suddenly. In the case of a sudden change because of our situation, there is a case where we will pay a consideration for binding, but we basically compensate a performer for binding with using him/her on the next location, using relations with the performer until now.

(2) Viewpoints from the Antimonopoly Act

When a broadcaster, etc., makes a contract with an entertainment agency or performer for an individual order, the broadcaster, etc.'s making a contract orally without exchanging a written contract itself does not immediately come into question in the Antimonopoly Act[77].

However, a broadcaster, etc.'s not exchanging a contract in advance or not giving a full explanation for the provisions of a contract to an entertainment agency or performer will result in an entertainment agency's or a performer's providing services in a situation where it does not have a clear understanding of those provisions. So that conduct may be the cause of inducing an act which constitutes abuse of superior bargaining position, through such an act as hindering transactions on an entertainment agency's or a performer's own free initiative.

In addition, if a broadcaster, etc., whose bargaining position is found to be superior to an entertainment agency or performer causes a disadvantage to the entertainment agency or performer unfairly in light of normal business practices in such a way as setting a significantly low consideration unilaterally by using its bargaining position without consulting sufficiently with the entertainment agency or performer, even though the broadcaster, etc., presents the specific terms of the contract in advance, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

Furthermore, regarding documenting a contract failing to make progress in that way, for the purpose of showing a course of improving contract practices for artists who are providers of culture and arts, the Agency for Cultural Affairs announced the Guidelines for Building of Proper Contractual Relations in Fields of Culture and Art (Summary of Consideration) as the result of consideration at the Review Meeting for Building of Proper Contractual Relations in Fields of Culture and Art (announced on July 27, 2022 and revised on October 29, 2024[78]). Those Guidelines show Sample Forms and Explanation of Contracts for Performers' Appearances. From the point of view of the competition policy, a broadcaster, etc., should carry on with documentation of contracts by using those sample forms as reference materials.

[77] There is a possibility that a "not giving a full explanation for the provisions of a contract," "not making a contract in writing," and "not accepting negotiations" may be in violation of the Subcontract Act or Act on Improvement of Transactions between Freelancers and Companies (see III, 1 above).

[78] "We revise the Guidelines for Building of Proper Contractual Relations in Fields of Culture and Art (Summary of Consideration)." (announced on October 29, 2024)

VI. Actual conditions of transactions between a record company and an entertainment agency or performer and promotion of fair competition

1. Demonstration prohibition clause

(1) Actual conditions

As mentioned in II, 2, (3), B above, in an exclusive performer contract between a record company and an entertainment agency or performer, an obligation under exclusive contract is generally imposed on the performer during the term of the contract. Furthermore, there is a case where a demonstration prohibition clause is prescribed to prohibit the performer from giving a demonstration (e.g. master disc production and distribution) for recording at somewhere other than that record company for a certain period after the termination of the contract.

As a result of the hearing survey of record companies, as shown in Figure 76, some of the companies answered that the purpose of prescribing a demonstration prohibition clause is "to prevent a breach of an obligation under exclusive contract, such as recording at another company during the term of the contract." In addition, other companies answered that it is important for online music distribution to continue so that fans of a performer will not leave the performer and that there are advantages in not prescribing a demonstration prohibition clause. In addition, as a result of the hearing survey of record companies, as shown in Figure 77, regarding thinking on a period when a demonstration prohibition clause is prescribed, some of the companies answered that a period of six months is appropriate, given lead time from the start of production to a master disc's going out into the world.

Meanwhile, as a result of the hearing survey of entertainment agencies, as shown in Figure 78, regarding a demonstration prohibition clause, some of the agencies answered that a demonstration prohibition clause has now expanded in scope, in such a way as prohibiting streaming distribution, and is substantial restriction of performers' activities.

Figure 76. Reasons why a record company prescribes or does not prescribe a demonstration prohibition clause

<Record companies>

- We prescribe a demonstration prohibition clause, and its purport is to prevent free rides. A record company makes human and monetary investments in the performer during the term of an exclusive contract. If a record company to which a performer has transferred releases a musical piece immediately after the transfer, fame which the performer gained through investments made by our company will be exploited by that record company.
- We prescribe a demonstration prohibition clause. Since it generally takes adequate time to produce and record a musical piece, there is a case where a period of producing a musical piece is the term of a contract with our company. However, when a contract terminates amicably, we sometimes exempt a performer from a demonstration prohibition clause.
- We prescribe a demonstration prohibition clause. There was a case where, although a performer decided to transfer to another record company, the performer recorded expenses for musical piece production on our books before the transfer. This is the reason why we will counter such a case.
- We prescribe a demonstration prohibition clause. If a performer gives a demonstration for the purpose of recording immediately after he/she makes a contract with another record company, the environment prepared by our company will be used free of charge.
- We prescribe a demonstration prohibition clause. It is because when a performer transfers from a record company, we leave an interval so that to which the rights belong

can be known in an outward form. In addition, it is a provision which every record company makes. Record companies' having a common tacit rule creates a system in which a specific record company will not suffer a loss.

- We prescribe no demonstration prohibition clause. When the sale of packages was mainly carried out, a demonstration prohibition clause was effective for record companies so that the companies would not be deprived of profits. However, recently, since it is important to continue distributing a musical piece of a performer so that fans will not leave the performer, I think that there are advantages in not prescribing a demonstration prohibition clause.
- We prescribe no demonstration prohibition clause. In fact, there is a case where a performer who has transferred from us released the same musical piece as that which he/she recorded at our company from other company a few months after the termination of the contract, but our company said nothing about a demonstration after termination of the contract.

Figure 77. Grounds for setting demonstration prohibition period

<Record companies>

- I think that, given lead time from the start of production to a master disc's going out into the world, a period of six months is appropriate.
- Although a period of six months is set according to practices, the period is based on the actual conditions in which promotion of a new song is carried out for at least six months after the termination of the contract, since a performer is often active in a tour pertaining to the release of a new song for about six months, if he/she releases a new song immediately before the termination of the contract.
- It is not certain whether a period of six months after the termination of a contract is enough. Formerly, it normally took six months to make music, but recently, it is becoming possible to make music in a shorter period.

Figure 78. Responses about a demonstration prohibition clause, from entertainment agencies

<Entertainment agencies>

- Even when a performer is a "just a singer who does not write music or words for songs," it will normally take about six months for the record company to which the performer transfers to prepare a musical piece for the performer. The purport of a demonstration prohibition clause is to prevent a performer from transferring to another record company and from releasing a musical piece, if the performer has transferred to another record company. I think that this allows record companies to balance profits among them.

<Experts>

- An exclusive performer contract prohibits a performer from giving a "demonstration for recording" for six months. The scope of a "demonstration for recording" is expanding recently. In the actual conditions, a performer has become unable to do almost anything. Previously, a demonstration in a broadcast program or a live concert was not prohibited. With development of technology, record companies have come to interpret the clause as prohibiting all things which can be recorded. That scope has been being expanded by record companies although the companies have not had any talk. I feel that it is substantial restriction of activities and has a strong shade of meaning of harassment. Although a ruling that a non-competition obligation is against public order and morals has recently been made, in exclusive performer contracts, a demonstration prohibition clause is still often seen.

(2) Viewpoints from the Antimonopoly Act

A demonstration prohibition clause uniformly prohibits a performer's demonstration for recording for a certain period after the termination of a contract with a record company. It is conceivable that, as an act of hindering transactions on a performer's own free initiative, the degree of a disadvantage caused by that clause is considerably large.

Regarding a demonstration prohibition clause, as mentioned in (1) above, each of record companies stated its various purposes, including prevention of a breach of an obligation under exclusive contract and of free rides. However, it can be considered that the clause has an aspect that is not necessarily clear.

Of the above, regarding the purpose of the clause being to prevent free rides, similarly as mentioned in IV, 3 (Non-competition obligation) above, even though it is because a record company becomes unable to recover investments in a performer, since the record company cannot recover the investments by prohibiting a performer's demonstration for recording after the termination of the contract, it is conceivable that it is not allowable to prohibit a performer's demonstration for recording after the termination of the contract for the purpose of preventing free rides.

In addition, regarding the purpose of the clause being to prevent a breach of an obligation under exclusive contract, from the results of the Survey, it is conceivable that there are some cases where it is necessary to prevent a performer from making a recording for another record company during the term under exclusive contract. However, whether such a breach of an obligation under exclusive contract may be frequently committed is unknown, and such a means of claiming compensation for a loss may be considered as competition restrictive means. Based on the above, the necessity and reasonableness of a demonstration prohibition clause is doubtful.

Based on the above, for example, if a record company whose bargaining position is found to be superior over an entertainment agency or performer causes a disadvantage to the entertainment agency or performer unfairly in light of normal business practices by prescribing a demonstration prohibition clause in a contract with the entertainment agency or performer by using its bargaining position, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, if a record company's prescribing a demonstration prohibition clause in a contract with an entertainment agency or performer causes the risk of bringing about a situation where other record companies are excluded or their opportunities for transactions decrease through other record companies' becoming unable to secure performers or being unable to have a performer give a demonstration for recording, it comes into question in the Antimonopoly Act as an exclusively conditional transaction or binding conditional transaction.

2. Rerecording prohibition clause

(1) Actual conditions

There are cases where a contract between a record company and an entertainment agency or performer prescribes a clause to prohibit a performer from giving a demonstration for recording pertaining to a musical piece having been released by the record company (e.g. master disc production and distribution) for a certain period after the termination of the contract (rerecording prohibition clause).

As shown in Figure 79, regarding the reason for prescribing a rerecording prohibition clause, record companies gave such an answer that it is because covering the same musical piece by the record company to which a performer has transferred has an influence on sales of the same musical piece by the previous record company.

Moreover, in the hearing survey of record companies, as shown in Figure 81, regarding the time from which a period of a demonstration prohibition clause starts, some of the companies answered that, from the point of view of managing many musical pieces, they consider that the period starts after the termination of the contract.

Meanwhile, as a result of the hearing survey of entertainment agencies and trade associations, as shown in Figure 82, regarding a demonstration prohibition clause, some of them answered that a demonstration prohibition clause is a strong restriction and that the problem is that a prohibition period starts not from the release of a musical piece but from the termination of the contract.

Figure 79. Reasons for record companies' prescribing a rerecording prohibition clause

<Record companies>

- If a musical piece is rerecorded immediately after the sale of the piece, we will fall into a disadvantageous situation in business. So we prescribe the clause to avoid that risk. Actually, we carry out operation in a way that do not file a suit for rerecording but check the details of a fact.
- The purport of prescribing a rerecording prohibition clause is to protect our company from a loss which our company would suffer, because costs which our company has borne will become meaningless, if another record company covers a hit song.
- If we do not prescribe a rerecording prohibition clause, for example, when a performer releases a big hit song one year before he/she transfers from our company, where the performer rerecords the same song immediately after transfer, it will have a great influence on our company's sales. Sales of a CD peak immediately after its release and are declining afterward, but a hit musical piece continues to be viewed in distribution. So especially in distribution, profits protected through a rerecording prohibition clause are large.
- The purport of prescribing a rerecording prohibition clause is to recover production costs. We invest in publicizing and advertising musical pieces produced during the term of the contract and need to recover investments through master discs produced. If a musical piece is rerecorded and released by the record company to which the performer has transferred immediately after transfer, its sales will be dispersed, and we cannot recover investments fully. In addition, the record company to which the performer has transferred can get a free ride in connection with advertising expenses.
- A master disc is produced through group work by a performer and a record company. So once we have invested in the production, we wish to maximize the value of the master disc.
- The purpose of prescribing a rerecording prohibition clause is for a record company to recover the cost of producing a master disc. Fans wish to listen to a musical piece whose recording has been newly made despite being the same musical piece. So if a

period under a demonstration prohibition clause is short, our company's profits will be impaired.

Figure 80. Grounds for setting a period of rerecording prohibition

<Record companies>

- Regarding the period, I can only say that it is because the conditions have been always applied.
- We set a period out of practices and have no clear criteria for judgment. However, a record company does business in a way that recovers costs for unsalable songs from profits yielded from some hit songs, and so needs to recover the costs through hit songs for a long time.
- Seeing from the life cycle of musical pieces, a musical piece which is said to be a long hit sometimes continues to sell for several years. So we set the period for five years after the termination of the contract, because we consider that a rerecording prohibition period may include those several years.
- A rerecording prohibition period is set out of practice. However, it is conceivable that the former record company will release new songs within three years at shortest, that songs will be changed to some extent, and that the rerecording would have little influence on the former record company.
- Our company wishes to set the prohibition period for a longer time to recover investments. However, considering consistency with other record companies, we set the period on the same plane as those of other record companies.

Figure 81. Grounds for setting time from which rerecording prohibition period starts

<Record companies>

- The rerecording prohibition period's starting not after the release of goods but after the termination of a contract makes no special sense.
- From the purport of a rerecording prohibition clause, it is no problem that the rerecording prohibition period starts at the time of releasing a musical piece. However, since the burden of managing many musical pieces is heavy, we have decided that the prohibition period starts after the termination of the contract. If a contract is for each musical piece, there is a case where the prohibition period should start at the time of releasing the musical piece.
- I can understand the reason why the rerecording prohibition period should start at the time of releasing the same musical piece last, but cannot manage musical pieces in business. In addition, our company makes efforts not only to advertise a master disc but to increase the value of a performer.
- It is easier for our company to manage musical pieces when the prohibition period starts after the termination of that contract. In addition, I think that starting after that termination is easier for an entertainment agency to understand.

Figure 82. Responses about a rerecording prohibition clause from entertainment agencies and trade associations

<Entertainment agencies>

- I understand that the purport of a rerecording prohibition clause is to prevent the master disc of the previous record company from falling in value when the record company to which a performer has transferred rerecords and releases the musical piece. However, I think that the reason why the prohibition period starts not at the time of releasing a musical piece but at the termination of the contract is, in principle, that a record company can rerelease the musical piece repeatedly during the contract. However, in fact, the same record company does not rerelease a musical piece repeatedly. Therefore, I think that its original purport is to prevent another record company from poaching a performer suddenly.

<Trade associations>

- Although the reason for prohibition of a demonstration for recording the same musical piece is to prevent cannibalization[79], the starting time of a prohibition period being set not at the release of a musical piece but at the termination of the contract is a problem.
- A record company sets a rerecording prohibition period for three to five years. I think that this is strong restriction and that record companies must not set such a period absolutely. Since there is a case where a record company releases a CD a little before the termination of the contract, I can rather understand that the prohibition period starts on the release date, but the period is estimated from the termination date of the contract. The number of CDs sold peaks on the release date and then decreases. For example, it is desirable to restrict rerecording for such a period from the release of a new song to the time at which the song is ranked out of the sphere of the top 100 in the famous music charts, which usually takes less than six months. Namely, it cannot take more than three years.

<Experts>

- Regarding a rerecording prohibition clause, I understand, since a record company sometimes releases an album just before the termination of the exclusive contract, the reason why the company has trouble if another record company sells the same album directly after transfer. However, a rerecording prohibition period should start not at the termination of the contract but at the recording or sale of a record. Setting the starting time at the termination of that contract is the same as saying that, if the performer terminates the contract, the record company would harass him/her, for itself.

(2) Viewpoints from the Antimonopoly Act

If a record company prohibits a performer from giving a demonstration for recording pertaining to a musical piece released during the term of the contract to an extent not deviated from the purpose of recovering production costs for the musical piece, a rerecording prohibition clause does not immediately come into question in the Antimonopoly Act. However, if a record company prohibits demonstrations for recording uniformly in connection with musical pieces released during the long term of a contract[80], it hinders transactions on a performer's own free initiative after the termination of the exclusive contract, and the degree of a disadvantage caused by the clause is considerably large[81].

[79] A state in which similar products scramble for sales against each other. Competing.

[80] It is generally said that the term of a contract between a record company and an entertainment agency or performer is a couple of years. It is conceivable that "Long term" here is a case where that contract is renewed several times.

[81] A rerecording prohibition clause should be permitted to the extent that reasonable necessity and

In the hearing survey of record companies, regarding the reason for prescribing a rerecording prohibition clause, the companies answered that it is because, if the same musical piece is rerecorded after transfer from a record company, it has an influence on sales of the existing master disc and that, to protect their profits they prescribe the clause. Although that reason seems to be reasonable to some extent, according to the Survey, a rerecording prohibition clause does not cover a reasonable period to recover investments after the release of each musical piece. There are cases where a record company prohibits a performer uniformly from rerecording all musical pieces during the term of the contract for a considerably long period from the termination of the contract. In that case, the prohibition is excessive restriction compared with the necessity of prescribing a rerecording prohibition clause, and it is conceivable that there is a possibility that necessity and appropriateness of it are not recognized.

For that reason, for example, if a record company whose bargaining position is found to be superior over an entertainment agency or performer causes a disadvantage to the entertainment agency or performer unfairly in light of normal business practices by prescribing a rerecording prohibition clause in a contract with the entertainment agency or performer by using its bargaining position, it comes into question in the Antimonopoly Act as abuse of superior bargaining position.

In addition, if a record company's prescribing a rerecording prohibition clause in a contract with an entertainment agency or performer results in other record companies' becoming unable to use the performer's musical pieces until now and causes the risk of bringing about a situation where other record companies are excluded or their opportunities for transactions decrease, it comes into question in the Antimonopoly Act as an exclusively conditional transaction or binding conditional transaction.

appropriateness of means are recognized to achieve the purpose of recovering investments (whether the necessity, etc., are recognized is decided in consideration of a situation of whether a rerecording prohibition period is limited to a period needed to recover investments or whether consultations have been held fully and a possibility of being substituted with monetary compensation).

VII. Initiatives of the JFTC

As a result of the Survey, an act which will come into question in the Antimonopoly Act, if the act is found to have fair competition hindrance, has been verified between entertainment agencies and performers, such as an entertainment agency's blocking a performer from transferring or becoming independent. In addition, an act which may be the cause of inducing an act which constitutes abuse of superior bargaining position has been verified, such as a case where a contract is not made in writing. In addition, an act which will come into question in the Antimonopoly Act, if the act is found to have a fair competition hindrance, has been verified between a broadcaster etc., or record company and an entertainment agency or performer.

To prevent those acts which come into question in the Antimonopoly Act, the Japan Fair Trade Commission has announced the results of the Survey and has publicized the contents of this Report to the operators concerned, such as entertainment agencies, broadcasters, etc., record companies, and related trade associations, as widely as possible.

Moreover, the JFTC has requested the major trade associations[82] of entertainment agencies to publicize the contents of this Report to entertainment agencies which are their members, as widely as possible, and has called their attention especially to IV, 4, (4) above (Concerted restriction of transfer by several entertainment agencies or a trade association).

So that efforts to solve the problems shown in this Report will be carried forward, the Japan Fair Trade Commission continues closely watching progress on efforts by the companies concerned while it has necessary communications, in cooperation with the government agencies concerned, such as the Cabinet Secretariat. In addition, the JFTC will closely watch problems in the Antimonopoly Act for performers in music and broadcast programs, including acts which will come into question in the Antimonopoly Act as pointed out in this Report and will deal with violations of said Act strictly, fairly, and aptly.

After this, based on the Content Industry Revitalization Strategy (formulated and specified in the "Grand Design and Action Plan for a New Form of Capitalism 2024 Revised Version" decided by the Cabinet on June 21, 2024, we are to formulate and announce guidelines showing specific thinking in the Antimonopoly Act and the competition policy founded on the contents of this Report. Furthermore, we are to conduct an actual condition survey to realize an appropriate trade environment for creators at production sites for movies and cartoons.

[82] Japan Association of Music Enterprises, Federation of Music Producers Japan, Japan Entertainment Management Entrepreneurs Association, and Nippon Seiyu Jigyosha Kyogikai (JSYCC)