Guidelines on Ensuring Fair Transactions between Performers, etc. and Talent Agencies, Broadcasting Companies, etc., and Record Companies

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Introduction

Content such as anime, music, broadcast programs, movies, games, and manga are assets that Japan can be proud of, and with technological advances, the source of content competitiveness is shifting to individual creators. On the other hand, much content is not produced solely by individual creators, and collaboration between creators and related businesses is also expected to continue to be important for content creation and increasing the competitiveness of content.[1] In particular, as will be discussed later, it has been pointed out that the Japanese production system has developed in a unique way in Japan, and its characteristics must also be taken into consideration.

Based on this perspective, in order to ensure fair competition among those involved in the content industry and to create an environment in which individual creators in Japan can fully demonstrate their creativity, it is necessary to start promoting business relationships, etc. that encourage appropriate return of profits to creators and the sound activities, etc. of those involved in the content industry,

Based on the Content Industry Revitalization Strategy (formulated and specified in the Cabinet decision of June 21, 2024, "Grand Design and Action Plan for a New Form of Capitalism, 2024 Revised Edition"), the Japan Fair Trade Commission (JFTC) has conducted a "Fact-Finding Survey on Transactions, etc. between Performers in the Fields of Music, Broadcast Programs, etc. and Talent Agencies (Survey on Improving Fairness of Transactions to Support Creators)" (hereinafter referred to as "the fact-finding survey") regarding contracts, etc. between performers (artists, actors, entertainers, etc.) in music, broadcast programs, etc. and their respective talent agencies, and published a report on the Survey in December 2024.

Furthermore, in light of the fact that the above-mentioned Content Industry Revitalization Strategy calls for the creation of guidelines from the perspective of ensuring fairness of contracts, etc. between performers and talent agencies, and based on the contents of the fact-finding survey report, the Cabinet Secretariat and the Japan Fair Trade Commission have jointly established “Guidelines on Ensuring Fair Transactions between Performers, etc. and Talent Agencies, Broadcasting Companies, etc., and Record Companies” (hereinafter referred to as “these Guidelines”) which indicate specific approaches in order to promote business relationships, etc. that encourage appropriate return of profits to performers and sound activities, etc. by those involved in the content industry, and ensure compliance with the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947, hereinafter referred to as the “Anti-Monopoly Act”) and other laws.

[1] In Japan in particular, content has traditionally been created through collaboration between creators and various stakeholders and related businesses (such as talent agencies, broadcasting companies, and record companies in the fields of music and broadcast programs, etc.) who support creators, and this system continues to this day.

Part 1: General overview

1. Current situation and basic approach

The contents of contracts between talent agencies and performers[2] vary, and their legal nature also varies, including types such as business partnership contracts and business outsourcing contracts. These contracts are also referred to by terms such as exclusive performer contracts and exclusive management contracts (hereinafter referred to as "exclusive management contracts").[3] In a typical exclusive management contract, the talent agency provides the performer with services such as training through lessons and schedule management, as well as carrying out a wide range of production work including necessary promotional activities, and bears the costs and risks associated with these.[4] Meanwhile, the agency can continue operations by receiving compensation for performers' performances from broadcasting companies or program production companies (hereinafter referred to as "broadcasting companies, etc.") and paying a portion of that amount to the performers as remuneration. On the other hand, performers are obligated to do business exclusively with the talent agencies with which they have a contract, and to perform in venues provided by broadcasting companies, etc. that are business partners of the talent agency, and in return they receive remuneration from the talent agency as compensation for that.

It has been pointed out that the Japanese production system has developed uniquely in Japan, but historically, talent agencies have taken the risk of discovering and training performers, promoting them, and playing a role in areas such as increasing the value of publicity (the ability to attract customers of the performer's name, likeness, etc.) (hereinafter referred to as "training, etc."), and compared to the United States, there has been a tendency for cases where performers make their own investments to be limited.[5]

Therefore, in order to provide high-quality content, talent agencies have the role of continuously training performers for an appropriate period of time, taking into account the potential of each performer, and creating an environment in which they can be highly evaluated by viewers. It is important to note that if talent agencies are unable to recover the costs of training, etc. and secure an appropriate level of profit, the Japanese production system will not be able to provide high-level content through competition based on high-quality performances.

Furthermore, in order for such high-level performances to be achieved, the performers' abilities must be fully exhibited, and an appropriate business relationship where both parties are satisfied must be established between talent agencies and performers to ensure conditions where good performances can be realized.

When producing a broadcast program, broadcasting companies etc. plan the program and consider performers to appear based on the content. Talent agencies often enter into contracts with broadcasting companies, etc. to gain opportunities for their affiliated performers to perform on programs. In cases such as when a performer is not affiliated with a talent agency, the performer may enter into a contract directly with a broadcasting

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[2] In addition to the performers indicated as examples in Article 2, Paragraph 1, Item 4 of the Copyright Act (Act No. 48 of 1970), this broadly includes entertainers, comedians, voice actors, video distributors, models, presenters, cultural figures, etc.

[3] It is important to note that there are many different types of performers, some of whom are not affiliated with talent agencies and work as individuals, and some who belong to theater companies, orchestras, associations, etc.

[4] This is generally considered to create an environment in which performers can concentrate on their primary work as performers.

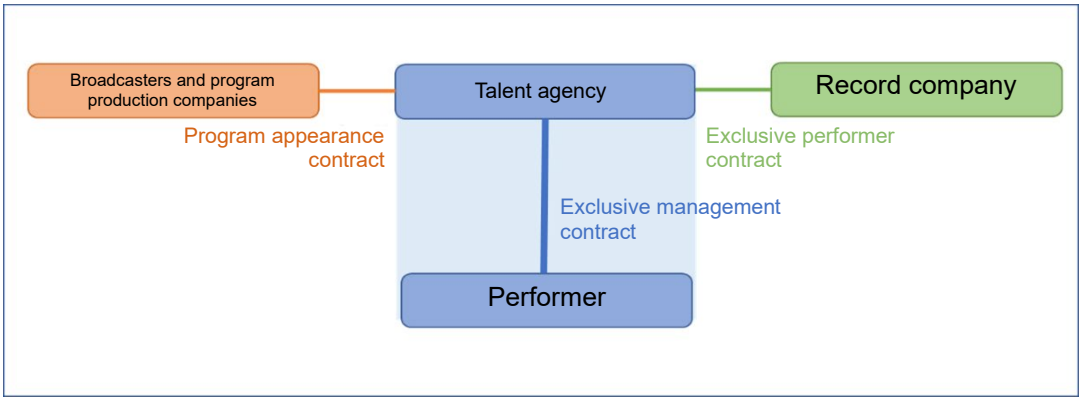
[5] In Japan, there are a variety of other business models for talent agencies, including the agent system that is mainstream in Europe, the United States, and other countries, where performers themselves enter into contracts with managers, lawyers, and other professionals, bear the costs, and retain all rights themselves.

company, etc. The broadcasting company, etc. then makes the necessary adjustments and concludes contracts, etc. with various businesses and parties involved in each process, such as filming and editing, and broadcasts the completed broadcast program. Furthermore, in order to reach a wider audience, broadcasting companies, etc. take steps such as program publicity through their own broadcasting media, etc. and in recent years have also begun simultaneous streaming, etc. of their programs over the Internet. In addition, after broadcasting, there is also promotion of secondary use of broadcast programs, such as selling them to domestic and overseas broadcasting companies, etc.

In the field of music, it is common for exclusive performer contracts to be concluded between a record company and a talent agency, or between a record company and a performer, or between these three parties. An exclusive performer contract stipulates an exclusive obligation such that during the contract period, the performer must provide performances (singing and playing) exclusively for CDs, DVDs, etc. sold by the affiliated record company, and the record company has the exclusive right to produce master recordings, etc. Under this exclusive performer contract, the record company produces the master recording, releases it on CD, etc. or through online music distribution, and pays remuneration to the performer or the talent agency to which the performer belongs, mainly in the form of royalties from the profits earned. The record company bears all the risks as the distributor and manufacturer, such as the costs of producing the master recording, manufacturing and logistics costs for CDs, etc., distribution costs, and advertising costs, etc. In addition, the record company provides training, etc. for new performers, either alone or in cooperation with a talent agency, in order to help them improve their skills as performers and build up a track record. Record companies have the role of carrying out various domestic and international promotions before and after the release, securing various tie-ups for the time of the release, and making various uses, etc. of songs after a certain period of time has passed since release.

In this way, performers collaborate with talent agencies, broadcasting companies, etc., record companies, etc., and by gaining an environment in which they can demonstrate their creativity, they create content that Japan can be proud of.

Figure 1: Contracts between transacting entities



*This is an example of a typical transaction. Actual business relationships, etc. vary widely.

In fact-finding surveys, the three types of transactions mentioned above are typically investigated :

i) transactions between talent agencies and performers;

ii) transactions between broadcasting companies and talent agencies/performers; and

iii) transactions between record companies and talent agencies/performers.

Conduct that may be problematic from the perspective of the Anti-Monopoly Act is checked for some of these transactions, and points such as the thinking in the above Act are summarized. For example, in transactions between talent agencies and performers, talent agencies may be in a superior position. In transactions between broadcasting companies, etc. and talent agencies/performers, broadcasting companies, etc. may be in a superior position. And in transactions between record companies and talent agencies/performers, record companies may be in a superior position. In such situations, the counterparties may have no choice but to accept abusive conduct based on such superior position.[6]

It goes without saying that this conduct needs to be corrected, but talent agencies, broadcasting companies, etc. and record companies need to take proactive measures to develop an environment in which performers can maximally demonstrate their creativity and abilities and receive appropriate return of profits.

2. Nature of these guidelines

Based on the fact-finding survey report, these Guidelines compile 17 action guidelines on actions that should be taken by the business entities that are parties to the transactions described in 1.i to 1.iii above, namely talent agencies, broadcasting companies, etc. or record companies. From this perspective, we have decided to introduce "examples of actions that can serve as a reference for ensuring fair transactions."[7] In addition, for each of the 17 action guidelines, actions that could be problematic from the perspective of the Anti-Monopoly Act are listed as "examples of potentially problematic actions" based on the fact-finding survey report.

From the perspective of creating an environment in which performers' creativity and abilities can be maximally demonstrated and profits are appropriately returned to them, talent agencies, etc. are expected to act in accordance with the 17 action guidelines set out in these Guidelines while seeking to foster a common understanding with performers.

In addition, if the performer is young,[8] [9]special consideration is required due to the young age of the individual, and it is particularly important to act in accordance with the action guidelines in these Guidelines.

In particular, if talent agencies, etc. engage in conduct that does not comply with the 17 actions to be taken, as outlined in these Guidelines, this could hinder fair competition and if there is a violation of the Anti-Monopoly Act, the Japan Fair Trade Commission will

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[6] In some cases, such as famous performers, the performers themselves may be in a stronger position than talent agencies, etc.

[7] The examples of actions discussed here are based on actual actions taken, etc. and are intended to serve as reference for ensuring fair transactions from the perspective of the Anti-Monopoly Act. It is presumed the examples will be used as reference after fully considering all circumstances.

[8] For example, there is likely a tendency for young people to sign contracts with talent agencies without fully understanding the contents of the contract.

[9] It is important to note that when a minor enters into a contract, the consent of a legal representative such as a parent is required, and that contracts without such consent can, in principle, be rescinded (Article 5 of the Civil Code).

take strict action in accordance with the Anti-Monopoly Act.[10]

These Guidelines summarize actions that may be problematic from the perspective of the Anti-Monopoly Act, but if a performer is a ”specified entrusted business operator” in the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (Act No. 25 of 2023, hereinafter referred to as “The Act on the Improvement of Transactions between Freelancers and Enterprises") or a “small and medium-sized entrusted business operator” in the Act on Preventing Delay in Payment to Small and Medium-Sized Entrusted Business Operators in Relation to Manufacturing Consignment (Act. No. 120 of 1956, hereinafter referred to as “The SME Transactions Act”),[11] then the actions listed in the table below may violate not only the Anti-Monopoly Act, but also the Act on the Improvement of Transactions between Freelancers and Enterprises or the SME Transactions Act. In such cases, each business operator must take this into consideration. For example, it should be noted that under the Act on the Improvement of Transactions between Freelancers and Enterprises, a business that outsources work is obligated to immediately clearly state the terms of the transaction, such as the amount of remuneration and the payment deadline (Article 3, Paragraph 1 of the Act on the Improvement of Transactions between Freelancers and Enterprises). As with the Anti-Monopoly Act, any violation of these laws will be dealt with strictly by the Japan Fair Trade Commission.

Figure 2: Main applicable provisions of the Act on the Improvement of Transactions between Freelancers and Enterprises and the SME Transactions Act

Actions that may violate the Act on the Improvement of Transactions between Freelancers and Enterprises or the SME Transactions Act	Main applicable provisions
Transactions between talent agencies and performers	
Requests for performance in money related to transfer and independence (See Section 2.3(1) below)	Requests to provide unfair economic gains (Article 5, Paragraph 2, Item 1 of the Act on the Improvement of Transactions between Freelancers and Enterprises; Article 5, Paragraph 2, Item 2 of the SME Transactions Act)
Unilateral decisions regarding remuneration (See Section 2.5(1) below)	Low-price setting (Article 5, Paragraph 1, Item 4 of the Act on the Improvement of Transactions between Freelancers and Enterprises: Article 5, Paragraph 1, Item 5 of the SME Transactions Act), and unilateral price determination without consultation (Article 5, Paragraph 2, Item 4 of the SME Transactions Act)

[10] If the "actions to be taken" are taken appropriately, the conduct in question is generally not expected to give rise to any issues under the Anti-Monopoly Act.

[11] The circumstances under which these apply will be determined based on the actual circumstances of each individual contract.

Actions that may violate the Act on the Improvement of Transactions between Freelancers and Enterprises or the SME Transactions Act	Main applicable provisions
Transactions between talent agencies and performers	
Coercion of work, etc. (See Section 2.5(2) below)	Requests to provide unfair economic gains (Article 5, Paragraph 2, Item 1 of the Act on the Improvement of Transactions between Freelancers and Enterprises; Article 5, Paragraph 2, Item 2 of the SME Transactions Act)
Failure to make a contract in writing or to fully explain the contents of the contract (see Section 2.6(1) below)	Obligation to clearly state transaction terms (Article 3 of the Act on the Improvement of Transactions between Freelancers and Enterprises), Obligation to clearly state order details, etc. (Article 4 of the SME Transactions Act)
Clear indication of the details of transactions relating to performances, etc. to performers (see Section 2.6(2) below)	Obligation to clearly state transaction terms (Article 3 of the Act on the Improvement of Transactions between Freelancers and Enterprises), Obligation to clearly state order details, etc. (Article 4 of the SME Transactions Act)
Transactions between broadcasting companies, etc. and talent agencies/performers	
Failure to make a contract in writing, not fully explaining the contents of the contract, and not accepting negotiations (see Section 3.1 below)	Obligation to clearly state transaction terms (Article 3 of the Act on the Improvement of Transactions between Freelancers and Enterprises), Obligation to clearly state order details, etc. (Article 4 of the SME Transactions Act)

Part 2: Actions to be taken by talent agencies

1. Contract period, etc.

(1) Setting the contract period for exclusive obligation

Actions to be taken by talent agencies

- ✓ If it is necessary to secure a certain period of exclusive obligation, the period shall be clearly stipulated in the contract in advance.
- ✓ The contract period that stipulates the exclusive obligation shall be decided by mutual agreement, taking into account the requests of the performer, at the time of contract conclusion (or renewal[12]), and if a performer requests a contract

[12] When renewing a contract too, if a performer requests a contract period shorter than that proposed by the talent agency, then regardless of the initial contract period, the period should be that necessary to recover costs for training, etc., within a reasonable range and to secure profits within a reasonable range, taking into overall consideration the

period shorter than that proposed by the talent agency, the talent agency shall provide sufficient explanation and consultation to the performer regarding the period needed by the talent agency to recover investment costs[13] for training, etc. (hereinafter referred to as “costs for training, etc.”) within a reasonable range, and to secure profits within a reasonable range.[14]

- ✓ If no contract period is specified, then normally the performer shall be allowed to terminate[15], at any time they wish, based on the fact that both parties can terminate the contract.
- ✓ At the stage of contract conclusion (or renewal), the content of the exclusive obligation and the contract period for which the exclusive obligation is set out shall be fully explained to and discussed with the performer.

Generally speaking, the exclusive obligation provides an incentive for talent agencies to provide training, etc. to performers, which can have a pro-competitive effect by, for example, improving the abilities of performers. However, if the binding period imposed by the exclusive obligation becomes too long, other talent agencies that could provide better training and opportunities to perform, etc. for the performer may not be able to provide such opportunities for training, etc., and performers may not be able to transfer, etc. at an appropriate time, such as when they find another talent agency that has the potential to provide them with better potential for activities. Therefore, from the perspective of ensuring that performers can choose, at the right time, talent agencies that can provide them with better training and opportunities to perform, etc., if a talent agency needs to secure a certain period of time for exclusive obligation, it should clearly stipulate that period in advance in the contract so that performers can anticipate the period for which they will be bound by the exclusive obligation at the time of signing the contract.

Furthermore, the contract period that stipulates the exclusive obligation should be determined by mutual agreement, taking into account the performer's requests, and if a performer requests a contract period shorter than that offered by the talent agency, then the contract period should be set to the period necessary to recover costs for training, etc. within a reasonable range and to secure profits within a reasonable range, [16] and the need to set such a contract period should be fully explained to and discussed with performers.

With regard to recovering the costs for training, etc. within a reasonable range and securing profits within a reasonable range, it must be noted that:

i) talent agencies may not always be able to recover the full amount of the costs for training, etc. that were actually incurred for a performer in cases such as when the performer does not achieve success, and

ii) a performer's ability and ability to attract customers are the result of the combined efforts and talent of the individual performer and the corporate efforts of the talent

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costs for training, etc. that the talent agency has already invested up to that point and the costs for training, etc. that it will need to invest in the future, as well as the distribution of profits between the two parties during the contract period and the outlook for future profit distribution, etc.

[13] Costs for training, etc. include not only expenses directly related to improving the skills necessary for performing activities, such as the cost of lessons for the performer, but also capital invested to increase the value of publicity (the ability to attract customers of the performer's name, likeness, etc.) of the performer such as advertising expenses to promote the performer, within a reasonable range.

[14] This also includes securing revenues related to the portion, of the publicity value that will bring future revenues, generated by training, etc. of performers, that is contributed by the talent agency.

[15] This refers to the termination of a contract between a talent agency and a performer.

[16] According to a questionnaire survey conducted as part of the fact-finding survey, approximately 80% of talent agencies that set contract periods set periods of two years or less.

agency, and therefore it may not always be possible to consider all of this to be the result of training, etc. by the talent agency.

Furthermore, a certain number[17] of talent agencies did not specify the contract period in the fact-finding survey. If the talent agency does not permit a performer to leave the agency when the performer wishes, even though there is no specified contract period, the performer will face difficulties that were not anticipated when the contract was signed in trying to transfer or become independent. Therefore, from the perspective of allowing performers to freely decide whether to transfer or become independent, talent agencies that do not set contract periods should allow performers to leave the agency if they wish.

In addition, the fact-finding survey revealed that among talent agencies that claim to have contract periods, almost all automatically renew exclusive contracts, and in some cases the renewal period is the same as the initial contract period. In the case of a performer, etc. who has renewed his/her contract (multiple times) and who is considered to have already recovered a reasonable range of costs for training, etc. and secured a reasonable range of profits through the previous contract period, this may unfairly restrict the performer if the contract renewal period is extended to a length that is as long as the initial contract period for the training stage, contrary to the performer's wishes. Therefore, in order to ensure that performers can choose, at the appropriate time, a talent agency that can provide them with better training and opportunities to perform, etc., the contract period after contract renewal should be as follows: If a performer requests a contract period shorter than that proposed by the talent agency, then regardless of the original contract period, the period should be determined to be the period necessary to recover costs for training, etc., within a reasonable range and to secure profits within a reasonable range, taking into consideration the costs for training, etc. that the talent agency has already invested up to that point and the costs for training, etc. that it will have to invest in the future, the status of securing profits during the contract period, and the outlook for securing profits in the future. Furthermore, the necessity of setting such a renewal period should be fully explained to and discussed with the performer, and after that the renewal period should be set by mutual agreement.

Also, a questionnaire survey conducted as part of the fact-finding survey revealed that approximately 30% of talent agencies do not explicitly explain to performers the "contract period (and whether or not there is automatic renewal)," suggesting that there are a certain number of talent agencies that do not provide sufficient explanation. Generally, when a performer enters into a contract with a talent agency that includes an exclusive obligation, the contract period is considered to be an important matter. Therefore, at the contract signing stage (or contract renewal stage), the talent agency should fully explain to the performer the content of the exclusive obligation and the contract period, and discuss the matter with the performer.

Examples of actions that can serve as a reference for ensuring fair transactions

[17] According to a questionnaire survey conducted as part of the fact-finding survey, approximately 40% of talent agencies stated that they "do not have a contract period."

(a) If a performer does not request a long-term contract, the contract period is short, including for new performers.

(b) There is no contract period stipulated in the contract, and if a performer wishes to terminate the relationship, he or she may do so at any time.

(c) The contract period after contract renewal is shorter than the original contract period.

(d) When explaining the contents of a contract to a minor performer, the performer's legal guardian (legal representative) is always present. Furthermore, the performer is not asked to sign on the spot; instead, the first session is limited to explaining the contents of the contract, including the contract period, and the performer is asked to take the draft contract home and review it.

Examples of potentially problematic conduct Applicable provisions under the Anti-Monopoly Act are indicated in parentheses

(a) Contracts are concluded using a uniform template that specifies a long-term contract period, without reaching an agreement based on full discussion, with all performers joining the agency, including not only young performers currently being trained but also making no distinction with performers having long experience in the industry who are already well-known. (Abuse of superior bargaining position (Article 2, Paragraph 9, Item 5 of the Anti-Monopoly Act), trading on exclusive terms or trading on restrictive terms (Unfair trade practices (Fair Trade Commission Public Notice No. 15 of 1982 , hereinafter referred to as "General Designation"), Paragraph 11 or 12)

(b) Although the contract does not specify a contract period, the talent agency does not allow the performer to leave the agency unless the talent agency agrees. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(c) The initial contract stipulates a fairly long period of time for the exclusive obligation, but the period of extension due to contract renewal is also mechanically set to the same period as in the initial contract, without sufficient discussion and agreement, regardless of the performer's previous period of affiliation. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(d) The contract term (or the lack of one) is not explained to performers. There is no opportunity to discuss the contents of the contract. (Deceptive customer inducement (General Designation, Paragraph 8))

(2) Right to request extension of period

Actions to be taken by talent agencies

- ✓ If the contract stipulates the right to request an extension of the contract period (the right to renew the contract upon request from the talent agency), then when it is deemed necessary to recover costs for training, etc. within a reasonable range, and secure profits within a reasonable range, the right may be exercised within a reasonable range, such as only once, and the necessity and scope of its exercise shall be fully explained to and discussed with the performer at the stage of contract signing (or renewal)

- ✓ When exercising the right to request an extension of period, the period shall be the period necessary to recover unrecovered costs for training, etc. within a reasonable range and to secure profits within a reasonable range, after considering alternative monetary compensation options and the reasons for this shall be fully explained to the performer

In the fact-finding survey, it was found that even when a performer requests to leave the talent agency (not to renew) at the time of expiration of the contract between the agency and the performer, there are cases in which the right to request an extension of the contract period is stipulated as a right that the talent agency can unilaterally renew the contract at its sole discretion.

Generally, if the right to request an extension of period is stipulated and exercised for the purpose of recovering unrecovered costs for training, etc. within a reasonable range and securing profits within a reasonable range, it can serve as an incentive to train and invest in performers, in combination with the above-mentioned exclusive obligation, and can have a pro-competitive effect, such as improving the performers' abilities. However, it also unilaterally extends and binds the exclusive management contract even after the contract period has expired and the performer has expressed his or her intention to leave, and the degree of disadvantage suffered by the performer is considerable.

In the fact-finding survey, responses to questions about the purpose of the right to request extension of period included, in addition to recovering costs for training, etc., "to deter performers from transferring or becoming independent" and "to prevent unscrupulous poaching practices." However, if there is no need to recover costs for training, etc., or to secure profits within a reasonable range, it is difficult to recognize purposes such as deterring performers from transferring or becoming independent, or preventing poaching, as reasonable purposes for stipulating and exercising the right to request extension of period.

Provisions regarding the right to request extension of period shall only be permitted in exceptional cases, when it is deemed necessary to recover unrecovered costs for training, etc. and to secure profits within a reasonable range, taking into consideration the possibility of alternative monetary compensation options, etc., and when such necessity is recognized, the right shall be exercised within a reasonable scope, such as only once, and the necessity of this, including the scope of its exercise, should be fully explained to and discussed with the performer at the stage of contract signing (or renewal).

Furthermore, when exercising the right to request extension of period, the period shall be set to the period necessary to recover unrecovered costs for training, etc. within a reasonable range and to secure profits within a reasonable range, after considering alternative monetary compensation options, and the reasons for this should be fully explained to the performers.

Also, as for the profits to be secured within a reasonable range, the portion of future profits contributed by the talent agency through the training, etc. of performers is expected to be extremely high in the case of well-known performers. However, it should be determined to be within a reasonable range by calculating the reasonably expected future profits and taking into consideration the talent agency's degree of contribution such as the labor, money, and corporate efforts expended, as well as the performer's achievements and years affiliated with the agency, etc.[18]

[18] For example, after a talent agency and a performer work together and publicity value has increased, the performer may remain with the talent agency for a considerable period of time and have already brought the talent agency profits equivalent to the agency's contribution. Or the performer's anticipated activities after transferring or going independent may not be expected to bring in the same high profits as before. Or, as in 4(1) below, if the talent agency

It should also be noted that these cases can usually be adequately addressed with financial compensation.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) Cases in which the right to request an extension of the contract period is exercised are assumed to be those in which the relationship between the talent agency and the performer is poor, and in such situations there is no benefit to either party in extending the contract period, so the right to request extension of period is not stipulated.

continues to hold various rights, etc. of the performer even after the performer leaves the agency, then the agency can secure profits from such rights, etc. even after the performer leaves the agency. Circumstances like these must also be taken into consideration when determining a reasonable range.

(b) If an agency's contract template does not provide for a right to request extension of period, and a performer joins who will be trained, etc. at the agency's expense, then the agency considers the training plan (costs for training, etc.) and anticipated profits and specifies these in the contract. Furthermore, when concluding a contract, the company provides sufficient explanation to the performers and discusses the matter with them.

(c) If a contract concluded with a performer provides for the right to request an extension of the contract period, the right may be exercised only once throughout the contract period.

(d) In the case where the right to request extension of period stipulated in the contract is actually exercised, the required period is determined by calculating the profit necessary to recover costs for training, etc. within a reasonable range, and to secure profit within a reasonable range, for the departing performer.

Examples of potentially problematic actions

(a) The right to request an extension of the contract period is uniformly provided for in the contracts with performers under management, regardless of the amount of the costs for training, etc. invested, or whether such expenses are recovered or whether profits are secured within a reasonable range. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(b) The right to request extension of period was exercised, even though recovery of costs for training, etc. and securing profit equivalent to the talent agency's contribution had already been achieved during the contract period. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(c) The contract stipulates the right to request an extension of the contract period, but the contract was concluded without any explanation at all to the performer about this right before the contract was concluded. (Deceptive customer inducement)

2. Provisions on non-competition obligations, etc.

Actions to be taken by talent agencies

- ✓ In principle, contracts shall not stipulate non-competition obligations, etc. (if existing contracts contain such stipulations, the clauses specifying non-competition obligations, etc. shall be deleted)
- ✓ If a performer has access to a trade secret that should be protected, the first step is to consider entering into a non-disclosure agreement as a less restrictive means of dealing with the trade secret.

In the fact-finding survey, it was found that there were cases where restrictions were imposed on the activities of performers who left the agency, such as not engaging in any entertainment activities for a certain period of time or indefinitely after the end of the contract, not providing services to other talent agencies, or working as a freelancer (not affiliated with a specific talent agency) (hereinafter, these restrictions on activities are collectively referred to as "non-competition obligations, etc.").

Non-competition obligations, etc., directly restrict the business activities (i.e. performance) of performers after they leave the agency, and as they hinder the performers' ability to trade and engage in activities based on their own free and independent judgment, the degree of disadvantage suffered by the performers is considerable.[19]

In addition, generally, if non-competition obligations, etc. are imposed to the extent that they are deemed reasonably necessary and the means appropriate to achieve the goal of preventing the leakage of trade secrets, etc., they can have a pro-competitive effect, such as eliminating concerns about the sharing of information equivalent to trade secrets, etc. with contractual partners and allowing the contractual partners' capabilities to be fully utilized. However, in the entertainment field, it is considered to be an exceptional case for performers who basically only perform and are not involved in the actual operation of talent agencies to have knowledge of trade secrets, etc. that should be protected, and given this, it is highly likely that the necessity or appropriateness of imposing such activity restrictions in the first place will not be recognized.

Therefore, as a general rule, talent agencies should not include non-competition obligations, etc. in their contracts. Additionally, clauses stipulating non-competition obligations, etc., should be deleted if they are stipulated in existing contracts.

Furthermore, even if a performer becomes aware of trade secrets, etc., there are other means of preventing the leakage of trade secrets, etc. That is, in addition to non-competition obligations, etc., it is also possible to enter into a confidentiality agreement, which can directly prohibit the leakage of trade secrets, etc., as a means which is less restricting of the performer's activities.

Therefore, even in exceptional cases where a performer has knowledge of a trade secret that should be protected, the first step should be to consider entering into a confidentiality agreement.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) Since affiliated performers do not have knowledge of trade secrets, no non-competition obligations are imposed.

(b) Although there is no provision for a non-competition obligation, a confidentiality obligation may be imposed when a performer learns of a trade secret that should be protected.

Examples of potentially problematic actions

(a) Non-competition obligations, etc. are imposed to deter performers from transferring to other companies or going independent. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(b) No non-competition obligation is imposed, but performers who leave are required to become freelancers for a certain period of time. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

[19] There is a court decision in which a provision that prohibited the conclusion of any contract with a third party for the purpose of performance, such as a management contract, after the expiration of the contract term of an exclusive management contract was ruled invalid as being contrary to public order and morals (Intellectual Property High Court Judgment of December 26, 2022, Reiwa 4 (Ne) No. 10059).

3. Action to hinder transfer or independence

(1) Request for performance in money related to transfer or independence

Actions to be taken by talent agencies

- ✓ If a request for performance in money may be made when a performer leaves, it is best to stipulate this in the contract in advance.
- ✓ In particular, when performance in money is requested to recover unrecovered costs for training, etc. within a reasonable range and to secure profits within a reasonable range, if the amount of money requested may be large, then the contract shall stipulate the circumstances. etc. under which performance in money is required, as well as the calculation method, etc., and provide sufficient explanation and consultation to performers, including the necessity of such payments, at the time of contract signing (and renewal).
- ✓ Requests for performance in money shall be limited to the extent deemed necessary and appropriate in order to recover unrecovered costs for training, etc. within a reasonable range and to secure profits within a reasonable range.
- ✓ If a request for performance in money is made when a performer leaves, the performer must be informed of the basis for calculating the requested amount, and at the same time, the necessity and appropriateness shall be fully explained to and discussed with the performer
- ✓ When requesting performance in money, a sunset clause shall be included, taking into account the performer's income after transferring or becoming independent,[20] and consideration shall also be given to discussion with the agency the performer has transferred to of performance in money within a reasonable scope.

In the fact-finding survey, there were cases where the agency demanded[21] performance in money from the performer when the performer left the agency.

In a questionnaire survey of talent agencies, almost no responses indicated that they had made demands for performance in money. However, in interviews with performers, some said that when they requested to leave talent agencies, they were asked to pay large amounts of money without any reasonable justification, suggesting that demands for performance in money at the time of leaving can sometimes be used to deter performers from transferring to another agency or becoming independent.

If the demand a talent agency makes for performance in money from a departing performer is within the necessary range to recover unrecovered costs for training, etc. required for the performer within a reasonable range and to secure profits within a reasonable range, it will enable the talent agency to secure training and investment, which will lead to incentives for training, etc. of performers, and that can have effects such as improving the abilities of performers. On the other hand, demanding performance in money that is disproportionately high compared to the objectives of recovering unrecovered costs for training, etc. within a reasonable range and securing profits within a reasonable range can have effects including hindering transactions

[20] A clause that obligates a performer to pay the talent agency to which the performer belonged an amount calculated by multiplying a gradually decreasing rate with income after the performer transfers or becomes independent.

[21] This is called a "transfer fee" etc. in cases such as when a performer transfers to another talent agency.

based on the free and independent judgment of performers, such as making performers hesitate to transfer or become independent.

Therefore, the request for performance in money should be made only to the extent[22] that it is deemed reasonably necessary and the means appropriate to achieve the goal.

Furthermore, if a talent agency does not fully disclose to a performer in advance that it will require performance in money when the performer leaves the agency, and then the talent agency demands performance in money when the performer wishes to leave, this could have the effect of hindering the performer's free and independent transfer and independence. Therefore, it is best for talent agencies to stipulate in advance in their contracts if they will demand performance in money when a performer leaves the agency. In particular, when performance in money is requested to recover unrecovered costs for training, etc. within a reasonable range and to secure profits within a reasonable range, if the amount of money requested may be large, then the approach (such as the circumstances under which performance in money is requested) and calculation method, etc. should be stipulated in advance in the contract when concluding or renewing, etc. the contract with the performer, and the necessity of such payments should be fully explained to and discussed with the performer.

When requesting performance in money from performers who actually leave the agency, the talent agency should indicate to the performers the basis for calculating the amount, fully explain its necessity and appropriateness, and discuss with the performers so they can confirm the appropriateness of the amount.

Furthermore, even if the demand is within a reasonable range to achieve the above-mentioned objectives, it is anticipated that a large lump sum payment would be a significant burden on individual performers. For this reason, talent agencies should consider incorporating a sunset clause, under which they pay the former talent agency a gradually decreasing percentage of income after the performer leaves the agency (but not exceeding the amount calculated above), or they should consider negotiating with the talent agency to which the performer transfers on behalf of the performer about performance in money within a reasonable range.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) No performance in money was requested when a performer left the agency.

(b) Discussion and billing were done after presenting the performer with the basis for calculating the unrecovered portion of costs for training, etc. and the revenue to be secured.

(c) After explaining to the performer the basis for calculating the unrecovered costs for training, etc. and the revenue to be secured, a sunset clause equivalent to that amount was presented and discussed.

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[22] For the considerations necessary for recovering costs for training, etc., see 1(1) and (2) above.
Furthermore, there is a court decision that ruled that if an exclusive management contract includes a provision that the performer will compensate the talent agency for losses at the end of the contract, it is valid to the extent necessary to compensate the talent agency for the contributions it made to the performer (Tokyo District Court Judgment of December 25, 2006, Heisei 17 (Wa) No. 19752 and Heisei 17 (Wa) No. 20118).

(d) The unrecovered portion of costs for training, etc. and the amount of revenue to be secured were high, so the calculation basis was presented to and discussed with the talent agency to which the performer transferred.

Examples of potentially problematic actions

(a) The contract with the performer did not stipulate a demand for performance in money, but when the performer decided to become independent, a demand was made for a large performance in money in order to hinder the performer from becoming independent. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(b) A demand for performance in money was made to a performer for whom the agency had already sufficiently recovered costs for training, etc. and secured profits within a reasonable range. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(2) Hindering performers who wish to transfer or become independent

Actions to be taken by talent agencies

- ✓ When a performer requests to transfer or become independent at the end of their contract, the agency shall respond appropriately by, for example, providing the new agency the performer transfer to with contact information, important points, and other information necessary for their activities after the transfer, so that the transfer or move to independence can proceed smoothly.
- ✓ No statements shall be made, and no actions shall be taken, that would hinder a performer from transferring or becoming independent.

In the fact-finding survey, performers responded that they had been subjected to the following practices by talent agencies:

i) Contrary to the explanation given by the talent agency when the performer joined the agency, the talent agency did not allow the performer to leave the agency at the end of the contract period.

ii) Threats were made to the effect that if the performer transfers to another talent agency or becomes independent, they will no longer be able to engage in any performing activities.

iii) It was contractually prohibited to negotiate transfer with other agencies during the contract period.

iv) Bad rumors were spread about a performer to the agency to which he or she was planning to transfer, the media, etc.

v) A performer has hindered from transferring or becoming independent together with his/her manager by prohibiting the manager from transferring to a competing talent agency, etc., even though the manager intends to leave together with the performer, or by making it a condition of the transfer or independence of the performer that the manager will not be involved with the performer, even if he/she leaves the agency, after the performer leaves.

All of these actions are likely intended to hinder performers who have requested to

leave their talent agencies from transferring or becoming independent, and of course any other actions that hinder performers from transferring or becoming independent are also not acceptable. However, when a performer requests to transfer or become independent at the end of their contract, talent agencies should respond appropriately to ensure that the transfer or shift to independence can proceed smoothly.

Furthermore, if the talent agency has a stronger position than the performer, it can likely hinder the activities of the performer who is trying to transfer or become independent, or the talent agency to which the performer is transferring. Therefore, talent agencies should not make any statements or take any actions that would hinder such transfers or independence.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) When a performer requests to transfer or become independent, the talent agency does things like communicating the necessary contact information, important points, and other information to the talent agency to which the performer is transferring, to ensure a smooth transfer or independence.

(b) If a performer requests to leave the agency, the agency may negotiate to have them stay by offering better terms, etc., but does not say or do anything that would affect the performer's future activities.

Examples of potentially problematic actions

(a) The above i) to v) or similar acts (Abuse of superior bargaining position, interference with transactions (General Designation, Paragraph 14))

(b) A performer requested to leave an agency, but although the agency granted them permission to do so, it delayed the actual leaving, saying for example that the procedures could not be completed yet. (Abuse of superior bargaining position, interference with transactions)

(c) When a performer requested to leave an agency, the agency threatened, for example, to spread bad rumors to outside parties if the performer left the agency. (Abuse of superior bargaining position, interference with transactions)

(3) Hindering performers who have transferred or become independent

Actions to be taken by talent agencies

- ✓ Agencies shall not say or do anything to hinder performer activities, so that performers who have transferred or become independent can continue to work smoothly after transferring or becoming independent.
- ✓ Regarding performers who have transferred or become independent, care shall be taken with words and actions so as not to tell broadcasting companies, etc. that they did not leave on good terms or that they had some trouble, which may lead broadcasting companies, etc. to consider not hiring them or make them think there is a possibility of trouble, which may lead to them not hiring them.

Actions to be taken by broadcasting companies, etc.

- ✓ Regarding performers who have transferred or become independent, companies shall hire, etc. performers at their own discretion, not refraining from hiring them out of consideration for the talent agency to which they previously belonged, e.g., not allowing them to appear in performances when performers from their previous agency are also performing, or not hiring them because they have changed their stage name or have a reputation for not leaving on good terms.

In the fact-finding survey, performers responded that the following acts had been committed against performers who transferred or became independent from talent agencies.

i) Broadcasting companies, etc. were pressured to not allow performers who have left an agency to appear on their programs by, for example, spreading bad rumors about them, such as that their departure was not amicable or that there was trouble at the time of their departure.

ii) Other talent agencies, performance venues, or related businesses, etc.[23] were pressured to discourage them from working with performers who left an agency.

iii) Using methods such as leaving information about a performer who has left a talent agency on the agency's website to mislead broadcasting companies, etc. into believing that the performer is still affiliated with the agency, thereby inducing others to approach the agency to request services from the performer, and then refusing, etc. to allow the performer to appear, thereby depriving the departed performer of business opportunities.

All of these actions prevent performers who have left the agency from engaging in work they were originally going to do, and are therefore not acceptable.

Furthermore, in interview surveys of broadcasting companies, etc., some responded that they would, for example, be reluctant to use a performer who has transferred if they heard that there was trouble between the performer and their former talent agency. This suggests that even if there is no pressure from the talent agency, broadcasting companies, etc. may consider a performer who has left a talent agency to be one who is in trouble with their previous talent agency, and for such reasons the performer may no longer be hired for use in broadcast programs, etc.

Therefore, to enable performers who have transferred or become independent to continue their activities smoothly after transferring or becoming independent, talent agencies should not engage in any words or actions that would hinder the activities of the transferred or independent performers as described in i) to iii) above. Furthermore, talent agencies should be careful about their words and actions so as not to, for example, tell broadcasting companies, etc. that the transfer was not on good terms or that there had been some trouble, which would cause the broadcasting companies to be hesitant to hire the performer or make them think there is a possibility of trouble, which would lead them to not hire the performer.

In addition, broadcasting companies, etc. should also hire, etc. performers who have transferred or become independent, at their own discretion, without giving consideration to the talent agency to which the performer previously belonged, such as not allowing

[23] Hair and makeup artist, stylist, broadcast writer, etc.

them to appear when other performers from the talent agency to which the performer previously belonged are also appearing, or not hiring a performer because the performer has a reputation for not leaving on good terms due to changing their stage name, etc.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) When a performer transfers to another agency or becomes independent, the agency ensures that the performer can continue to work smoothly after transferring or becoming independent through steps such as properly dealing with handover to the new talent agency and by contacting, etc. the broadcasting companies, etc. that are business partners.

Examples of potentially problematic actions

(a) Any of the above i) to iii) or similar acts (Interference with transactions)

(b) After a performer left the agency, the agency informed broadcasting companies, etc. or related businesses that the departure was not amicable and that there had been trouble. (Interference with transactions)

(4) Transfer restrictions, etc. by joint action or trade associations, etc.

Actions to be taken by talent agencies or trade associations

- ✓ Multiple talent agencies working jointly, or trade associations, shall not restrict the transfer of performers or refuse to sign contracts with performers who wish to transfer, but will instead each enter into contracts with performers at their own discretion.
- ✓ Transferring performers shall not be required to work as freelancers for a certain period of time, but will be allowed to make their own free choices.

When multiple talent agencies jointly or within a trade association restrict the transfer of performers, this has a strong anti-competitive effect, as it hinders performers from freely choosing the talent agency they wish to belong to and avoids or stops competition between talent agencies.

In the fact-finding survey, some talent agencies stated that they recognized that there was a common understanding in the industry that transfers between talent agencies are forbidden. Others stated that accepting transfers, including transfers after the expiration of an exclusive contract, would put them in a difficult position, and that they would make performers take a certain period of freelance work to avoid being seen as having poached. This suggests that there is a widespread aversion to performers transferring in general among the talent agencies interviewed in the fact-finding survey.[24]

Although the fact-finding survey did not reveal any cases in which multiple talent agencies acting jointly, or trade associations, explicitly restrict the transfer of performers, it goes without saying that talent agencies acting jointly, or trade associations, must not engage in actions such as restricting transfers, and each talent agency should enter into contracts with performers at its own discretion.

[24] On this point, some trade associations have pointed out that they pay close attention to compliance within their organizations and have made it known that transfer restrictions, etc. should not be imposed.

Furthermore, in interviews with talent agencies, several responded that when a performer transfers into their agency, they are required, even after the end of their contract, to go on a so-called freelance period where they work without being affiliated with the agency for a certain period, in order to prevent other talent agencies, etc. from perceiving them as having been poached. From the perspective of not hindering the free transfer of performers, talent agencies, etc. to which performers transfer should not require them to work as freelancers for a certain period of time, and the timing of the transfer should be left to the performers' free choice.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) The decision to persuade performers who wish to transfer from other talent agencies is made at the discretion of the talent agency.

(b) Regarding contracts with performers who have left another talent agency and become freelance, if they wish to join an agency, they do so at their own discretion.

Examples of potentially problematic actions

(a) At trade association meetings, etc., participants shared the understanding that they would not poach each other in the future by citing and criticizing the most recent story of a performer transfer. (Unfair restraint of trade (Article 2, Paragraph 6 of the Anti-Monopoly Act))

(b) Several talent agencies shared the understanding that they would not accept the transfer of a performer who had recently left an agency, criticizing him as ungrateful. (Concerted refusal to trade (General Designation, Paragraph 1))

4. Actions against performers' rights

(1) Licenses for various rights related to works

Actions to be taken by talent agencies

- ✓ When a request for use is made by a business partner, etc. such as a broadcasting company, etc., the use of various rights, etc. shall be granted unless there is a rational reason not to grant such permission.
- ✓ If permission is not granted to use various rights, etc., the reason for this shall be fully explained to the person who requested permission.

Under the Copyright Act, the rights inherent to performers are statutorily established, and these rights are said to belong to the performer. However, the ownership of various rights, etc. such as intellectual property rights (copyright, neighboring rights, etc.) and publicity rights, that a performer holds or acquires, may be determined in a contract with a talent agency. In the fact-finding survey, approximately 60% of respondents said that they had transferred or vested these various rights, etc. to talent agencies.[25] Furthermore, it was confirmed that even after a performer leaves a talent agency, the talent agency may continue to hold all the various rights, etc. relating to the works

[25] As noted in footnote 5 on page 2, there are a variety of business models for talent agencies, including those in which the performers themselves own the various rights.

created while the performer was affiliated with the agency. In such cases, the party seeking permission to use the rights (a broadcasting company, etc. or other business partner, a performer that has left an agency, or the talent agency, etc. the performer has transferred to) must obtain permission from the talent agency to which the performer belonged at the time the work was created in order to use the various rights, etc. related to the work.

Generally speaking, vesting the various rights, etc. arising from a performer's performance to the talent agency to which the performer belongs at the time of the performance is considered to have a certain degree of rationality, as it enables the talent agency to generate profit from the various rights, etc., and by controlling the performer's exposure, it encourages the talent agency to provide training, etc. of the performer and can serve as an incentive to improve the performer's abilities. However, in the fact-finding survey, some performers responded that they had requested use of the rights after leaving an agency, but that this was not granted, even though there was no valid reason.

From the perspective of allowing performers to continue working freely even after transferring or becoming independent, and enabling the utilization of various past rights, etc., the talent agency should allow the use of various rights, etc. if there is no rational reason for not granting permission to use various rights, etc.[26]

Furthermore, if a talent agency does not grant permission for the use of various rights, etc. for rational reasons, it should fully explain the reasons to the person requesting permission.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) When a request is made for permission to use the rights pertaining to a performer who has left an agency, permission is granted in all cases, except in cases where there is a reasonable ground such as the possibility of the rights being used in a defamatory manner.

(b) In principle, permission is granted for requests relating to the works of performers who have left an agency. As an exception, in cases where a third party requests permission to use past footage, such as when there is a risk that the use of past footage may damage the performer's image, this is explained to the performer, etc. and permission is not granted.

(c) It is confirmed with the performer, etc. who was left an agency each time whether it is possible to grant permission for works created while they were affiliated with the agency.

Examples of potentially problematic actions

(a) The company refused to grant permission for the use of works pertaining to performers

[26] Whether or not there is a rational reason is judged based on the specific circumstances of each case. For example, it may be judged that there is a rational reason for refusing to grant permission in specific cases, based on the talent agency's reasonable judgment, in order to gain fair and lasting recognition in the market. On the other hand, it may be judged that there is no rational reason if the request comes from a third party and there is no reason involving a risk of use in a defamatory manner for the person, or if use is not permitted at all without sufficient consultation, etc. regarding use fees, etc. within a reasonable range.

who had left the agency, without any particular rational reason. (Individual refusal to trade (General Designation, Paragraph 2))

(2) Restrictions on the use of stage names and group names

Actions to be taken by talent agencies

- ✓ If the rights to a stage name or group name (hereinafter referred to as "stage names, etc.") are to be vested in a talent agency, this shall be clearly stipulated in the contract in advance, and fully explained to and discussed with the performer.
- ✓ Unless there is a rational reason, there shall be no restrictions on the use of stage names, etc., and even if restrictions are imposed, the method of restriction shall be reasonable, including alternative means such as payment of a use fee within a reasonable range, and the reasons for the restriction shall be fully explained to and discussed with the performer.

In the fact-finding survey, it was confirmed that the rights to a performer's stage name, etc. may be vested with the talent agency to which the performer belonged even after the performer leaves the agency, and that talent agencies sometimes restrict the use of the previously used stage name, etc. for a performer who leaves the agency.

Vesting the rights to stage names, etc. to talent agencies during the contract period makes it easier for talent agencies to manage stage names, etc., and may have pro-competitive effects such as encouraging them to invest in improving the value of stage names, etc., such as their ability to attract customers. On the other hand, if a talent agency restricts the use of stage names, etc. of performers who leave the agency, then the performers will not be able to use the stage names, etc. that have the ability to attract customers after they leave the agency, which can lead to a decline in the performer's recognition, causing significant disruption to the performer's activities thereafter and resulting in serious disadvantages such as a decrease in revenue.

In the fact-finding survey, some performers responded that they had been restricted in the use of their stage names, etc. after leaving their agencies, even though this was not explicitly stated in the contract. However, if the use of stage names, etc. is restricted after leaving the agency without it being clear who has ownership of the rights to stage names, etc. this could discourage performers from transferring to other agencies or going independent. Therefore, if the rights to stage names, etc. are to be vested in the talent agency, this should be clearly stipulated in the contract in advance, and fully explained to and discussed with the performers.

Furthermore, from the perspective of allowing performers to continue to work freely using the same stage name, etc., even after transferring or becoming independent, there should be no restrictions on the use of stage names, etc. after leaving the agency, unless there is a rational reason[27]. Even if restrictions are imposed, the method of such restrictions should be reasonable, including alternative means such as payment of a use

[27] Whether there is a rational reason or not shall be determined based on the specific circumstances of each case, but it may be determined that there are no national reasons if the talent agency continues to use the group name or there are no circumstances in which the talent agency is unable to recover the expenses invested in improving the value of the stage name, etc., or to secure profits within a reasonable range, or if there is a need to recover investment costs or secure profits within a reasonable range, but no use is permitted without sufficient consultation regarding use fees, etc.

fee within a reasonable range, and the reasons for the restrictions should be fully explained to and discussed with the performer.

Furthermore, in the fact-finding survey, it was found that when a performer works using their real name (when they use their real name as their "stage name") or when they use a stage name, etc. that they used before joining the agency, the rights to that "stage name" are generally not regarded as belonging to the talent agency. However, if the stage name, etc. that a performer used before joining the talent agency were to belong to the talent agency (and its use after leaving the agency not be permitted) even though the talent agency has not made any particular investment in improving the value of the stage name, this could be considered to be abuse of superior bargaining position and would be a problem under the Anti-Monopoly Act.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) Performers may freely use the stage names, etc., that they used while affiliated with a talent agency without any restrictions even after leaving the agency.

(b) In cases where a stage name was registered as a trademark based on the wishes of a performer and the costs were borne by the talent agency, the talent agency asked the performer to pay the portion of the costs for the remaining period at the time the performer left the agency during the registration period, and based on mutual agreement, the trademark registrant was changed to the performer, allowing the performer to continue using the stage name.

Examples of potentially problematic actions

(a) Although the contract did not state anything about the handling of stage names, etc., the agency restricted the use of the stage name, etc. when the performer left the agency, claiming that the stage name, etc. belonged to the agency. (Individual refusal to trade, interference with transactions)

(b) Under the contract, the stage name of the individual performer belonged to the talent agency. However, despite the fact that the performer had been with the agency for a considerable period of time and there were no circumstances whereby the talent agency had not recovered costs for training, etc. or secured profits within a reasonable range to improve the value of the stage name, etc. the agency unilaterally restricted the use of the stage name, etc. without any consultation when the performer left the agency. (Individual refusal to trade, interference with transactions)

(c) The contract did not state how the rights to stage names, etc. would be handled after the performer left the agency, and no sufficient explanation was given, but the performer was asked to change his/her stage name, etc. after leaving the agency. (Deceptive customer inducement)

5. Acts concerning the treatment of performers

(1) Unilateral decisions regarding remuneration

Actions to be taken by talent agencies

- ✓ Upon signing the contract, upon renewal, or at regular intervals, sufficient consultations shall be held with the performer, and terms such as the amount of remuneration (including secondary use fees, distribution of profits, etc. from social media and fan club operations, merchandise sales, etc.) and commission rate, as well as the costs to be borne by the performer (expenses to be deducted from remuneration) should be clearly stated in the contract as far as possible.
- ✓ In the event that expenses not specified in the contract are to be charged to the performer or deducted from the performer's remuneration, such expenses shall be fully explained and only deducted after consultation and agreement with the performer.

In the fact-finding survey, some performers responded that talent agencies do not negotiate with performers regarding their remuneration, that expenses, etc. are deducted without prior explanation, and that they do not discuss with performers or distribute revenue from secondary use fees, social media and fan club operations, or merchandise sales, etc.

In order to ensure that profits are appropriately returned to performers, the terms of remuneration, etc. must be made as clear as possible and sufficient discussions must be held between talent agencies and performers.

More specifically, talent agencies should hold sufficient discussions with performers at the time of contract signing, contract renewal, or at appropriate intervals such as annually, and should specify in the contract as clearly as possible the amount of remuneration, commission rate, expenses to be borne by performers (expenses to be deducted from remuneration), and other terms.

Furthermore, when talent agencies charge performers for expenses not specified in the contract or deduct such expenses from the performers' remuneration, they should provide a full explanation of such expenses and only do so after consultation and agreement with the performers.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) The remuneration distribution ratio and payment method are basically negotiated with the performer every year, regardless of the contract period.

(b) Secondary use fees arising from the secondary use of various rights, etc. are paid to performers in the same distribution ratio as remuneration for performances.

(c) The contract fee paid by a record company, etc. is a compensation that binds the performer, and is therefore distributed to the performer after deducting expenses such as advertising fees, lesson fees, styling fees, etc.

(d) If expenses not specified in the contract are incurred, the talent agency holds sufficient discussions with the performer regarding such expenses and charges the performer or deducts such expenses from the performer's remuneration in the amount agreed upon by both parties.

Examples of potentially problematic actions

(a) When renewing a contract, the amount of remuneration is determined unilaterally without negotiating with the performer. (Abuse of superior bargaining position)

(b) By making remuneration a fixed system, the amount of compensation remains the same for a long period of time, and transition to a commission-based system is not permitted. (Abuse of superior bargaining position)

(c) The handling of secondary use fees for broadcast programs in which performers appear is not stipulated in the contract, and performers are not given any distribution of the secondary use fees equivalent to their compensation. (Abuse of superior bargaining position)

(d) Performers are forced to pay for lesson fees, travel expenses, and other expenses incurred before their debut without sufficient consultation. (Abuse of superior bargaining position)

(2) Forced work

Actions to be taken by talent agencies

- ✓ The specific details of the work requested by the business partner shall be presented to the performer in advance and their intentions shall be confirmed.
- ✓ If a business partner requests work that a performer may not be interested in, and the agency moves to accept the work for reasons such as training or promoting the performer for the future, then the necessity of the work, etc. shall be fully explained to the performer, and the work shall only be accepted, after consultation with the performer, if the performer consents to the work.
- ✓ If a performer refuses to perform specific work, the performer must not be retaliated against, etc. by refusing to perform any other business activities, including other work, without reasonable grounds, and the performer's free choice shall be respected.

In the fact-finding survey, some performers responded that "the content of the work and the remuneration are communicated as soon as they become known" and "they can specify work they don't want to do," but some also said that they are sometimes forced to do work they do not want to do.

Essentially, performers and talent agencies are independent businesses and are not in an employment relationship, so talent agencies do not give instructions or orders to performers. Generally, talent agencies may make suggestions or persuade performers, but they cannot force them to do anything. If it goes against the performer's wishes, the performer can refuse the work proposed by the talent agency.[28] .

In particular, performers in the training stage may not necessarily be aware of their own abilities and qualities, and talent agencies may encourage performers to take on work that they do not wish to do, with a view to training and promoting them for the future. It is also possible that there may be benefits for the performer, such as expanding the

[28] Individual tasks (performers' performances) are not specified in the exclusive management contract, and it is common for consultations, etc. to take place between the performer and the talent agency in the course of daily activities.

scope of their work through work that they do not wish to do. Therefore, it is not a problem for talent agencies to make significant proposals and persuade performers in order to have them perform work based on the agency's training and promotion strategies, etc. However, as mentioned above, performers are essentially independent business operators and are free to choose the work they do, so they must not be forced to do things.

Nevertheless, if talent agencies force performers to perform certain work, it will hinder the performers' freedom to choose their work, and as a result, the performers may be forced to go in a certain direction that goes against their wishes, which could result in the performers themselves suffering disadvantages, such as not receiving performance requests in the direction they would have liked. Particular care is needed, especially in the case of young people, as they are more likely to be forced to work due to the power dynamics with talent agencies. Therefore, to ensure that performers are able to work freely, the content of the work requested by a business partner should be presented to the performers in advance and their intentions confirmed.

For the reasons stated above, when a talent agency is about to accept a request from a business partner for work that the performer may not desire, it should fully explain to the performer the necessity of undertaking the work, etc., hold discussions with the performer, and only accept the work if the performer consents.

In the fact-finding survey, some performers responded that they were sometimes forced to do work they did not want to do, as managers told them things like they would not be allowed to take on other jobs unless they did certain tasks. If a performer refuses to perform a particular task, the talent agency should not retaliate by refusing to perform any other business activities with respect to that performer without reasonable grounds, and should respect the performer's free choice.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) Performers can specify the content of work they do not want.

(b) The details of work and the remuneration are communicated to performers as soon as they become known, and their intentions are confirmed.

(c) Even if work has been requested from a business partner as a result of the talent agency’s sales activities, etc., the agency respects the performer's choice if the performer refuses the request.

Examples of potentially problematic actions

(a) Performed were forced to do work they did not want to do, and prevented from receiving work requests in the direction they would have liked. (Abuse of superior bargaining position)

6. Actions that hinder contract transparency

(1) Not making contracts in writing and not fully explaining contract content

Actions to be taken by talent agencies
✓ Contract contents (content of work, method of calculating remuneration, etc.)

shall be clarified and the contract shall be in writing (*)

*The “Guidelines for the Establishment of Appropriate Contractual Relationships in the Cultural and Arts Sector (Summary of Review)” published as the result of review by the "Study Council for the Establishment of Appropriate Contractual Relationships in the Cultural and Arts Sector" of the Agency for Cultural Affairs does not mention exclusive management contracts, but talent agencies should consider using the guidelines as a reference in any areas where they can, such as promoting written contracts and fairer transactions.

- ✓ When concluding contracts with performers (especially young performers), important contract contents such as clauses regarding the various rights acquired by the performers and stage name ownership, clauses regarding remuneration, and clauses that may restrict the performers' activities (including after they leave the agency) shall be proactively and fully explained, including their purpose.
- ✓ When renewing a contract, the performer's intentions regarding important contract contents shall be fully confirmed.
- ✓ A certain period of time shall be provided between the presentation of a draft contract and contract agreement/conclusion, allowing performers to fully consider the contents of the contract while consulting with lawyers, etc. (Performers shall not be forced to conclude a contract on the spot.)
- ✓ Consideration shall be given to allowing performers (especially young performers) to consult with a third party such as a lawyer regarding the contents of the contract, etc.
- ✓ A sincere response shall be given at all times to questions and requests for consultation from performers regarding the contents of the contract.

Actions to be taken by performers

- ✓ Performers shall confirm or ask questions, etc. about any unclear points of the contract contents with the talent agency or a lawyer, etc., and make sure they fully understand the contents of the contract before signing or renewing it.

In the fact-finding survey, some performers responded that when talent agencies sign contracts with performers who wish to sign with them, the contracts are concluded verbally, not in writing, and that talent agencies do not fully explain the contents of the contract.

In general, performers are thought to have less experience, knowledge and information than talent agencies, and often have weaker negotiating power. For example, performers may not be aware of important clauses that may come into effect in the future (such as when they leave the agency), or they may find it difficult to ask questions to older talent agency managers, and this can easily lead to situations where they conclude contracts without fully understanding their contents. Young performers are thought to be particularly susceptible to this situation.

Therefore, when signing a contract, the talent agency should clarify the contents of the contract and put it in writing.[29] In addition, exclusive management contracts may

[29]*The “Guidelines for the Establishment of Appropriate Contractual Relationships in the Cultural and Arts Sector (Summary of Review)” published as the result of review by the "Study Council for the Establishment of Appropriate Contractual Relationships in the Cultural and Arts Sector" of the Agency for Cultural Affairs does not mention

contain clauses specific to the entertainment industry that are not necessarily common business practices, such as the right to request an extension of the contract period, and clauses regarding the ownership of various rights, etc. of performers and rights related to stage names. Therefore, talent agencies, in particular, should take the initiative to provide performers (especially young performers) with a full and easy-to-understand explanation of the purpose of important contract contents, including such clauses.[30]

Furthermore, when renewing a contract, the performer's wishes should be fully confirmed regarding important contract contents.

Furthermore, talent agencies should allow a certain period of time from the presentation of a draft contract until agreement and conclusion of the contract so that performers can fully consider the contents of the contract while consulting with lawyers, etc., and they should not force performers to conclude the contract on the spot.

In addition, regardless of whether the contract has been concluded or not, talent agencies should always respond sincerely to questions or requests for consultation from performers and others regarding the contents of the contract.

On the other hand, the fact-finding survey revealed that in some cases performers do not fully understand the contents of the contract. For example, they do not read the contract carefully.

Therefore, performers should also carefully review the contents of the contract, confirm, ask questions, etc. regarding any unclear points with talent agencies or lawyers, etc., to ensure they fully understand the contents of the contract before entering into or renewing it.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) When a contract is first concluded with a performer (when the performer joins the agency), the contract is read over with the performer, and particular emphasis is placed on explaining matters relating to remuneration and compensation for damages.

(b) When signing a contract with a minor performer, the minor’s legal guardian (legal representative) is always be present. Instead of having the performer sign on the spot, the first session is limited to explaining the contents of the contract and the performer is asked to take the draft contract home to review. The performer is asked to sign and submit the contract only after fully understanding and agreeing to the terms.

(c) When a contract is first concluded with a performer, a certain period of time is allowed before the contract is concluded so that the performer can consult with a third party such as a lawyer before signing the contract.

(d) Even after a contract has been concluded with a performer, the agency provides consultation if the performer has any questions regarding the contents of the contract.

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exclusive management contracts, but talent agencies should consider using the guidelines as a reference in any areas where they can, such as promoting written contracts and fairer transactions.

[30] In particular, the period of the exclusive contract, the right to request a period extension, the non-competition obligation, the ownership of rights and rights pertaining to stage names, and remuneration.

(e) Contracts with performers are exchanged in writing, even when contracts are renewed. When renewing a contract, the agency also explains and discusses with the performers the terms of the contract, including remuneration.

Examples of actions that may be problematic or may cause problems

(a) There is no contract with the performer. (Acts inducing abuse of superior bargaining position, deceptive customer inducement)

(b) The distribution ratio, etc. of secondary use fees for a work is not specified in the contract, and not explained to the performer. (Acts inducing abuse of superior bargaining position, deceptive customer inducement)

(c) A written contract is concluded, but the written wording is not explained in detail. (Acts inducing abuse of superior bargaining position, deceptive customer inducement)

(d) When the contract was renewed, the company continued to automatically renew it without any explanation or discussion of the contents of the contract. (Acts inducing abuse of superior bargaining position)

(e) When concluding a contract with a performer for the first time, it is difficult to explain the contents of the contract to the performer and ensure that they fully understand it, so the performer is only asked to confirm and sign the contract on the spot, and no copy of the contract is provided. (Acts inducing abuse of superior bargaining position)

(2) Disclosure of the details of transactions relating to performances, etc. to performers

Actions to be taken by talent agencies

- ✓ When trying to receive a request work from a business partner such as a broadcasting company, etc., talent agencies shall disclose details of the transaction content related to the performance, etc. that are knowable at that time so that performers can select the work at their own discretion.
- ✓ (For cases where the performer expresses his or her opposition to undertaking the pertinent work, see "5(2) Forced work.")

In the fact-finding survey, some performers reported that they had not been informed in advance of the details of the transactions related to their performances, etc. (such as the details of the work and the terms of remuneration, etc.).[31] As a result, they had no choice but to take on tasks that they had not anticipated, tasks with low remuneration, etc.

Generally speaking, when talent agencies are unable to inform performers of the details of the transaction in advance, performers, who are essentially in a position where they can choose their work as independent business owners, are likely to find themselves in a situation where they are unable to freely choose their work.

[31] Depending on the transaction situation between the talent agency and the performer, this may violate Article 4 of the SME Transactions Act (Clear indication of order content, etc.) or Article 3 of the Act on the Improvement of Transactions between Freelancers and Enterprises (Clear indication of transaction terms) (see Section 1.2 above).

Therefore, from the perspective of allowing performers to choose their work at their own discretion, talent agencies should, when trying to receive requests for work from business partners such as broadcasting companies, etc., disclose details of the transaction related to the performance, etc. that the talent agency can know at that time. (For cases where the performer expresses his or her opposition to undertaking the pertinent work, see "5(2) Forced work.")

Examples of actions that can serve as a reference for ensuring fair transactions

(a) When an agency tries to receive requests for work from broadcasting companies, the company notifies the performers of the contents, etc. of the broadcast program at an early stage so the performers can make a choice about the work.

Examples of actions that can lead to problems

(a) Although the company is aware of the content of broadcast programs, etc., it does not inform performers, even if they have questions, until the last minute because it would be bothersome. (Acts inducing abuse of superior bargaining position)

(b) Because they want young performers to gain a wide range of experience, the agency deliberately does not inform them of the details of the work until the last minute, so that they cannot refuse work. (Acts inducing abuse of superior bargaining position)

(3) Disclosure of details, etc. regarding performers' remuneration

Actions to be taken by talent agencies

- ✓ If performers are paid remuneration on a commission basis, the following items shall be clearly stated:
  - (1) the total contract amount for each task performed by the performer (each contract between the talent agency and the business partner);
  - (2) the amount or ratio of (1) to be distributed to the talent agency and the performer, respectively; and
  - (3) if there are any expenses, etc. to be deducted from the performer's remuneration in (2), the items and amounts

In the fact-finding survey, some performers responded that talent agencies do not provide sufficient details, etc. when paying them their remuneration. If a talent agency only tells a performer the amount of remuneration that the performer will receive, and does not disclose the total amount of the contract with the broadcasting company, etc., the amount distributed to the talent agency, or the expenses, etc. to be deducted from the remuneration amount, it may be difficult for the performer to confirm the appropriateness of the compensation.

Therefore, to enable performers to confirm the appropriateness of their remuneration, talent agencies should, when paying performers remuneration on a commission basis, clearly indicate the following items:[32]

[32] When a talent agency is commissioned by a broadcasting company, etc. to produce a program, it may use performers affiliated with its own agency to produce the program, and only the amount of remuneration to be paid to the performer for appearing on the program may be disclosed between the talent agency and the performer, without

(1) The total contract amount for each task of the performer (each contract between the talent agency and its business partner)
(2) The amount or ratio of (1) distributed to talent agencies and performers, respectively
(3) If there are any expenses, etc. to be deducted from the remuneration paid to the performer in (2), the items and amounts

Examples of actions that can serve as a reference for ensuring fair transactions

(a) Details of payments to performers indicate the name of each performance work, the date of the work, the transaction amount, and the ratio or amount of distribution to the performer. Therefore, the performer can confirm the total contract amount for each task and how much has been paid to the performer.

(b) Basically, the talent agency covers expenses from its share, but if there are any expenses that the performer should cover, those are listed in the remuneration details so that the performer can see any expenses, etc. that have been deducted from the remuneration.

Examples of actions that can lead to problems

(a) Only the total monthly payment amount is communicated to the performer. The breakdown of each individual task item and amount is not shown. (Acts inducing abuse of superior bargaining position)

(b) Only the amount of remuneration minus expenses is communicated to performers, without indicating the items or amounts of expenses. (Acts inducing abuse of superior bargaining position)

Part 3: Actions to be taken by broadcasting companies, etc.

1. Sufficient negotiation when requesting work, and clear indication of contract terms in writing, etc.

Actions to be taken by broadcasting companies, etc.

- ✓ When requesting work from talent agencies and performers, companies shall provide as specific contract terms as possible (e.g., amount of remuneration, payment terms, work content, binding period, etc.) in writing (*) (This includes emails, electronic files, etc.)

  *Regarding the documentation (putting into writing) of contracts, the Agency for Cultural Affairs has published the “Guidelines for the Establishment of Appropriate Contractual Relationships in the Cultural and Arts Sector (Summary of Review)” (on July 27, 2022, revised on October 29, 2024) as a result of review by the "Study Council for the Establishment of Appropriate Contractual Relationships in the Cultural and Arts Sector" with the aim of indicating a direction, etc. for improving contractual practices among artists, etc. in the cultural and artistic sectors. These guidelines provide "sample templates and explanations of contracts for performances

relying on a distribution ratio or other arrangement previously agreed upon between the talent agency and the performer. In such cases, the amount of the remuneration and the items and amounts of expenses to be deducted from the remuneration should be clearly stated.

by performers.” Broadcasting companies, etc. should use such templates as a reference when putting their contracts into writing.

- ✓ Rather than unilaterally presenting or changing contract terms (such as remuneration amount, payment terms, work content, and binding period) etc. for talent agencies and performers, companies shall confirm their opinions, provide sufficient explanations, and hold discussions with them by providing opportunities for negotiations, etc.

The fact-finding survey revealed that contracts between broadcasting companies, etc. and talent agencies/performers are often not in writing, and that regardless of whether they are in writing or not, work is often ordered unilaterally without the terms of each performance being decided (or coordinated) in advance between the broadcasting companies, etc. and talent agencies/performers.

If broadcasting companies, etc. do not exchange a contract in advance or do not fully explain the contents of the contract to talent agencies and performers, talent agencies and performers will have to provide services while contract contents are unclear, which could hinder the talent agencies and performers from engaging in transactions based on their free and independent judgment.[33] .

Therefore, from the perspective of allowing talent agencies and performers to choose their work at their own discretion, broadcasting companies, etc. should, when requesting work from talent agencies and performers, indicate contract terms as specifically as possible (such as the amount of remuneration and payment terms, the content of the work, and the binding period) in writing, etc. (including email or electronic file, etc.).

Regarding this lack of progress in putting contracts into writing, the Agency for Cultural Affairs has published the “Guidelines for the Establishment of Appropriate Contractual Relationships in the Cultural and Arts Sector (Summary of Review)” (on July 27, 2022, revised on October 29, 2024) as a result of review by the "Study Council for the Establishment of Appropriate Contractual Relationships in the Cultural and Arts Sector" with the aim of indicating a direction, etc. for improving contractual practices among artists, etc. in the cultural and artistic sectors. These guidelines provide "sample templates and explanations of contracts for performances by performers.” Broadcasting companies, etc. should use such templates as a reference when putting their contracts into writing.

Furthermore, in the fact-finding survey, some talent agencies and performers responded that they could not negotiate with broadcasting companies etc. because if they voiced their opinions on the contract terms, they would lose the work (even if they requested negotiations, the companies would not respond).

Therefore, from the perspective of achieving fair transactions through negotiations between broadcasting companies, etc. and talent agencies/performers, broadcasting companies, etc. should not unilaterally present contract terms, etc. to talent agencies/performers, but should instead provide opportunities for negotiations, etc. to confirm the opinions of talent agencies/performers, provide sufficient explanations, and hold discussions.

[33] It seems that in some cases talent agencies may feel like it is better not to sign a contract in advance, etc. as it makes it easier to negotiate contract terms after the fact, such as after recording.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) A contract is exchanged with the talent agency for each individual program. Especially in the case of dramas, performers including supporting actors (except extras [34] exchange a contract before filming begins.

(b) Performance fees are determined through negotiations with talent agencies based on factors such as the time slot of the program, the length of the program, the format of the performance, and the performer's track record (fees received from past performances).

(c) Performers who appear on broadcast programs on a regular basis are provided with regular opportunities for negotiations even if there is no request from the talent agency or performer. The opinions of the talent agency and performer are confirmed, and a decision is made on the amount of remuneration, etc. after sufficient explanation and discussion.

Examples of actions that may be problematic or may cause problems

(a) Leading performers exchange contracts with talent agencies, but non-leading performers, or even leading performers who appear in programs other than continuing programs, do not exchange contracts, and specific contract terms are not clearly specified in writing, etc. (Acts inducing abuse of superior bargaining position)

(b) Contracts are often exchanged after filming has finished. In some cases, contracts are exchanged after the program has aired. (Acts inducing abuse of superior bargaining position)

(c) There is no individual negotiation with talent agencies and performers about a flat-rate amount determined based on the amount of remuneration for program appearances in the past (prices are set internally based on the performer's rank). (Abuse of superior bargaining position)

Part 4: Actions that record companies should take

1. Stipulating clauses prohibiting recording of performances

Actions to be taken by record companies

- ✓ Companies shall confirm the purpose of establishing a performance recording prohibition clause that prohibits recording of performances for a certain period after the contract ends, and examine the necessity and appropriateness of contractual provisions prohibiting the recording of live performances, including whether or not to include such provisions. If such provisions are to be included, they shall be explained to and discussed with performers, etc. including their necessity and appropriateness.

[34] Even if the person is an extra, if the Act on the Improvement of Transactions between Freelancers and Enterprises is applicable, the broadcasting company, etc. is obligated to clearly state the terms of the transaction (Article 3 of the Act on the Improvement of Transactions between Freelancers and Enterprises), so separate attention is required on this point.

- ✓ Even if there is deemed to be a necessity, etc. for the purpose of establishing a performance recording prohibition clause, the scope and period of the prohibition shall be limited to the range necessary and reasonable for that purpose.

In the fact-finding survey, cases were evident where, in exclusive performer contracts between a record company and a talent agency/performer, performance recording prohibition clauses are stipulated to prohibit performances for recording[35] (for the purposes of master production, distribution, etc.) outside the record company by the performer for a certain period of time after the contract expires.

Record companies have cited the following as the purposes of including a performance recording prohibition clause: "to prevent free riding" on the personal and financial investment made during the exclusive period, and "to prevent recording for other record companies during the exclusive period" (preventing violations of the exclusive obligation). However, with regard to the purpose of preventing free riding, since it is not possible to recover the investment by prohibiting performers from performing for recording after the contract has expired, there is no reasonable justification for prohibiting performers from performing for recording after the contract has expired in order to prevent free riding, etc. on the personal and financial investment made during the exclusive period, and so it is not permissible. Furthermore, with regard to the purpose of preventing violations of the exclusive obligation, it is conceivable that there may be cases where it is necessary to prevent recording for other record companies during the exclusive period, taking into consideration the time, effort, and expense, etc. involved in legal proceedings to deal with such violations. However, in light of the fact that it is unclear whether such violations of the exclusive obligation occur frequently,[36] and the fact that, if there is a breach of the exclusive obligation, other less competitively restrictive means of resolving the matter such as monetary compensation could be considered (violation of contractual exclusive obligation constitutes a breach of contract), there are doubts as to whether a performance recording prohibition clause is necessary or appropriate.

In light of the above, and from the perspective of realizing the freedom of performers to engage in activities after the termination of exclusive performer contracts, record companies that include clauses prohibiting the recording of performances should once again confirm the purpose of including such clauses and examine the necessity and appropriateness of such clauses, including not only the decision to include such clauses in contracts but also the decision not to include them. If such clauses are to be included, they should fully explain and discuss with performers, etc., including their necessity and appropriateness.

Furthermore, in the fact-finding survey, some respondents stated that with the development of technology, record companies have come to interpret the clauses to apply to anything that can be recorded or filmed, and that the scope of interpretation has

[35] Regarding performances for recording of musical pieces, etc. already released by the record company, please refer to the "No rerecording Clause" in Section 2 below.

[36] Record companies have pointed out that with the development of equipment that allows for low-cost master production at home and the development of a network environment that makes it easy to do things such as publish songs and other content through one's own social media accounts, etc., performers are also required to take sufficient care and consideration to avoid violating their exclusive obligations.

been unilaterally expanded without any discussion.[37] On the other hand, record companies have pointed out that with the development of technology, the number of performances that could be subject to performance recording prohibition clauses is increasing due to the increase in situations involving performance recording, and that record companies have not unilaterally "expanded" the interpretation or scope.[38][39]

In light of the above, even if the necessity of the performance recording prohibition clause is recognized in terms of its objective, the scope and period of the prohibition should be limited to what is necessary and appropriate for achieving that objective.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) Because it has become important in recent years to continually distribute performers' music and not allow fans to move away, there is no provision prohibiting recording of live performances.

(b) Although a performance recording prohibition clause is stipulated, the clause is limited to a necessary and reasonable extent, such as excluding from the scope of the prohibition streaming distribution that does not involve a live musical performance, such as simple interviews (conversations).

(c) Although a performance recording prohibition clause is stipulated, the scope of application of the clause has been limited to a necessary and reasonable extent, taking into consideration the circumstances at the time of termination of the contract.

Examples of potentially problematic actions

(a) The company does not allow any performances, not only musical performances but also, for example, online interviews, even when consulted by talent agencies. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(b) If the recording is within the period of the performance recording prohibition clause, for example, if a talent agency, etc. individually consults with the company after a considerable period of time has passed since the contract ended and the performance is not deemed to be a violation of the exclusive obligation, the company does not enter

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[37] In the fact-finding survey, one response stated that: "The scope of 'performances for recording' has expanded in recent years, and in reality, almost nothing can be done. Previously, performances and live music on broadcast programs were not included, but with the development of technology, record companies have come to an interpretation that anything that can be recorded or filmed is included. The scope is being unilaterally expanded by record companies without any discussion. It's a de facto restriction on activities."

[38] Record companies pointed out that "The scope and interpretation of 'performances for recording' has not changed. In the past, there were more live performances that did not involve recording, and more broadcast programs that did not go beyond a temporary fixed scope for broadcast. Also, there were fewer opportunities for performances that did not involve musical performances (such as dialogues, interviews, and comments) to be recorded and used for distribution, etc., so there were few performances that fell under the scope of the performance recording prohibition clause. As technology advances, the number of performances that might be subject to the performance recording prohibition clause is increasing due to the increase in performances involving recording, and the record companies have not unilaterally 'expanded' the interpretation or scope."

[39] On the other hand, record companies have pointed out that in practice, they are already taking flexible measures in some cases to avoid unduly restricting the activities of performers, after first checking the nature of the recorded performance and how the audio and video will be used, etc.

into negotiations and does not uniformly permit performances. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

2. No rerecording clauses

Actions to be taken by record companies

- ✓ When stipulating a no rerecording clause, rather than uniformly prohibiting the rerecording of songs released during a long-term contract period from the time the contract ends, the clause shall be limited to songs that are necessary for the purpose of recovering investments within a reasonable range and securing profits within a reasonable range, and a necessary and reasonable period shall be set for that purpose.
- ✓ The starting point for the no rerecording clause to take effect shall be set in a way that is deemed necessary and appropriate, including setting it at the time of release of each individual song, rather than just at the time the contract ends.[40]
- ✓ Regarding the no rerecording clause, if a long time has elapsed since release of a song, spanning multiple contract renewals, and there have been negotiations from a talent agency of performer, the company shall respond flexibly by allowing rerecordings if investment within a reasonable range has been recovered and profits within a reasonable range have been secured.
- ✓ For already released songs, etc., the no rerecording clause applies not only to recordings for the purpose of releasing the same songs through other record companies, but also to live performances and concerts that involve recordings. However, it shall be limited to the extent necessary and appropriate for the purpose of recovering investments within a reasonable range and securing profits within a reasonable range after the song's release.

In the fact-finding survey, it was found that exclusive performer contracts between record companies and talent agencies/performers sometimes contained clauses (no rerecording clauses) prohibiting performers from performing for the purpose of recording (performances for the purpose of master production, distribution, etc.) songs, etc. that have already been released by the record company for a certain period of time after the contract expires.

In the fact-finding survey, record companies responded that they have a no rerecording clause because if the same song is covered by the record company an artist transfer to, it will affect sales of the same song from the previous record company. This suggests that the no rerecording clause is stipulated with the aim of securing sales after the song is released. There is likely a certain degree of rationality in stipulating a no rerecording clause, as long as it does not deviate from such purposes. On the other hand, in the fact-finding survey, some talent agencies, etc. responded that while the period of no rerecording clauses is often 3 to 5 years, the starting point is often uniformly set at the time of contract expiration, and that in some cases the clause applies uniformly to songs, etc. released during long contract periods spanning multiple renewals, even if a long time has passed since their release, making the clause a stronger restriction than

[40] If a song is initially released and then subsequently re-released or further promoted with additional investment, these points in time may be used as the starting point.

the above-mentioned purpose.

Therefore, from the perspective of realizing the freedom of performers to engage in activities after the end of their exclusive performer contracts, record companies should take as the object of the no rerecording clause[41] only songs for which it is necessary and appropriate to achieve reasonable investment recovery and securing of profits, and the starting point should be set in a manner that is deemed necessary and appropriate, including the time of release of each individual song.

Furthermore, when a talent agency or performer negotiates with a record company regarding a song that was released a long time ago, spanning multiple contract renewals, during the no rerecording period following the expiration of the contract, the record company should be flexible and allow rerecording if it has recovered its investment within a reasonable range and secured profit within a reasonable range.

Furthermore, in the fact-finding survey, some experts responded that the no rerecording clause is a heavy restriction that prohibits not only recording of a song, etc. that a performer has already released with a record company in order to release the same song with another record company, but also all performances by the performer for recording, including live concerts, etc. that involve recording of the same song.[42]

In light of the above, record companies should limit the scope of no rerecording clauses to what is necessary and appropriate for the purposes of recovering investments within a reasonable range and securing profits within a reasonable range after the release of individual songs.

Examples of actions that can serve as a reference for ensuring fair transactions

(a) The no rerecording clause does not apply to songs that have been released a considerable amount of time ago.

(b) Although a no rerecording clause is stipulated, the scope of application is limited, based on discussions at the time of expiration of the contract, to the extent necessary for the purposes of recovering investment within a reasonable range and securing profits within a reasonable range after the release of the song, such as performances for recording by other competing record companies. For example, live performances distributed by companies other than other record companies (including cases involving archive distribution) are excluded from the scope of application of the no rerecording clause.

(c) The no rerecording clause is applied to the extent and for the period necessary to

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[41] Songs that have been released for a long time, spanning multiple contract renewals, are generally considered to be songs for which a reasonable recovery of investment or reasonable securing of profits has already been achieved, or for which no further reasonable recovery of investment or reasonable securing of profits can be expected, and are therefore not considered to be songs for which there is such necessity or appropriateness.

Furthermore, record companies point out that even after the release of a song, there are cases, up until the end of the exclusive performer contract with the talent agency or performer, and sometimes even after the contract has expired, where it is necessary and appropriate for them to make various expenditures (for example, cooperation with live performances and promotional activities, etc.) to maintain and increase sales of songs released in the past, and to recover these various expenditures through continued sales after the release.

[42] Record companies pointed out that the music content they sell is not limited to audio products such as CDs and music distribution, etc., but also includes a variety of visual products, etc. such as Blu-rays and DVDs containing live footage and video distribution, etc. and that some products have different arrangements, so the impact of rerecording the same song varies, but there may be impacts even if the products are different.

recover investments within a reasonable range and ensure profits within a reasonable range. For example, if, during the no rerecording period, a request is made for permission to rerecord the same song for a live video product released by the record company the performer has transferred to, the company considers whether the rerecording will be competitive with its own products (either live video products or studio recordings, etc.) that have already been released and contain the song, or whether it may have an adverse effect on sales, and if it is determined that there will be no adverse effect, the company allows the rerecording.

Examples of potentially problematic actions

(a) In the case of a performer whose contract has been renewed multiple times and whose contract has lasted for a considerable period of time, all songs, including those recorded during the initial contract period, are subject to a no rerecording clause, and even though the company has not made any particular additional expenditures, etc. in recent years to maintain or improve the value of the songs, the performer is uniformly prohibited from rerecording for a considerable period of time after the contract has expired, and the company is not open to negotiations. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

(b) The talent agency tried to negotiate with the record company to rerecord a song that is still in the period of the no rerecording clause, but was released quite some time ago and has barely sold in recent years, but the company does not allow rerecording. (Abuse of superior bargaining position, trading on exclusive terms, or trading on restrictive terms)

Part 5: Future responses

1. The Cabinet Secretariat and the Japan Fair Trade Commission, with the cooperation of relevant government ministries and agencies, relevant trade associations, etc., will strive for broad awareness of these Guidelines.
2. In cases where talent agencies, etc. engage in conduct that does not comply with the actions to be taken as set out in these Guidelines, and thereby pose a risk of impeding fair competition, etc., the Japan Fair Trade Commission will take strict measures in accordance with the Anti-Monopoly Act, etc.