

| | Cease-and-Desist Order | Decision |
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| Whether or not broadcasters avoided using musical works administered by the copyright management operator that was new to the market (“New Entrant”) | Due to the Respondent’s (JASRAC’s) collection of broadcast royalties by way of comprehensive collection, in programs produced by themselves, broadcasters (mainly FM radio stations) avoided for the most part usage of works administered by the New Entrant from the first half of October 2006, because the use of such works would incur additional copyright fee payments. | <ul style="list-style-type: none"> ○ In stating whether or not broadcasters avoided usage of such works, it must be said that the reason for restricting such arguments to programs produced by broadcasters (mainly FM radio stations) themselves lacks rationale. Also, there exists no evidence to conclude that broadcasters other than FM radio stations avoided the use of works administered by the New Entrant. ○ It can be concluded that works administered by the New Entrant were used to a considerable degree, even in programs produced by broadcasters (mainly FM radio stations) themselves, between October and December 2006. ○ It cannot be concluded that broadcasters generally avoided using works administered by the New Entrant, and it can only be concluded that broadcasters merely acted cautiously with regard to the use of such works. ○ The main reason for the broadcasters acting cautiously with regard to the use of works administered by the New Entrant is not the Respondent’s practices in question, but has been concluded to be the bewilderment and confusion on the part of the broadcasters as a result of the New Entrant’s entrance into the copyright management business for broadcast usage without adequate administration systems. |
| The circumstances under which a major music publisher which had assigned the administration of copyrights pertaining to broadcasting to the New Entrant terminated its management trust contract | As the Respondent did not amend its method of collecting broadcast royalties, it could not be expected that broadcasters would stop avoiding the use of such works and broadcast royalties could be earned, and this led to the termination of the contract. | <ul style="list-style-type: none"> ○ The major music publisher which had entrusted the administration of copyrights pertaining to broadcasting to the New Entrant did not have knowledge of objective usage statistics of works administered by the New Entrant. In reality, it cannot be said that broadcasters generally avoided using works administered by the New Entrant, and because it can only be concluded that broadcasters merely acted cautiously with regard to the use of such works, it cannot be said that the music publisher in question terminated its management trust contract with the New Entrant based on accurate information. ○ Also, it cannot be said that the main reason for the broadcasters acting cautiously with regard to the use of works administered by the New Entrant was the accrual of additional copyright fee payments based on the comprehensive fee collection stipulated in the usage license agreement between the Respondent and the broadcasters, but can be concluded to be the ill-prepared entry of the New Entrant into the copyright management business and the bewilderment and confusion on the part of the broadcasters that this caused. ○ As such, it is difficult to say that the music publisher in question terminated its management trust contract as a result of the Respondent’s practices in question. |

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| The relationship between copyright owners other than the aforementioned major music publisher and the New Entrant | As the Respondent continues the practices in question, because it could hardly be expected that broadcasters would use works administered by the New Entrant, copyright owners other than the aforementioned major music publisher very seldom entrusted the administration of music copyrights with regard to broadcasting to the New Entrant. Therefore, the New Entrant cannot obtain a sizable repertoire and is in a situation where it is difficult to conduct copyright administration business for broadcasting. | <ul style="list-style-type: none"> ○ Because it is possible to conclude that the New Entrant has been entrusted with the administration of a significant number of works including popular works, and that a significant number of broadcasters are prepared to enter into negotiations with the New Entrant regarding the conclusion of usage license agreements, it can be considered that the New Entrant is capable of collecting a reasonable amount of broadcast royalties by concluding usage license contracts with broadcasters, and that the reason its broadcast royalty revenue remains low is because it has not concluded usage license contracts with broadcasters. ○ Of the copyright owners' testimonies included in the record of oral statements submitted by the investigator, it is arguable whether it was in fact heard that works administered by the New Entrant would not be used due to the accrual of additional copyright fee payments resulting from the Respondent's comprehensive fee collection method. Even had there been such rumors, it cannot be concluded that such rumors concurred with reality. ○ As such, it would be difficult to conclude that copyright owners other than the aforementioned major music publisher did not entrust the New Entrant with the administration of music copyrights for broadcasting as a result of the Respondent's practices in question. |
| The non-entry of other copyright management business operators | The reason why other copyright management business operators do not enter the management business for broadcasting is because the Respondent has concluded usage license contracts which stipulate the said comprehensive fee collection method with all of the broadcasters and collects broadcast royalties based on these contracts. Because it is expected that broadcasters will not use works administered by copyright management business operators other than the Respondent due to the accrual of additional fee payments, they are unable to obtain from copyright owners the entrustment of music copyrights with regard to broadcasting. | <ul style="list-style-type: none"> ○ It can be concluded from evidence that the administration of music with regard to broadcasting is extremely complex and costly and that this has the effect of discouraging copyright management business operators from entering the market for the administration of broadcasting. As such, portions of the testimony by the representatives of other copyright management business operators included in the record of oral statements submitted by the investigator which are in line with the assertions of the investigator cannot be accepted, and there is no other evidence which allows for the confirmation of the investigator's assertions. |