

Law

In this section we'll look at contracts:

- The 3 main types of contract between musicians, managers, record companies and publishers
- Other common types of contracts

All musicians during the course of their careers will have to enter into music industry contracts at one time or another. Indeed managers, performers, promoters, record companies and publishers also enter into contractual arrangements. The law governing music contracts is the same as the law governing all other contracts.

All that is required from a music industry point of view is an understanding of what is needed in such contracts, how they work and the affect on the contracting parties careers.

There are three main contracts in an artist's career, namely:

- **Management contract**
- **Record contract**
- **Publishing contract**

There are also a number of subsidiary contracts, namely:

- **Merchandising contracts**
- **Sponsorship agreements**
- **Agency agreements**
- **Band agreements**

Management Contracts

1. Who is the manager?

You will need to investigate the identity of the manager, his/her expertise, financial status and standing in the industry. A good manager is worth their weight in gold, a bad manager can end up doing a lot of damage to an artist's career. Talk to the other artists that have been represented by the manager find out what their experiences have been. If relationships have turned sour, find out why.

2. How long is the contract for?

a) Consider **the term** of the agreement, do not lock yourself into an agreement which could prove to be unproductive.

b) **Impose conditions** on the manager to ensure s/he obtains a recording agreement with a major record company within say, the first twelve months of any management term, check if s/he has a clause that gives you the opportunity to get out of the contract if you want to.

c) After the second year **ensure that a reasonable income level has been reached** so that if you are not earning a certain sum of money you can again get out.

Do not enter into a long term agreement. Three years is usually right and in some cases up to five years may be acceptable. Do not agree to a roll over term as this may lead to bad habits. The management situation should be reconsidered at some point from both the artist's and the manager's point of view.

3. How much money does the manager get paid?

Consider the percentage payable to a manager. **Twenty per cent** is the norm although established artists often agree to pay only fifteen percent.

4. How does the manager calculate his/her commission or wages?

Understand the basis upon which commission is calculated.

Managers **should not** commission recording costs, video costs, producers' advances and royalties, recoupable tour support and the like. Managers should **not** commission live work on a **gross** basis (before costs have been taken out) but on a **net** basis (after costs have been taken out) so that the artist does not make a greater loss than he or she is making in the normal course of events, due to the management commission. Always limit live management commission to income earned after the cost of PA, lights and agents have been paid.

5. What happens when the contract ends?

Consider how management commission is considered after the end of the term. Managers should only earn income after the end of the term on **recordings made and compositions composed during the management period** and there should be a **cut off point** at some point in the future. In any event full management commission should no longer apply after the end of the management agreement, there should be a reduction tailing off at some time completely.

6. Who keeps track of the money?

Consider the accounting provisions. Make sure that if the manager does collect your money s/he keeps proper books and records, s/he keeps personal money in a **separate back account** from that of the artist which bears interest and that the artist has the **right to inspect the manager's books**.

7. Who is employing whom?

The manager is employed by the artist and not vice versa. You can consider the manager having all of the artist's income paid to the **artist or their accountant** who will then pay the manager.

8. How can the artist keep artistic control or get out of the contract?

Put in clauses obliging the manager to do certain things on the artist's behalf which would enable the artist to break the contract if the manager did not comply. Clauses such as full consultation clauses, abiding by the artist's wishes and aspirations clauses and the like are important.

9. Whose Lawyer should the manager use when negotiating on behalf of the artist?

Ensure that the manager is in liaison with the artist's professional advisers, accountants and solicitors so that the artist retains control over the artist's affairs.

10. What about the manager's expenses?

Consider the question of expenses. Managers should **not** have carte blanche to spend the artist's money, there should be a **financial limit** on expenses and the manager should not be able to spend money unless it is reasonable, necessary and exclusively incurred on the artist's behalf.

Record Contracts

1. Who is the record company?

Make sure you know the company with whom you are contracting. Major companies are well known but many production companies and smaller independent labels are not. Full investigations should be made of production companies, particularly to see how records are distributed and to ensure that there is a **proper cash flow** from the distributor through to the artist.

2. What will be produced?

Ascertain the **product commitment**. It is better to have a commitment for an album than a single, as the company will spend more money on making and breaking an album than they would on a single, which of course increases your chances of success as an artist and means your publishing income is likely to be higher.

3. When will it be released?

Consider the **release commitment**. It is no good having a product made and not released for sale; there should be a firm commitment in your home territory and in the major preferably in the major territories of the world.

4. How much will the artist be paid in royalties?

Royalty is the term used for the amount of money that the artist will receive from the record company for each record, CD or cassette sold. The royalty is normally defined in terms of a percentage of the amount that the record is sold for. Royalties should be paid on **100%** of all records sold, not 90% as some companies attempt to do and the artist should be careful to ensure that the royalties are on **net retail** as opposed to publisher **dealer** price. If they are based on published dealer price then they should be **scaled up** (increased).

Consider how record companies will take away the royalties already given, such as reductions for twelve inch singles, TV advertised albums, club sales and CDs and DCCs. These items should be gone into most carefully as on many occasions **there is no validity for reducing artists' royalties** by record companies, all they are doing is increasing their profit base at the artist's expense.

5. What about advances paid by the record company?

Deal with the question of advances and recording costs carefully as all of these items are **recoupable** (taken out of earnings) from royalties. Advances should be sufficient to ensure that the band can work at their recording career and survive and should enable the band to purchase whatever equipment is needed in the first years of their career.

Recording agreements should be subject to budgets mutually agreed between the record company and the artists. Control should be imposed to ensure that the record companies do not allow the budgets to run away, which eats in to the artist's royalties.

Publishing Contracts

1. Who is the publisher?

Research who the publisher is, remembering that publishing income is far more difficult to collect than record income. It is vitally important that your publisher is a reputable company able to continue paying income over many years.

2. How long is the contract for?

Do not enter into a publishing agreement for a period longer than five years. The terms of an agreement will need to be reconsidered every so often in view of the writer's success. If possible only enter into an agreement for a period of three years although this will in effect, be one year plus two one year options.

3. What sort of publishing advances can the songwriter or composer expect to be paid?

The advances should reflect an accurate estimate of the income due to the artist normally over the next 12 months. If an artist has secured an album deal it will be higher than if the artist had secured a singles deal. The publisher is effectively advancing the income that will be expected on royalty payments to the artist through the release of recorded material.

4. How much money will a publisher take in royalty income?

a) The royalties should be a fair and accurate split; the norm today is **75% for the writer and 25% for the publisher**. Royalties split 50-50 is not acceptable and are a hangover from a less regulated era.

b) Understand fully how royalties are calculated at source it means that when £1 is earned throughout the world the writer receives 75p.

However, if royalties are calculated on a **receipts basis** and the publisher has entered into a 75/25 split with its sub-publisher (even if it is a company the publisher owns completely) then the songwriter will receive is **75% of 75% - that is 56.25p in the pound**.

5. When will the writer get the full rights to her/his music back?

Consider the retentions. **Songs last for the writer's life plus 70 years** and it is very important that writers get their songs back at some point so that they can enter into new agreements and maximise potential income. **Songs are a writer's pension**. Many songs which seem to have no real value after their initial success come back years later and are of considerable value. A 10 to 15 year retention period is fair, some publishing companies require longer, but **you should not agree to a life of a copyright deal**.

6. What control does the writer have over her/his work?

Deal with creative controls in a publishing deal as you have in a record contract. You want to ensure that the writer's work is not altered, amended or modified **without permission**. Ensure sync licenses (the right to put the music on film, TV) are not granted without the writer's permission. **Impose controls on the publisher to ensure they register each song in each territory in order to protect them**.

7. How can an artist ensure the right to the debut performance of his/her own song?

Contractual controls make sure that the publisher abides by any control composition clause and requirements for the granting of sync licenses imposed by the record company and that the publisher will grant to the writer's own record company a first mechanical license without the writer's permission. **This will ensure the writer always has his or her own work available to him/her.**

8. Who keeps track of the money?

Deal with accounting provisions as per the record company – it is very important in publishing agreements that the source of all income is easily identifiable.

Other Types of Contract

AGENCY CONTRACTS

These are contracts that are entered into with agents, which deal with the live work of any band.

It is advisable to ensure that the agreement includes a **key man clause**, so if a particular agent inside an agency leaves the artist is free to go with the agent.

Agents are very personal and it is not easy for an agent to 'inherit' somebody else's artists and have the same level of enthusiasm.

Agency contracts for North America require a different expertise from the rest of the world and **the UK agents should not be granted world-wide agency rights.**

SPONSORSHIP OR ENDORSEMENT CONTRACTS

Sponsorship contracts concern the association of a product with the artist and usually require the artist who attends certain parties to meet certain people, to have the products name appear at venues, on programmes, to appear in adverts and to generally sponsor the product.

Endorsement contracts do not usually provide for payment of moneys but provides artists with products used in performances such as keyboards, cymbals.

MERCHANDISING CONTRACTS

These agreements concern the **sale of merchandise** and are split usually between **tour income** and **retail/wholesale income**.

Tour income is usually tied into the number of tickets sold for the concerts. Thirty per cent of the sale price is a reasonable split, bearing in mind the merchandiser has to manufacture as well as sell.

Artists should ensure that they are reported to daily on tour by the merchandiser as failure to do so often leaves accounting procedures open to abuse.

On Wholesale and Retail deals, the percentages are much less, between ten and fifteen per cent. The artist should always make sure that he or she has creative control so that products and designs not approved by the artist cannot be sold.

BAND AGREEMENTS

Bands often require agreements between themselves to ensure that all income is split in accordance with their agreement and that matters such as ownership of the band's name and who has overall control of the band's activities are agreed.

The issue of copyright ownership in the songs are often an issue that needs consideration. Often members of the band other than the songwriter, will consider that they should be entitled to a share in royalties because of musical input into the material. Often an income share is agreed.