

PRINCIPLES OF CONTRACT

A short summary of the principles of contract that any musician should be familiar with.

A. Principles:

1. Requirements

(a) offer and acceptance - i.e. agreement on the terms

- * Get offer in writing if possible - avoids problems of invitation to treat (e.g. advertisements - send us your demo....)
- * Withdrawal or Lapsing of Offer Before Acceptance
- * negotiations - no acceptance if you are still negotiating one or more terms of the offer
- * certainty of terms - i.e. both parties need to be agreeing to the same thing

(b) consideration - valuable

- “peppercorn”

(c) mutual intention to create a legally binding relationship - i.e. to be bound by what you are both/all saying and writing

(d) Capacity of Contracting Parties

eg. must be over 18 years of age (or need parent/guardian to sign and guarantee the performance)

2. Written & “Oral” contracts - NO need to be in writing

BUT written agreements

*support intention to create legal relationship and

2.

*easier to prove what the terms were - certainty.

BUT, if in writing, be very clear about the terms and include all of the terms that are important to you.

Some contracts need to be in writing:-

eg. a contract granting an **exclusive licence** to copyright in a work

and

a contract for the **assignment** of copyright in a work

3. Contracts are made up of Terms - i.e. what are the terms of the contract

- only terms are binding
 - * express or implied at law
- distinguish binding terms from peripheral discussions and statements which are not necessarily meant to be binding.
- **understand** those terms! If you don't - do all you can to get advice before you sign/agree.

4. Breach of Contract

- Importance of Privity - can only sue the other party/parties who are party to that contract.

Make sure you ensure that the contract is with the party you wish to bind (esp. when dealing with a company)

This means that you can't sue third parties with whom your publisher alone has entered a contract (e.g. for synchronisation of one of your songs). Your publisher will need to do this for you.

- Remedies for breach include:-

- * specific performance;
- * damages (you must mitigate your losses)
- * can terminate in some circumstances (not automatic)
 - e.g. if written contract gives you that right
 - or, need failure to perform fundamental terms of contract

(e.g. A Simple Assignment Contract - you are paid a big advance for an assignment of copyright in a couple of Songs - but you are not the owner of the rights in those songs - a total failure of consideration)

5. Avoiding Your Obligations Arising Under A Contract

- NOT EASY - especially if you have obtained legal advice on it
 - Harsh and Unconscionable Contracts (N.S.W. Contracts Review Act)
- e.g. Holly Johnson of “Frankie Goes to Hollywood” fame (Publishing Agreement)- successful

but

George Michael (SONY Recording Agreement) - unsuccessful

B. Practical Considerations

- The music industry is “riddled” with contractual relationships.
- Some of you may have already entered into contracts in respect of your music industry activities.
- Don’t enter contracts for the wrong reasons.

Contracts with managers, publishers, record companies (etc.) are like marriages:-

4.

- * they are generally supposed to be long term;
- * when they are miserable they are really miserable;
- * getting out of them is much more difficult and expensive than getting into them.

BEFORE you sign on the dotted line, ask yourself:-

- * Why am I doing this?
- * Is the timing right for this deal?
- * Do I have a good relationship with the other party?
- * What are we committing to do for one another?
- * Is this realistic given my talents and attributes?
- * Is this realistic given their talents and attributes?
- * Will they respect me in the morning?