

## PUBLISHING AGREEMENTS

Some things to look out for in music publishing agreements.

### ESSENTIAL TERMS

#### 1. Duration

##### 1.1 The Term

The term of the publishing agreement is the period during which you, the composer **provide your exclusive services as songwriter/composer to the publisher.**

- **Options to extend the (songwriting) Term** may sometimes be included.

\* Keep number and duration of Options to a minimum.

##### 1.2 The Retention Period

Is the period **immediately following the end of the (songwriting) Term**, during which the publisher may **retain** ownership and/or control of all the copyrights it acquired from you during the Term.

**\*\*\*AVOID RETENTION PERIODS “FOR THE DURATION OF COPYRIGHT”**

#### 2. Territory

#### 3. The Advance

\* An advance is normally **RECOUPABLE**

#### 4. Recoupment

All advances paid by the publisher will be **recoupable from the writer’s publishing earnings.**

**LOOK AT YOUR CONTRACT to see WHAT ELSE IS RECOUPABLE.**

5. Productivity Commitment

Usually specified as the songwriter's obligation to deliver a **minimum number of compositions a year (about 10 - 12)**

6. Grant of Rights - Assignment/Exclusive Licence of Copyright

\* **assignment versus an exclusive licence of the copyright in compositions**

Consider:-

\* What controls do you maintain over your works (and reputation)?

The rights **assigned or exclusively licensed** to the publisher (which will be sole and exclusive) for the territory will usually include:

- (a) The right to grant licences to **perform** the compositions publicly **subject to the rights of APRA.**
- (b) The right to make **adaptations, additions, alterations, arrangements and translations** of the compositions in whole or in part.
- (c) The right to grant **mechanical licences.**
- (d) The right to grant **synchronisation licences.**
- (e) The right to use the titles of the compositions for all purposes in connection with the compositions.
- (f) The right to publish, print and reproduce the compositions.
- (g) The right to licence others to use any of the above rights.
- (h) The right to collect any other income relating to the compositions.

7. Publisher promises and warranties

- (i). to assist in obtaining a recording agreement.

3.

- (ii). to obtain covers of the compositions.
- (iii). to collect all income arising from exploitation of the compositions during the retention period, and
- (iv). to protect the copyright and all like rights in and to the compositions.

8. Publisher's Obligation to Exploit [VERY IMPORTANT]

- \* Reversion of Rights for Failure to Exploit

9. Royalties based on a percentage of income derived from each use including:-

- \* mechanical (including Covers)
- \* synchronisation licence income
- \* Public Performance/Broadcasting/Diffusion Income
  - "the writer's share" / "the publisher's share"
- \* Miscellaneous Income
- \* Overseas Income
  - N.B. the Sub-Publisher's Commission
- \* "Nett Receipts" vs "At Source"
  - Nett receipts deals - royalty is calculated as a percentage of the **money actually received by your publisher in Australia - after deduction of the sub-publisher's commission** from the total amount of income earned from its territory.
  - "at source" Deal means royalty is **based on the gross receipts in the overseas territory, only allowing specifically nominated deductions.** (e.g. withholding or other taxes. )

10. Creative Control

\* licensing the work for synchronisation, both with film and television programmes and into commercials, impacts on professional reputation.

\* ONLY WITH YOUR PRIOR WRITTEN PERMISSION (if possible)

11. Accounting

12. Termination Rights and Reversion of Rights

\* for breach (eg. failure to pay royalties)/bankruptcy