

## RECORD AGREEMENTS

Useful information about recording agreements – how, what they can involve and what to expect.

### Topics

- \* Getting a Record Deal
- \* Types of Record Agreements
- \* Usual Terms in an Exclusive Recording Services Agreement - What to Expect

### A. GETTING A RECORD DEAL

- No magic formula - **Luck and Fate** play a big part
- Getting your work **auditioned** helps - perhaps by getting a record company's Artist & Repertoire" Manager ("talent scout") to attend one of your gigs (Part of your **self-promotion** skills)
- Do your homework - Treat it as a **business** (not a hobby) if you wish to be taken seriously
- Understand **your market** for your type of music - be realistic about this
- **REMEMBER** - Record industry people are under pressure to perform and to meet budgets (the Music Industry is a business!)

You need to attract their attention - i.e. they need a reason to choose your recording/act over another person's recording or act

- if you make a **promise** - **keep it!**

Broken promises are not forgiven, nor forgotten.

- be **patient** (unless you are very lucky, it won't happen quickly) **BUT** be ready for it (it could happen suddenly).
- be **persistent** - **BUT** know when you have worn out your welcome.

REMEMBER, You are bound to meet again sometime, so it is good to maintain positive contacts and relationships - The industry is "small" when it comes to meaningful "players" and these people talk to each other too.

- **get good management (at the appropriate time**
- Ensure you have access to **good legal & financial advice** (the best you can afford - Arts Law Centre is good in the beginning when money is scarce)
- Artistic integrity is very important BUT don't take it personally if you are asked by a record company to make some artistic compromises.

You need to **consider and balance your integrity with the commercial reality of the business** - voice your concerns and preferences in a well considered and thoughtful way. Be open-minded. If you can't be you may need to consider financing your own recordings, marketing and distribution - not easy unless you are very famous.

- **SUMMARY - Success in the Music Industry takes guts, ambition, organisation, money (lots of) .... talent (sometimes) and LUCK (always).**

## B. TYPES OF RECORD AGREEMENTS

### \* Exclusive Recording Services Agreement - "Direct Sign" Record Deal

- Record Company agrees to provide resources and funds/marketing - Record Company administers and pays for the recording process and master recordings, manufactures, warehouses and promotes the records, distributes the records, collects payments and looks after bad debts - **BIG FINANCIAL COMMITMENT & INVESTMENT**
- You supply your services to record for that company **ONLY** and to help promote those recordings **AND** you receive royalties for most records sold and for other uses of the recordings they

have recorded - **BIG CAREER COMMITMENT & PERSONAL RESPONSIBILITY**

- **COPYRIGHT** in Masters ALWAYS Owned by the Record Company IN PERPETUITY

\* Contract for Master Recordings - "Tape Lease Deal"

- Artist administers and may also pay at least part of the costs of producing the master recordings THEN delivers the finished master recordings to the Record Company for record production and distribution/sales and often also for other forms of exploitation (eg. synchronisation). **Greater Artistic Control** to Artist in this deal.
- **COPYRIGHT** usually owned by Artist BUT may be exclusively licensed or Assigned to the Record Company for the Term of this Deal (about 3-5 Years)
- Record Company may pay an **Advance** on royalties (recoupable) and the Company will manufacture/ warehouse/ promote and distribute/sell records and collect payments (etc.)
- Artist gets a **royalty** - slightly higher than under a Direct Sign Agreement due to the lesser financial risk taken by the Record Company (i.e. the Company can evaluate the Master Recording before agreeing to enter the contract.

\* Manufacture and Distribution Record Agreement - "P & D Deal"

- "P & D" = pressing and distribution
- Artist records masters at **own expense**
- **COPYRIGHT** Owned by Artist
- **Total Artistic Control**

THEN delivers masters to the distribution/record company

- Record Company manufactures and fulfills orders from dealers - but manufacturing costs paid by Artist
- Artist is responsible for promoting the records
- Distribution/Record Company collects monies and is paid a royalty (which it deducts from collected monies) and the Artist is entitled to the balance
- Artist gets the biggest possible share of the income from this type of deal BUT the Artist must also pay all associated costs of producing and promoting the Masters and the Records (including mechanical royalties, performer fees/royalties, record cover/artwork/packaging)

\* Choosing the Right Deal For You

C. SOME ESSENTIAL DIRECT SIGN RECORD AGREEMENT TERMS

1. **Term**

During which you will make sound recordings only for this Record Company - EXCLUSIVE RECORDING SERVICES

- (a) Basic Term - Usually A "Contract Year" (as opposed to a Calendar Year) during which you must usually record and "deliver" completed masters for one Album.

A "Contract Year" is usually about 12 - 18 months (but NOTE that it may extend automatically until delivery of the Masters in accordance with requirements of the Record Contract)

- (b) Options - to Extend the Basic Term by one "Contract Year" at a time during which you must record and deliver the next Product Commitment for that Period (Usually one Album).

- Usually ONLY Record Company can exercise an Option (enables evaluation of prior Album)
  - Number of options - Usually 3 - Up to 5
  - Conditions of exercise (Release of Prior delivered Albums, record sales, Payment of an Advance, increase in royalties for masters delivered during that/subsequent Option Period(s))

(c) CAPPING The Term

Eg. Total Term (comprised of Initial Period and any Options exercised) not to exceed a total of say, 24 months for each of those periods as exercised. i.e. If Initial Term only (& no Options) then maximum of 24 months. If Initial Term plus One Option, then a maximum of 48 months etc.

2. Territory

- (a) For your exclusive Recording Services - Usually the World BUT Can be limited to Australia and New Zealand (eg. **Peter Andre**)
- (b) In which the Recording Company is entitled to release and exploit the Master Recordings you record for it - Usually the World

3. Product Commitment

- Amount - Usually one Album per Contract Year. CHECK the definition of "Album"
- Timetable for delivery - make sure it is realistic (to enable some holiday/rest periods). Don't forget you'll be touring and performing and possibly songwriting too.
- Commercially vs. Technically satisfactory - VERY IMPORTANT

6.

- Suspension - ensure it can't exceed 6 months (as this affects the duration of the TERM)

4. Advances - Usually a Defined Term

- Recording Costs
- Approved Contractual Recording Budget - AMOUNT is not everything
- i.e. An all-inclusive Advance
- Fully recoupable from your share of the royalties (to which you are entitled under the Contract)

5. Compensation

(a) Royalties - The Recording Artist's entitlement

- N.B. ONLY REACH YOUR POCKET AFTER FULL RECOUPMENT OF ADVANCES AND RECORDING COSTS
- For **Nett Record Sales** - A Percentage of the "**Royalty Base Price**"
- i.e. the Wholesale ("PPD") or Retail **LESS** Agreed **Deductions**
- **For Other forms of Exploitation** of the Master Recordings
- a Percentage of the **Nett Income** received by the Record Company
- **at least 50%**

(b) Domestic

- A Percentage of the Royalty Base Price
  - Fixed Rate or Escalations; (based on sales or recording period)
- (c) Foreign
- Affiliates - Royalty will normally be as per the Domestic Rate
  - Licensees - Charge a Royalty Too

**OTHER CLAUSES WHICH MIGHT IMPACT ON THE DOLLAR VALUE OF YOUR ROYALTY**

- (a) **"Producer Inclusive Royalty"** - Effect of inclusion of Producer's Royalty Entitlement in Your Royalty Rate - CAP the Producer's royalty which will be paid out of Your Royalty
- (b) **90% or 100% of sales** - Royalty calculated on ...
- (c) **Royalty Free** or greatly reduced royalty rate for certain number of first sales of **New Technology Formats** - AVOID if possible
- (d) **Packaging Deductions** - CAP to a % of PPD
- varies according to Single/ Cassette/CD Formats/New Technology Format (eg. CD-Rom)
- (e) **Clubs; Libraries;** - usually 50% of Royalty Rate Otherwise Applicable
- (f) **Premiums** - are records that are given away with goods
- (eg. Magazine/McDonalds / A Five-track Single CD - Various Artists on that Record Company's Books)

**Your Prior Consent** to these is useful - Reputation

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(g) **Budget/Mid-Priced**

- Expressly limit the period (i.e. can't sell at these prices within first year after first commercial release in that part of the Territory)

(i) **Flat Fee Licensing**

(j) **Free Goods; Promotional Goods; Sales Inducements - Usually NO Royalties - LIMIT the Numbers**

**YOU MUST HAVE A RIGHT TO AUDIT Books & Records of Record Company**

- Rights and Limitations

**6. Promotional Commitment and Tour Support**

- **Trade and consumer advertising, radio, billboards, etc.**
  - Express Minimum Amount Per Album - But only if You are Famous
  - Generally in Company's interest to Promote as they wish to Recoup
  - Should NOT be recoupable
- **Tour Support** - Specific Amount can be included BUT will normally be recoupable
- **Advertising Support** - Should NOT be recoupable
- **Deficit financing** - LOANS (Check Interest Components)
- **Equipment** - For You - inc. maintenance/purchases (Again, will be recoupable)

**8. Artistic Control and Restrictions on Company**

- Packaging
  - eg. Record Cover Artwork
  - Recoupable Cost so Your Approval to It would be Useful
  - Restrict use for **Merchandising** Purposes (Very Lucrative - Should be dealt with separately)
  - Copyright Usually Owned by Record Company - Ask for limited right to produce T-shirts and Posters for sale at Gigs/on Tours
  
- Image and Likeness
  - Restrict Company's Use to use for promoting sale of Records and NOT to be used in conjunction with **advertising/endorsement of goods or services** (even if it is the Record Company's other goods and services)
  - Reserve all other uses (inc. **Merchandising** - Can Be Very Lucrative)
  
- Advertising
  - N.B. TV Advertising Campaign
  - Royalty Breaks
  - Prior Consent Useful
  
- Coupling and TV compilations - Prior Consent Useful
- Producer - Choice of Producer (May come at a Price)
- Material to be Recorded (At least consultation)
- Editing and Mixing - Prior Consent/Moral Rights Issue

## 10.

- These costs are usually recoupable
- Approval of Test Pressing
- Synchronization Uses
  - Again, Reputation Issue
  - Prior Consent to M, R and X Rated Film Uses
- Budget Records, Premium Records (endorsements) - Prior Consent

## **9. Mechanical Royalty Rates**

- Maximums - eg. on maximum of ten of your written songs per Album (even if 12 or more of your songs included)
- Free Goods - usually no mechanicals - limit number of free goods

## **10. Groups - Specific Considerations**

- Solos
  - Need to be specific if any one of the band is doing anything else solo, otherwise you cannot record solo except with record company's permission (eg. **Warumpi Band - Neil Murray**)
  - Joint & severally bound
- Breakups

## **11. Re-recording Restrictions**

- NOT too long (after expiration of Term?)

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- LIMIT TO only for those Songs recorded and commercially released by that Record Company (NOT all songs recorded)

12. **Release Requirements**

- Domestic
- Foreign

13. **Pay or Play Provisions**

- Recording Obligations
- Release Requirements - Otherwise cannot exercise next Option/Term ends
- Liquidated Damages and Termination Rights