

## MUSIC INDUSTRY CONTRACTS

This is a series of extracts from expert articles about music industry contracts. You are also encouraged to read the three companion articles - Why is it so tough to make a living as a musician and What Do I need to do to get signed? and Explaining the income streams.

### **Record Contract Basics** by Michael McCready

Be sure to get advice from someone familiar with record contracts (usually an entertainment attorney).

In all record contracts, you will be signing an **exclusive agreement**. This means that you will not be able to record for anyone else other than the record company during the "term" of your contract. The term is how long the contract lasts.

Contrary to popular belief, record companies do not sign you and guarantee you seven albums. It may be a seven album deal, but nothing obligates the label to record seven albums. The seven albums means that the record label has the **option** to record seven albums. Typically, a record company will record one album and see how it does. If it sells well, they will exercise their option to record a second album. If the first album does not do well, the label usually drops you.

Record companies require long term option contracts because if the band *does* do well, the label wants to make sure that the band stays with their company. Since they invested so much and signed the band in the first place, they want to be able to share the success of the band over a long period of time.

Finally, the **territory** of most contracts is world-wide, meaning that the record company has exclusive rights to your services as a band throughout the world.

Almost all bands initially form to make music, as opposed to make money. However, **when it comes to a record contract, it is about money**. A record company puts a record out to make money. Creativity and integrity play a part, but it is a financial relationship.

In many contracts, the financial terms will run to over 15 pages. The rule in record contracts is what the record company gives you with one hand, it takes away with the other. The fundamental touchstone of record contracts are "points." Points refer to how many percentage points a band will receive as their royalty rate. On a major label, this will run between 10 and 15% and typically 9 to 12% on a smaller label. The percent royalty rate is just the beginning, however. The first question you should ask is, "a percentage of what?"

Generally, the royalty rate is based on a percentage of the standard retail selling price. You will get your full royalty rate for each full price CD/download you sell through normal retail channels.

What about other places where you sell your CDs? Record companies try to make the royalty rate paid to artists as attractive as possible. They may give you a generous royalty rate. However, in addition to the reduced royalty rate on CDs sold outside normal retail channels, there are also many reductions in your royalty rate.

Record companies will pay you a fraction of your royalty rate for sales not through normal retail channels. For example, you may receive 75% of your royalty rate for sales outside the United States, 60% of your royalty rate for CDs sold below standard retail price (i.e. albums sold at a discount) and 50% of your royalty rate for sales through record clubs. In fact, most of your CDs will not be sold through normal retail channels. Although you may have a 12% royalty rate, you will only get a 6% royalty rate on record club sales.

It is impossible to determine how much a band will get for selling a CD without a calculator. There are entire chapters in books written about all the various deductions. You get no royalties on records given away free for promotional purposes. A large deduction is the so-called "packaging" deduction. The theory behind this deduction is that the band pays for the packaging of the CD. Typically, these deductions range from 15 to 30% of your royalty rate. In effect, a 12% royalty rate and a 25% packaging deduction lowers your rate to 9%.

In addition, your royalty rate is often an "all-in" royalty rate which means that you must pay the producer out of your royalties. Typically, a producer will take 3 points (3%) which lowers your royalty rate even further.

Your royalty rate is meaningless unless it is viewed in the context of all the deductions. A band can expect an average of \$1.00 in royalties for each full-priced (\$16.98) CD sold through normal retail channels.

The other major concept involved in record contracts is the term "recoupment". Recoupment is a fancy word for pay back. Record companies expend a lot of money on bands. They pay for all the studio time, give the band an advance, promote the band, etc. All of this money is a loan to the band which the band must pay back. This is recoupment. The band pays back the record label out of their royalties.

For example, if a major label spends \$250,000 to record an album, the band must make over \$250,000 in royalties until they receive their first royalty check. Once a band sells enough records to pay back the amount to the record label, the band has recouped and will receive royalties on future record sales. Approximately 80% of albums never reach this point which means that most bands NEVER receive any

royalty checks. Do the math yourself - if you owe the record company \$250,000 and you make \$1.00 per CD, that is a quarter of a million CDs you must sell before you collect royalties.

The one redeeming feature is if the band does not sell enough CDs to recoup, they don't have to pay the record company back. It does not come out of the band's personal pocketbook.

There are other places a band can make money when they have a record out other than royalties. There is publishing. There is money from live personal performances (concerts). This is money that the band gets to keep - most of the time that is.

Some record company contracts allow the label to recoup money from other sources, such as publishing. Although this should be called robbery, the practice actually has a name and is called "cross-collateralization". This term means the band will not receive ANY money until the label gets paid back, i.e. the band is recouped.

Now for the topic everyone asks about: "How much is my advance?" Not surprisingly, this question is not as simple as it seems. In the past, record labels would sign a band and write a cheque to the band as a signing bonus and then pay and record an album. Some bands abused this and went over-budget on recording, much to the record company's dissatisfaction. To remedy this abuse, record companies developed the "recording fund."

The recording fund is the recording budget AND the advance rolled into one. The contract states that you have one lump sum to record your album, and if you are under-budget, anything left over is your advance. If you want to stay at the Ritz and waste time in the studio, that means less money for you for your advance. This has proved a marvellous incentive for bands to be efficient in the studio.

How much of an advance is good? Once again, this depends on the label and the circumstances of your signing. Generally speaking, the larger the label, the more of an advance you should expect. In addition, the more interest in the band, the higher the price becomes. However, is a large advance always the best? There is much disagreement on this issue.

Keep in mind, the more money you get as an advance, the more money you have to pay back before you receive royalties. If you take a huge advance and your album does not live up to expectations, a label may be quicker to drop you and cut its losses. On the other hand, most bands who sign record contracts never reach recoupment so the advance may be the only money they ever get from the label, so why not take as much as possible?

There is no right or wrong answer to the size of the advance. Some musicians have a "show me the money" attitude and others think about longevity within the industry.

Don't think that you have finally "made it" simply because you get offered a record contract. Often, it is a deal with the devil. There are many attendant drawbacks to signing a record contract. It is vital to have someone knowledgeable about record contracts negotiate the agreement on your behalf. Record contracts are routinely negotiated. A slight change in wording here and there can have a huge financial impact for a band.

[www.music-law.com](http://www.music-law.com)

[mccready@music-law.com](mailto:mccready@music-law.com)

© Copyright 2004 Michael McCready

*To read the full article by Michael McCready from which these extracts are taken, see: [www.fmc-ireland.com/publications/factsheets/record\\_contract\\_basics.htm](http://www.fmc-ireland.com/publications/factsheets/record_contract_basics.htm)*

## How Recording Contracts Work by Marshall Brain

Whether you are a solo artist or you are a member of a band, you generally have two problems if you are an unknown who is signing your first recording contract:

### Royalties

In addition to global exposure and fame, the biggest reason for signing a recording contract is to get paid for your music. The record company will record your act, master it, produce the album and sell it through record stores. You get paid a percentage of each album sold. Royalties on the sales of albums is the main source of money coming from a recording contract.

The percentage that you receive for each album sold is a negotiating point, but typically it can fall anywhere between 10% and 20%. Most new artists get a royalty percentage at the low end of the range, and 10% is common. A royalty deal seems simple enough. If a CD sells for \$15 and the royalty percentage is 10%, the band should get \$1.50 for the sale of each CD. If your first album sells a million copies, your band should get \$1,500,000. What's not to like about that?

The first thing to keep in mind is reasonable expectations for the sale of an album. The music industry publishes tens of thousands of new albums every year, and only a small percentage of them are going to go gold (500,000 records sold) or platinum (1,000,000 records sold). **You have about a 1-in-20 chance of producing an album that is a major hit.**

The second thing to keep in mind, and this is a big one, is that the band does not get \$1.50 for each CD sold. This discrepancy comes from the fact that the retail price of an album is different from the wholesale price, and many recording contracts pay based on wholesale rather than retail prices.

It is not uncommon in the music industry for retail stores to mark up the wholesale price by as much as 80% when a CD is put on the shelf. Then there are things like coupons, rebates, promotional discounts, etc. that can carve into wholesale prices. In addition, there is the concept of a sales channel. For example, record clubs represent a different sales channel from retail record stores, and record clubs usually get their CDs at a lower wholesale price. Therefore, the band gets less money from discs sold through record clubs. Foreign sales may be treated the same way.

What this means is that the royalty payment usually does not get calculated based on the \$15 retail price for the CD. The royalty payment may be calculated based on a much lower wholesale price point. It depends on the contract you sign.

The royalty amount can also be reduced by various charges. For example, it is common for a recording contract to withhold 25% of the band's royalties for a

packaging charge. There may also be a deduction for free CDs. It is not uncommon for a record company to give away free CDs to a vendor instead of discounting the wholesale price of a CD. If that happens, then the band will be paid nothing for the free CDs given away.

Another common practice is to charge the band for a variety of costs associated with producing an album. For example, the cost of recording the album, promoting the album, producing a music video and touring for the album may all be recoupable expenses. Which means all of these expenses may be deducted from the band's royalties before the band gets paid. The cost of recording an album can easily reach several hundred thousand dollars, and so can promotion, touring and music video costs. All of these costs get subtracted out of the band's royalty payment before the label writes the band a royalty cheque.

Finally, there is the concept of an advance against royalties. The record company may pay the band a set amount of money during the album's development so that the band can eat while they create an album. If so, that advance will be recouped before any royalties are paid.

If any money survives the recouping process, and the band actually gets a cheque, then the band's manager and/or agent will get a cut of the proceeds. A manager typically gets 20%, for example.

Finally, the money that remains gets divided among the band members.

What this system tends to do is create a situation where only those bands who create gold and platinum records ever get paid anything outside of their advance money.

From this discussion, you can see that you need to be aware of several things when reading a recording contract:

- The amount of the royalty percentage.
- Whether the percentage is calculated on the wholesale, channel price of the album or the retail price.
- Where the recoupable expenses are applied (do they get applied before the royalty rate is calculated or after)?
- The kinds of extra deductions (like packaging costs, breakage, freebies, etc.) that are taken.
- The size of the advance. Since the advance may be the only money you ever see, you want it to be as large as possible.

#### Royalty Alternatives: Another formula

In some cases (more common outside the U.S. or with indie labels), the record company and artists split the net profits of an album 50/50 (or along some other percentage in the range of 50/50). To calculate the net profits, the label takes

the gross receipts for the album and deducts all of the direct costs. The gross receipts are all of the money that the label makes from the album through wholesale sales of the CD. The direct costs include things like:

- Studio time and labour costs to record the album
- The costs of producers, technicians, etc. to produce a master
- The costs of pressing and packaging the album
- Shipping costs to get the albums to retailers
- Marketing, advertising and promotion costs
- Warehousing costs
- Legal costs
- Taxes
- Personnel costs
- Royalties paid to songwriters

Here, too, there is still a fair amount of wiggle room for the label. For example, the record label may be paying personnel \$10 per hour but charge a retail price of \$40 per hour when charging the cost of the personnel to the album as a direct cost. Part of that is justified (e.g. the label pays more for an employee than the hourly rate, including things like benefits, plus there's office space, equipment, and so on). But the markup is probably 100%. So the label is making a nice profit out of these expenses, and may still be making money even when the artist is making nothing.

Only 5% of all records released by major labels go gold or platinum. So you can see that there is no guarantee at all that your band will make any money from a recording contract. You are gambling that your album will be able to break through into the top 5% of albums and go gold or platinum.

The bottom line is that you want to push for the highest royalty rate possible, especially if there are a lot of recoupable expenses in the contract. You also want to push for the highest advance possible, since that may be the only money the band actually receives. Keep three things in mind when you negotiate the rate:

- △ It is likely that the first royalty number you see is negotiable. It is common to put a low-ball figure in the contract to give the label room to negotiate.
- △ It can't hurt to ask for a higher rate. The fact that you have been offered a contract means something. The label looked at your band or your solo act and saw talent that looked profitable. If one label can see that, it is possible that other labels would have the same reaction. This gives you a bargaining position.

- △ The Marketing Machine - You are signing a contract to achieve maximum exposure. You want the label to promote your record. If possible, you would like to see some sort of minimum dollar commitment on the part of the label in the area of promotion written into the contract.

### Recording

In return for royalties on albums sold, the band agrees to record those albums. That seems simple enough -- it is not possible to sell albums without recording them. The contract will normally set up a group of contract periods, with each period generating an album and one or more singles.

Normally the recording contract will specify the contract periods very clearly. An amount for the advance given with each contract period will be stipulated in the recording contract, and a deadline for the album will be stipulated as well. The first contract period generates the first album, the second contract period generates the second album, and so on.

So the band goes into the studio and records an album. The contract will specify that once it is recorded, it is the property of the label in perpetuity. In addition, the contract will normally have some sort of lock-out clause with a duration of five to 10 years. This clause prevents the band from re-recording any of the songs on the album for five to 10 years after the end of the contract. In other words, the label owns the songs you have recorded for a very, very long time.

If the label does not like the album, it has the right to reject it. In that case, the band has to record another album. Or the label can accept an album but shelve it and never release it. The lock-out clause will still apply in that case, even though the songs were never released.

### Options

Normally, a recording contract will have something like a one-year term to allow the first album to be recorded and released. The first contract period, in other words, lasts a year. Then the contract will have a number of options that the label can exercise to activate the second contract period, the third contract period and so on. For example, a contract might have five options. If the label likes the initial album, it can exercise its first option so that a second album can be produced.

During each option, the label is requesting a new album. The band usually gets another advance and goes into the studio to record the next album. The label can choose not to exercise its option, and in that case, the contract terminates. Or the label can exercise an option, but the band has no way to get out of the contract if things are uncomfortable. For example, if the band's first album is very successful and the band would like a higher royalty rate, there is no way to renegotiate that. The royalty rate applies across all of the contract periods in the contract. Or, if the band's first album was a bad experience and the band would

rather not do another one, there is no way that the band can avoid additional albums. If the record company exercises an option, the band is obligated to produce the album.

The options have the effect of locking a band in for six or seven albums (or more if the label rejects an album). If a band is doing well, the options in the contract guarantee that the band will produce a large collection of albums according to the terms of the contract. For most bands that sign their first contract as unknowns, this arrangement is very advantageous to the label. The band produces six or seven albums at a low royalty rate. If the band is not doing well, the label simply terminates the contract, but the lock-out clause prevents the band from re-recording the material. Even if the label has no interest in the band, the label owns all the recordings. There is no way for the band to re-release an album on its own.

Contracts will sometimes specify that recordings of live performances do not count toward the total number of albums stipulated in the contract. So if the label wants to release a live album, it can, and this does not shorten the contract.

Finally, there is a concept called **cross-collateralization**. Let's say a band's first album does well, but not well enough to recover all the recoupable costs, charge-backs, etc. For example, the record company sells 300,000 CDs and makes \$3 million. The band gets a 10% royalty. The recoupable expenses total \$500,000.

So the band "makes" \$300,000, but that money doesn't cover all the recoupable expenses. So the band is now \$200,000 in the hole. The band does not get a cheque, but the label probably cleared \$2 million from the album. So the record company exercises the first option. The band creates a new album. The income from the second album will have to cover all the remaining costs from the first album (\$200,000) and then all of the new costs for the second album before the band sees any money. **In this way, a band may need to produce several albums before it gets paid anything.** It is not a pretty picture for a band that "almost succeeds." The contract locks the band in, but the band makes no money from the contract outside of the advances.

**This is why you would like the advances to be as large as possible.** Since the advance money may be the only money you ever see, and is therefore the money that you and the band members will be living off of, you definitely want to try to negotiate an advance that allows the band members to live a decent life and cover things like health insurance.

**Exclusivity** - The label has exclusive rights to the band's music, the band's name, the band's members, the band's image and likeness, etc. for the duration of the contract.

**Merchandising** - Depending on what the contract says, any revenue earned from T-shirts, key chains and so on may go to the label. The label may own all merchandising rights for the band.

**Interviews and publicity** - The label can request, at pretty much any time, that the band make itself available for press interviews, personal appearances, photographic sessions, etc. The band probably will not be compensated for these activities outside of travel expenses.

**Creative control** - The label has the right to decide on the artwork for the CD label and jewel case. The label can also reject an album, or accept and then shelve an album.

**Other work** - Any outside work the band does must first be approved by the label.

**Personnel** - If someone resigns from the band (or, for example, dies), the label has the right to terminate the contract.

### Alternatives

So now you may be asking yourself, "Why would anyone sign a recording contract?" There are at least two good reasons for a band to sign a recording contract:

*If you hit it big and your album goes multi-platinum, your band will make some money. You will not make a lot of money compared to the money that the label makes off a multi-platinum album, but you will make some.*

*A major record deal is probably the best way to get mass-media exposure. It is unlikely, for example, to find a band getting air time on places like MTV, VH1 and commercial radio stations unless the band has signed with a big label. If mass exposure is what you crave, then a big label is probably the way to go.*

But let's say that you have read this article and you aren't liking the sound of things. **What are your alternatives?** You have perhaps five options:

- You can get out of the business.
- You can stay small and try to make a living off club performances and selling your own CDs at local shows.
- You can hire a big-name entertainment lawyer and hope that he/she can negotiate a better deal.
- You can go with an independent label and try to find a better deal.
- You can create your own record label.

The first option is the easiest from a purely logistical standpoint. The last option is the most complicated and requires a talent for business that leverages your

talent for music. Despite the complexity, there are a lot of people who have formed their own labels and made money doing it.

By starting your own label, you have total control, and you make a lot more money per CD you sell. The downside is that you generally do not sell as many CDs.

*To read the full article by Marshall Brain from which these extracts are taken, see:*  
<http://entertainment.howstuffworks.com/recording-contract.htm>

**What's a Record Label Deal All About?**  
by Christopher Knab, Fourfront Media & Music

Record labels today are attracted to acts that have built a strong following and have proved to the industry that they are a solid investment. When a record label signs an act to a recording contract, they expect to make a substantial return on the financial investment they have made in that act.

The following information is a basic outline to the key parts of a recording contract. Please be advised that should any such contract ever come your way, never sign anything without consulting your entertainment law attorney.

## INDIE LABEL VS. MAJOR LABEL

### **Indie Label**

An independent label is a record label that is not affiliated in any way with a Major Label, and uses independent distributors and/or digital distribution methods to get their releases into stores, both online and into shops.

When you think about pursuing an independent record label deal, think about the following issues:

**DISTRIBUTION** - Make sure the label has a solid distribution deal on a national level. Be sure to check on the relationship between the label and their distributor(s). Ask some questions like:

How many CDs has the distributor sold of the label's product?

Did the label have any problems getting paid by their distributor?

What kind of working relationship do they have with their distributors on their new releases?

Does the label have a budget to pay for some ads and in-store promotions through their distributor?

What kind of Internet distribution and online sales methods does the label use?

**ROSTER** - Make sure the label's roster isn't too big, or else you won't be given the attention you deserve. Also, make sure the acts on the roster match the type of music you play.

**PUBLISHING** - If the label has an affiliated Music Publishing division, and wants part of your publishing, don't be surprised, but be sure your lawyer protects as much of your publishing royalties as possible. Never allow a label to recoup any monies advanced to you for the recording of your record from your publishing royalties.

**MERCHANDISE** - Merchandise deals are deals made by your lawyer for your likeness to appear on t-shirts and other clothing and objects. If the label wants a percentage of the income from such a deal, you may have to negotiate how much they get.

**OPTIONS** - Find out how many options the label wants. Since "options = number of records (CDs)," you don't want to agree to too many options.

**INDIE PROMOTERS and/or IN-HOUSE STAFF** - Find out if the label works with independent radio and/or retail promoters. It's a good sign when they do; this raises the chances that your record will be seriously and effectively promoted.

**ADVERTISING** - Find out if the band has an advertising budget for releases.

**TOUR SUPPORT** - Find out if and how they support you on your tour (financially, morally, etc.) and how much of any advances for touring are recoup-able.

**POINT / PERCENTAGE of the LIST PRICE You Receive** - Find out how much you get paid for each record sold. A new act usually gets somewhere between 10-15% of the suggested list price of a recording. (Remember too that out of your percentage, you must pay your producer).

### **Major Label**

A major label is one that commands a high percentage of the annual sales of records, and has its own distribution system. When pursuing a major label deal, be absolutely sure that this is what you really want. Here are some points that might help you determine if this is the right thing for you to do:

**OPTIONS** - A major label often signs artists for 6 to 8 "records" (CD releases).

**A&R** - Research the A&R person. Know who they've signed, who they've worked with, who they've worked for, and how long they have been employed.

**NUMBER OF RELEASES** - Find out how many records the label releases per year. You don't want to sign with a label that releases too many records. Remember, they only have so much time and enthusiasm to put into the promotion of each record. Many major labels have between 12-25 releases coming out each month.

Here are some clauses that you will encounter (and sometimes have to watch out for) in a contract with a record label:

**EXCLUSIVITY** - Every record contract includes a provision stating that the deal is "exclusive." In other words, during the term of the agreement, you can't make records for anybody else. Therefore, an exclusivity clause in a contract refers to

the fact that you may only contract with this record company (you are "married" to that company.) Get your attorney to define the extent of exclusivity.

**TERM** - The contract's duration (How many records? What time constraints?)

**PRODUCT / CREATIVITY** - Who will control the amount of product and the quality of the product? You always want as much creative freedom as possible; the record company often maintains a veto power when letting a band choose the producer, engineer, studio, etc.

**RECORDING COSTS** - How much (recoupable) recording money will you get? Don't overdo it! Remember, you will have to pay it back from your royalty rate as applied to actual sales.

**ADVANCES** - How much (living) money will you get that is recoupable? What about other advances, such as videos and touring? Remember, you will have to pay back this money to the label.

**ROYALTIES** - The money paid for your service as a recording artist. Outside of the USA, you get a percentage of the U.S. Rate [Canada: 75-90% / UK, Japan, Australia: 60-70% / Rest of the world: 50 %].

**VIDEO** - Who controls the music video and how are the costs are apportioned? Try to have only 50% of the cost recoupable.

**PUBLICITY** - The label will need your permission for name, likeness and voice in order to publicise your record. Also, ownership of your website URLs may be a point of negotiation.

**MERCHANDISING** - Same as with Independent labels.

**UNION** - You promise to join a trade union (USA).

**AUDITING** - Your right to audit the books: make sure this clause is included in the contract.

**ACCOUNTING** - The label's responsibility is to report financially to you (reports to artists usually occur every 6 months).

**ASSIGNMENT** - The record company's right to sell the contract: majors sometime shuffle acts around from one affiliated label to another within their family of labels.

**CONTROLLED COMPOSITION** - How the label will pay mechanical royalties. The standard USA practice is that the label will only pay on 10 songs on your record,

and at 75% of the current statutory mechanical license fee ( 9 cents per song, per unit sold.) This rate changes every two years.

**TERMINATION** - This clause specifies the songs you may not be allowed to record for a set time after the ending of the contract.

**SIDEMAN'S CLAUSE** - You might want to consider including a sideman's clause; this allows an artist to do studio work. The artist still needs permission from the record company but they can't say no unless they have a very good reason. Without a sideman's clause, you would be prohibited from performing for any other band/label under the terms of an exclusive contract. If you have a sideman's clause in your contract, make sure all members of your band sign the document.

**KEY MAN CLAUSE** - If a significant label executive resigns, or leaves the company, you may terminate the deal. The label may also put such a clause in concerning a band member.

*Christopher Knab is an independent music business consultant based in Seattle, Washington. He is available for private consultations on promoting and marketing independent music, and can be reached by email at: [chris@chrisknab.net](mailto:chris@chrisknab.net). Chris Knab's book, 'Music Is Your Business' is available from the Music Biz Academy bookstore.*

**To read the full article by Chris Knab from which these extracts are taken, see:**  
<http://www.musicbizacademy.com/knab/articles/recorddeal.htm>

## What is fair in a record deal? by Chris Standring

**Artists have great difficulty making money from record sales.** There are two royalty sources that an artist is technically able to benefit from. The first is "artist" royalties. These are royalties due to an artist from record sales. Usually an artist can be offered anywhere between 10 to 20 royalty points depending on his/her credibility.

The second royalty source is "mechanical" royalties. These are publishing royalties payable to the songwriters. The royalty rate is around 7 cents per song. A songwriter who writes 100% of an album's worth of 10 songs will therefore make 70 cents per album sold. Clearly, it is extremely beneficial for artists to write the music they record.

However, labels somehow get away with paying artists only 75% of the "mechanical" rate, which means they effectively withhold 25% of the copyright income. Very successful artists can usually negotiate to get 100% of the "mechanical" rate but new artists have to accept 75%.

Returning to "artist" royalties, let's say a major label has just signed your band and offered you an exorbitant amount of money. Your manager has negotiated an artist royalty of 15 points - not bad for a new artist. Here's the way it works...

Every single promotional penny spent on promoting your record, be it video costs, radio promotion, press advertising, online promotion, or retail shop promotion is recoupable from your royalty points in some way. Some things are charged to the artist at 100%, some 50%. What this means is that in order for you to recoup \$100,000's worth of promotion, the record company will have to receive income almost 10 times that amount. (And you - the artist - won't see a penny until your recoupment is cleared).

How is this so? When \$100,000 of income goes to the record label, only 15% of that goes towards your recoupment. You are recouping at a snail's pace, Realistically, you can never really make money because even if your records are selling well, the label will continue to spend X amount of promotional dollars which in turn gets recouped at the 15% snail's pace.

As a result, the smarter artists know that they **HAVE** to write their own material. Once they have a hit record, if they are clever they will have their manager attempt to re-negotiate certain things. One of those items is to "clean slate", which essentially means getting the label to erase their recoupment bill from a previous record. This type of renegotiated deal is only possible for an artist with a very successful CD.

Aside from living off publishing income (mechanical royalties), a successful artist can always tour. The more successful an artist is, the more the band can be "guaranteed" high performance fees. A successful artist touring can command thousands of dollars per show to which record companies should not have access. This is important revenue for artists.

Finally, labels **should** make the lion's share. Why? Because anyone who stumps up the money in the first place should make the larger percentage. Otherwise artists should do it on their own. It is only right that artists sign a record deal where a record label makes more money than them, especially if an artist is new, undiscovered and needs huge promotion. Such promotion requires a ton of money, money which artists don't have. That's why we have record deals.

*To read the full article by Chris Standring from which these extracts are taken, see: <http://www.music-articles.com/marketing/what-s-fair-in-a-record-deal---by-chris-standring--a-r-online-.html>*

## The Music Industry's Funny Money by Cord Jefferson

Still think a music career is an easy path to a blinged-out life? Don't believe the hype. A whole lot of folks have to get paid before the musician does. This article traces the money trail.

If you thought the life of most musicians was comparable to the blissful and blinged-out existences of Kanye and Rihanna, you've clearly not heard much about our troubled music industry. According to the latest Nielsen research, only 2.1 percent of the albums released in 2009 sold even 5,000 copies -- that's just 2,050 records out of nearly 100,000, and to fewer people than go to a small liberal arts college.

As if that weren't bad enough, even the bands who do move units end up paying through the nose, mouth, eyes and ears for management, legal fees, producers and other expenses, leaving most of them scrounging to pay for record advances and, if they can afford it, health care. From the outside, it often sounds fun to be in a band. But before picking up that guitar or microphone, take a look at where the money from a record goes.

**SLRP:** The suggested list retail price of a CD is currently \$16.98, while the standard wholesale price -- what retail stores pay the label per CD -- is about \$10. Once the retailer gets the CD, they can sell it for however much they'd like -- hence "suggested." Artist's royalties are a percentage of the retail price. Superstars can get 20 percent of the SLRP, but most get 12 percent to 14 percent.

**Packaging charge:** 25 percent of the SLRP goes back to the record company immediately for what's called a "packaging charge" -- that's the label literally charging the artist for the plastic case in which his or her CD is sold.

**Free goods:** In essence, "free goods" are a roundabout way for labels to discount records so stores will be more inclined to buy them. So rather than sell "Best Buy" 100,000 records at the regular wholesale price, the label will sell them 100,000 records for the price of 85,000. The artist is then paid for the 85,000 CDs, not the actual 100,000 sold to the retailer.

**Reserves:** Records, especially records by newer artists, are generally sold with the caveat that retailers can return to the label whatever copies they don't sell for a full refund. Thus, to ensure they don't lose too much money on artists, record labels will sometimes pay artists for only 65,000 copies out of 100,000 copies, just in case 35,000 (25,000 if you consider the free ones) are returned. If the retailer ends up selling all their copies, the label will then pay the artist the balance owed, which can sometimes take years.

**Distributor:** Music distributors are entities designed to promote and distribute records. The major labels maintain in-house distributors, while most all indie labels use private distribution companies. For smaller bands' records, the distributor can take as much as a 24 percent cut of the SLRP; bigger bands might only be charged 14.2 percent.

**Songwriter/publisher:** If an artist doesn't write his or her own music, someone else has to. And someone who writes a song must first go through a music publisher, whose job it is to place that song with a recording artist who will agree to perform it. If an artist buys the song, the writer and publisher then receive 9.1 cents for every copy of the song sold, a sum they must then split.

**Personal manager:** This manager guides the career of the artist and gets about 15% of the artist's gross earnings.

**Business manager:** This manager is the artist's money man, making sure the musician repays his debts and invests his earnings wisely. A business manager charges 5 percent of an artist's gross.

**Lawyer:** While it's not always the case - many charge hourly - some artist's lawyers charge 5 percent.

**AFTRA and AFM:** These are the North American musicians unions. Singers join AFTRA (the American Federation of Television and Radio Artists), while players join AFM (the American Federation of Musicians). If an artist cuts an album, he has to join a union, which will then take \$63.90 in base dues plus 0.743 percent of the artist's first \$100,000.

**Record advance:** Unlike touring fees, of which the record company can only recoup half, record advances are 100 percent recoupable. That means that if the label fronts an artist \$75,000 to pay for whatever he or she needs to record an album --studio time, new instruments, etc. -- the artist then owes the label that initial \$75,000, regardless of whether the record is a success or not.

*To read the full article by Cord Jefferson from which these extracts are taken, see: [www.theroot.com/views/how-much-do-you-musicians-really-make?page=0,0](http://www.theroot.com/views/how-much-do-you-musicians-really-make?page=0,0)*

## RECORD LABELS - DO NOT TRUST THE A&R MAN by Steve Albini

Every major label involved in the hunt for new bands now has on staff a high-profile point man, an "A & R" rep who can present a comfortable face to any prospective band. The initials stand for "Artist and Repertoire." because historically, the A & R staff would select artists to record music that they had also selected, out of an available pool of each. This is still the case, though not openly. These guys are universally young [about the same age as the bands being wooed], and nowadays they always have some obvious underground rock credibility flag they can wave.

There are several reasons A & R scouts are always young. The explanation usually copped-to is that the scout will be "hip to the current musical "scene." A more important reason is that the bands will intuitively trust someone they think is a peer, and who speaks fondly of the same formative rock and roll experiences. The A & R person is the first person to make contact with the band, and as such is the first person to promise them the moon. Who better to promise them the moon than an idealistic young turk who expects to be calling the shots in a few years, and who has had no previous experience with a big record company. The band will say to themselves and everyone else, "He's not like a record company guy at all! He's like one of us." And they will be right. That's one of the reasons he was hired.

These A & R guys are not allowed to write contracts. What they do is present the band with a letter of intent, or "deal memo," which loosely states some terms, and affirms that the band will sign with the label once a contract has been agreed on. The spookiest thing about this harmless sounding little memo, is that it is, for all legal purposes, a binding document. That is, once the band signs it, they are under obligation to conclude a deal with the label. Make no mistake about it: once a band has signed a letter of intent, they will either eventually sign a contract that suits the label or they will be destroyed.

One of my favorite bands was held hostage for the better part of two years by a slick young "He's not like a label guy at all," A & R rep, on the basis of such a deal memo. He had failed to come through on any of his promises [something he did with similar effect to another well-known band], and so the band wanted out. On the cusp of making their signature album, an excellent band, humiliated, broke up from the stress and the many months of inactivity.

*To read the full article by Steve Albini from which these extracts are taken, see:*  
[http://www.negativland.com/news/?page\\_id=17](http://www.negativland.com/news/?page_id=17)

**YOU WILL NEED TO HAVE A BAND AGREEMENT and  
YOU WILL EVENTUALLY NEED TO FIND A MANAGER by Davenport Lyons**

If you're in a band, you need to have a **band agreement**. The agreement needs to cover -

- regular business meetings
- regular meetings with your manager and which member of the band is the main communications person (to and from the manager)
- the money side of songwriting (do only the songwriters benefit or have all the band members a share in publishing income?)
- how income is shared between band members (apart from songwriting)
- who owns and pays for instruments/equipment
- ownership of the band's name (this is usually shared by the band members, and the band's name cannot be used by ex-band members)
- income from sponsorship and merchandising (an issue directly linked to ownership of the band's name)
- what happens when a band member leaves OR a new band member arrives
- how expenses are shared
- professional issues such as appointing accountants/solicitors, opening a bank account and authorised signatories, who makes decisions about publishing or recording agreements, who makes the creative decisions

If you're in a band, you will eventually need a **manager**. The manager looks after:

- booking gigs and rehearsal space for the band
- sending demos to record and publishing companies and making follow-up phone calls
- keeping abreast of events such as IMRO Showcases, In The City Unsigned, MIDEM and SXSW and making sure that the band are entered for any such suitable events or tours
- writing a biography of the band and keeping it updated regularly
- organising professional photographs for demo and promotional purposes
- promoting the band in national and local press and radio
- creating and maintaining a press kit from any press coverage received
- handling all negotiations on the bands' behalf with record and publishing companies
- negotiating all business deals on the bands' behalf, e.g. merchandising deals, film soundtrack deals, fees for concert performance
- hiring all professionals associated with the band, e.g. lawyer and accountant
- liaising with the agent regarding tour schedules
- making sure that the record company is promoting any releases in tandem with tours and is treating all releases as a priority
- having comprehensive knowledge of the bands' legal and financial commitments and providing sound business advice relating to these issues

**A management contract needs to cover:**

- The term (length of time for which the manager will be involved with the band)
- The salary (a percentage of gross receipts, usually 15% - 20%)
- The exact coverage of the manager's role (e.g. If a member of the band develops an acting sideline, is this included?)
- The territories covered (it is wise to give a manager coverage only for the territories where he is knowledgeable)
- The key man clause ( if you have a relationship with a specific person within a management company and if this person leaves, what happens then?)

Get independent legal advice about a proposed contract to protect your interests  
Nominate one band member to liaise with the manager on a detailed basis

**The Term:** Commonly, the term of a management contact runs for between three and five years (although sometimes the period refers to album cycles). Sometimes after an initial period (often two or three years) the continuation of the term depends on the manager having achieved specific goals. This can be measured in a number of ways including by reference to the artists' earnings over a particular period of time or record sales. For new artists it is important to ensure that you can get out of the contract at an early stage if your manager has not secured a record and/or publishing deal within a given period (usually nine to twelve months). This is the manager's main job at the early stage of your career and if he is not able to do that job then you should be free to go and find a manager who can.

**Territory:** This refers to the geographical territories the manager will manage you in. Has the manager has in-depth knowledge of the American music industry or should you be managed by an American manager in this territory? With new artists a manager is almost always appointed on a worldwide basis. If the management is worldwide, try to ensure that your approval is required before the manager can appoint other (sub) managers in specific territories and that any commission payable to any sub-manager is paid for out of the manager's commission (to avoid you having to pay double commission on income arising in the territory where the sub-manager has been appointed).

**Scope:** Which aspects of your career is the manager looking after

**Commission:** This is how the manager gets paid. The income on which commission is charged will depend on the scope of the managers' appointment. Even where a manager is appointed over worldwide entertainment industry activities, you should try to ensure that you are only obliged to pay commission on income you actually receive from songs written (and ideally exploited) and records recorded (and ideally released) while he was managing you (i.e. during the term).

A UK manager will generally expect to receive a commission of 20% on income earned and actually received from agreements you enter into during the "Term" and activities you undertake during the "Term". Before a manager's commission is calculated, you should be able to deduct certain costs and expenses from your gross income. The income which is left after all these deductions is referred to as "net income" and the manager will be entitled to his percentage of that income.

**Expenses:** You will invariably have to agree to pay the manager's expenses incurred in promoting your career. Try to ensure that this will be repayable from actual income earned and received by you from your activities in the entertainment industry. Expenses can often be capped so that the manager can spend only a fixed amount each month. It is also a good idea to ensure that a manager cannot spend more than an agreed amount on any one item without your approval.

**Accounting:** The management agreement will specify whether you control and collect the income and pay the manager's commission or whether the manager controls and collects all the money, retains his commission and pays the balance to you. This is really important when a dispute arises between the manager and you.

It's better that you collect the money and pay the manager (probably with the help of an accountant). State that the manager cannot enter into agreements on your behalf without your consent. And the manager should not be able to "contract out" his obligations without your consent.

**Manager Duties:** The management agreement should always contain a clause that a manager will use his best efforts to further your career and provide the services normally provided by a first-class manager in the music industry (this is fairly standard wording). These will include negotiating and liaising with agents, promoters, record and publishing companies; organising, overseeing and supervising recording projects, live performances and touring; regularly liaising with the artists other professional advisers including lawyers and accountants; collecting income (if appropriate) and generally managing your affairs.

**Termination:** A provision should be included in the agreement saying that you are entitled to terminate the agreement in the event that the manager (or management company) is affected by insolvency events such as bankruptcy or liquidation.

**FINDING A MANAGER MATERIAL** - No author indicated. Published some years ago on the IMRO site. Now archived on [www.inarchive.com/page/2011-09-20/http://www.imro.ie/node/727](http://www.inarchive.com/page/2011-09-20/http://www.imro.ie/node/727)

**BAND AGREEMENTS MATERIAL** - Extracted from *Music Business - The Survival Guide* by Davenport Lyons Solicitors, published some years ago on the IMRO site. Now archived on [www.inarchive.com/page/2011-09-20/http://www.imro.ie/node/720](http://www.inarchive.com/page/2011-09-20/http://www.imro.ie/node/720)

To make some money from your composition, you have to get your song onto the market, as it is not going to make any money for you until it is some form of recording available to the public. Songwriters tend to approach a music publisher, as he is traditionally the person who publishes songs, gets a record label to put them on record, collects the royalties, and sends you a large fat cheque every so often.

There are some good publishers and some not so good publishers, and some downright bad publishers around. Very few songwriters today would sign a contract without having it first vetted by a good music business lawyer. In any event, many publishers now use stock or standard contracts, which are generally fair to both writer and publisher. For that reason, most complaints are not about the contract itself, but with the subsequent behaviour of the music publishing company offering that contract in the first place.

The songwriter can save saved himself a lot of subsequent heartache by asking a number of basic questions - questions you might ask somebody offering to sell something on your behalf, collect the money, and send it on to you later, after deducting their own cut (which is basically what publishing is all about).

Obviously, you would want to be handled by a successful publisher, but isn't it true to say that a successful publisher has plenty of good songs and songwriters already, and is not likely to be interested in yours? Some writers are convinced that it is easier to get contracts for less commercial material from less successful publishers. Our experience actually shows otherwise.

The less successful publisher has fewer contacts, and so fewer outlets for songs signed, plus less money for demos and promotion (not to mention advances!), and frequently, though not always, less experience. I think you are better off with publishers who have had at least one British or American Top 40 hit in the last twelve months.

Forget about publishers who tell you about their hit in Scotland or Massachusetts, unless of course your material is suitable only for regional markets. If the publisher has been unable to get a hit for himself in the last twelve months, why should his track record now suddenly improve just because you are giving him your songs? An unsuccessful music publisher is probably not as financially sound as you would like him to be and as he will be receiving your royalties, and putting them in his bank account before (hopefully) sending them on to you, you must be fairly happy about his financial position. You can have a credit check run on the music publisher by one of the many trade protection societies.

If you are not impressed by what you see, but are still tempted to sign, remember that ignorant publishers will give you bad advice, fail to promote your songs effectively or at all, and in some cases, may not adequately protect your rights (or indeed even their own) in subsequent negotiations. Most ignorant publishers fail after the first year or two, but a few seem to lead a charmed life - so beware!

Before signing with any publisher, try and speak with somebody who has dealt with that publisher, and ask him about his own experiences. If you cannot locate a writer who has dealt with that publisher, try the ISA (International Songwriters' Association). We can usually give you some idea of what to expect. Having said that, it is my opinion that in 90% of all cases, such precautions are superfluous, as I do genuinely believe that 90% of all publishers are relatively honest. They are not necessarily relatively efficient or successful - but they are usually honest.

What is a "shark publisher"? A shark is a self-styled publisher who does not publish. The most basic form of shark is the gent who preys on lyric writers. When you approach a proper music publisher, he is only interested in hearing a complete song, not just words. If he likes your song, he pays you a small advance, and starts trying to turn your song into a hit. In other words, a genuine music publisher publishes complete songs of lyrics and music, and he pays you - not you him.

Now the shark works the other way around. He will express enthusiasm for anything you give him, as long as you are willing to pay him to write melodies, write lyrics, write entire songs, and publish the results. The main point is that it will cost you money, and that you will never see one penny of that money again. The key point to remember is that the real publisher pays you, but that you pay the shark publisher.

So finally, you get a publisher who offers you a contract, and your first worry will be - what should I be looking for? You yourself should not look for anything in a contract, because under no condition should you examine a contract on your own. A contract is a binding legal document, and once signed, it is very difficult to break it, so take care - and have it checked. Publishers do not get annoyed if you ask for time to have the contract checked. Some publishers, in fact, insist that you take the contract away and take legal advice on it before signing it.

If the songs are really good and the publisher is really interested, he will sign them no matter how long you take to examine the contract. There are no time limits in songwriting. You can get your contracts checked through a lawyer, but it's very important that you get a lawyer who knows something about the music business (i.e. a lawyer who knows what the normal percentages on offer in the business are).

Use your own people in all areas; use your own accountant, your own lawyer, and your own agent. And beware of any company that seems to be very critical of your

advisers. That's a bad sign, because normally people in the same industry don't criticise each other openly.

Somewhere in the contract there should be an advance payment, no matter how nominal, because that is the whole principle of the thing. The publisher is going to be paying you; you're not going to be paying him, and in return for this payment, which might be 5c or €5 or €500, you will be giving the publisher the rights to promote your songs for a fixed period of time, after which you get them back.

The contract must contain a **short reversionary clause** of some type. This is a clause which gives the song back to you after a certain period of time has elapsed and the publisher has been unable to place it (a period of months or years but certainly no more than two years). After this time period, the songs revert to your ownership, and you are free to try elsewhere with them, and (what's more important) keep the advance which was paid you. You can suggest to your publisher that the reversionary clause should be one year, and he'll probably laugh at you, but a lot of professional songwriters only give a one-month option on a song before they take it elsewhere.

There is a second reversionary clause which comes into effect even if the song has been published and recorded. This clause stipulates that the publisher should give you back the rights to your song after a certain number of years, even if he's been successful with it. Some writers insist on ten years or fifteen, but the important thing is the principle that the publisher will not own the material for life even if he has been successful with it.

How about the percentages? The worst possible contract a newcomer would get would show one percentage of 10% and a whole load of 50%<sup>s</sup>. If you see any figures lower than 10 and 50, there's something seriously wrong. The lower figure (the 10%) usually applies to all sheet music sales, and the higher figure (the 50% or upwards) usually applies to everything else - in other words, all performance royalties, mechanical royalties, recording royalties or any other royalty which comes in.

If you don't find any reference in the contract to sheet music royalties, and you query this, the publisher may well say that nowadays nobody buys sheet music. This is spurious, and you should demand a percentage of all sheet music sales. The sheet music sales on any best-seller can be very substantial, particularly on tuneful, melodic, middle-of-the-road type songs. Now your publisher is telling the truth if he says that sheet music doesn't sell as well as it used to, but what still sells quite well is the compilation album of sheet music. These still sell and at very high prices: indeed you often see these in shops at €10-€15 each. You know the sort of thing I am referring to - books like "The Elvis Presley Song Book". You must get paid on these lines, because such books can sell two hundred and three

hundred thousand copies each, and if they are selling at €15, and you're not getting your cut, that's a hell of a lot of money to be missing out on.

The fifty per cent or higher royalty figure refers usually to all other income, from whatever source, including performance and mechanical royalties. Most songwriters know that if a record sells, they get paid for every copy sold over the counter. Such royalties are usually referred to as mechanicals. Many writers know as well that most of their money comes not from these royalties but from performance royalties - in other words, royalties paid each time your song is performed. Those royalties are very important, because they could mean that if your record never sold at all in any real quantity, it might still earn some money if it were played on radio or on television, or in a dance hall, or a disco, or indeed if it were sung on stage live by a group or whatever.

Payments in this area can range from perhaps just a few euro on a local station to hundreds of euro if your song is played on peak time television. And if you're ever lucky enough to have your song chosen as a signature tune for a popular television show, the sky's the limit. So make sure that this percentage is as high as you can get. I myself would never accept anything under 60% in this area, and I'd be trying for 70% or 75%.

Then there are the mechanicals. If a record is sold over the counter, so much of the money paid by the record buyer goes back to the record company. *The record company then pays the music publisher a percentage of the retail price of the record, and the publisher then pays you a percentage of this (at least 50% of it) or whatever figure has been agreed in the contract.* Again, I'd be thinking in terms of looking for 60% to 70% as a minimum, given that the legal minimum in this area is 50%.

Of course, there are also other sources of income which will be mentioned in the contract. If your song is used in a film, or if it's used as an advertising jingle, then you will also receive a percentage of that income. Again, there is a 50% minimum, but I'd be thinking in terms of asking for 60% or 70%. Usually, the percentages throughout the contract are identical anyway. In other words, if the publisher has offered 60% for one of the sources of income, he will be offering 60% for them all.

There should be a section in the contract which states when payments will be made. This will have to be on a regular basis; the maximum period between payments should be no more than six months or so. Beware of a clause which is quite popular in the USA which simply state that payments will be made "as soon as possible", because what is soon for you may not be possible for them for years, and you might find yourself waiting for money while they put it in the bank and earn interest on it. Worse than that of course, they might go broke before they

pay you, and then you'll get nothing. So make sure that there's a reasonable time limit laid down.

Finally, in your contract, there should also be a section stating that you may inspect their books at any stage, but make sure that it makes clear that either you or somebody appointed by you may look at the books, because it would probably be of little use you looking at the books on your own, unless of course you happen to be an accountant.

A very important point to remember is that outside Britain your publisher has to involve a second publisher to look after your song on his behalf, in the country in which the record is being sold. This second company, called the 'sub-publisher', may be an overseas branch of your publisher, or it may be a separate company to which your song has been licensed for several years. Either way, the sub-publisher takes a percentage of the song's earnings from that country (usually at least 15 per cent), and returns the rest to your UK publisher. It's this net amount which is eventually split between you and your publisher back home.

*To read the full International Songwriters Association manual from which these extracts are taken, contact the Association at [www.songwriter.co.uk](http://www.songwriter.co.uk) and ask for their superb "Selling your Songs" booklet.*

Music publishing is a key income generator within the music business. It is a core function of the administration and management of music, and is central to the underlying concept of music copyright control. Performing artists who can write their own material are advantageously placed, as they are in a potential position to engage in financially rewarding relationships with both record companies and music publishers.

**The Rationale for Music Publishing** - The song is the intellectual property of the songwriter(s) and so songs (as creative works) can be copyrighted separately from sound recordings. This distinction between songs and records means that songwriters can enter into publishing deals in much the same way as recording artists can sign record deals. Music publishers then manage these song 'catalogues'. In doing so, they serve to protect the songs' copyright, and to exploit the works to the benefit of both the songwriter and the publisher. Record companies, meanwhile, undertake the risk management activity of recording, manufacturing, promoting and distributing sound recordings.

Music publishing has a number of potential sources of income. These are as follows:

Mechanical Royalties from Manufacturing - A song can only be manufactured into a physical product (a CD, for example) by securing a 'mechanical licence', and on payment of a mechanical royalty to the songwriter. To simplify this process, standard rate scales are used, and collection agencies are assigned the task of collecting and distributing royalties. In the UK, for example, the current standard mechanical royalty rate is 8.5% of the published dealer price of the record. Thus, a record with a dealer price of £7.99 will attract a mechanical royalty of 68 pence per record for the songwriter(s). This sum is then collected by the local collection society - in this case, the MCPS (Mechanical Copyright Collection Society).

In the USA, the statutory mechanical rate is currently set at 8 cents per track (for songs up to 5 minutes long) and 1.55 cents per minute (or part thereof) for songs over 5 minutes long. This money is usually gathered in by a collection body (such as the Harry Fox Agency). Due to historical circumstances - and because there is such a strong buyers' market - many songwriters are only paid three-quarters of this US rate.

Other territories, of course, have their own local collection societies - such as AMCOS (Australia & New Zealand), CMRRA (Canada), JASRAC (Japan), NCB (Scandinavia) and GEMA (Germany). Most collection societies usually charge a fixed commission fee for their service. *Music Business Journal* has compiled a substantial list of these organisations (with hyperlinks) at <http://www.musicjournal.org/links.html>

Mechanical royalties are not only generated from the obvious products, such as CDs or videos, but also from other physical items, such as film reels, and even novelty items such as cakes, birthday cards, and mobile phone ringtones - indeed, any product containing copyright music.

BIEM is an important Paris-based organisation, which was set up to oversee reciprocal arrangements for the collection of music publishing mechanical royalties across international territories. Hence, most CDs now carry the small stamp, BIEM, on the actual disk itself - *e.g.*:

- ⤴ **GEMA/BIEM** (means manufactured in Germany, income collected via BIEM agreements);
- ⤴ **BIEM/MCPS** (means manufactured in the UK)
- ⤴ **BIEM/STEMRA** (means manufactured in the Netherlands).

This appellation is useful, because the corporate groups tend to focus their manufacturing in specific territories (Sony Europe, for example, manufacture in Austria). BIEM agreements now cover 38 international territories. Further information on BIEM can be found at their official website: <http://www.biem.org>

**Performance and Broadcasting Income** - Performance and broadcasting income is a key source of income for the songwriter and publisher. Every time a copyrighted work is broadcast, or performed in public, it should (theoretically) generate income. Again, to simplify the collection process, standard formulas are employed, and specific collection bodies have been set up to achieve an economy of scale in collection.

In the UK, the local collection society is the Performing Right Society, or PRS. Other examples are IMRO (collecting within the Republic of Ireland), APRA (Australasia), SOCAN (Canada), SACEM (France) and STIM (Sweden). Songwriters and publishers in the USA have three main options. They can join ASCAP (the American Society of Composers, Authors and Publishers), BMI (Broadcast Music, Incorporated) or SESAC.

The world's oldest collection society for performance income is France's SACEM, which was established in 1851. Most countries have unified collection bodies for the joint collection of all mechanical, broadcasting and performance royalties.

*Music Business Journal* has assembled a substantial body of hyperlinks to worldwide collection bodies. This can be found at <http://www.musicjournal.org/links.html> .

As live music generates performance income, some paperwork is needed in order to monitor playlists. Where applicable, this paperwork is completed by an act's

Tour Manager. Again, formulas are commonly used - in the UK, for example, this formula is 3% of gross box office receipts. Note that many unregistered venues do not generate performing right fees (particularly where performing music is, for them, an incidental activity).

Public places that play music must also pay for this performing right. 'Blanket' licences are therefore issued for this purpose. Buildings such as bars, restaurants, clubs, gyms, shopping centres and train stations must pay a set annual fee to their national performing right society. This income (known as 'black box' income) is then pooled collectively, and re-distributed on the basis of analogies from radio airplay, and other sources such as jukebox data.

Broadcasters, such as TV and radio stations, will either be sampled, or, for those with a significant audience reach, fully monitored. They will then pay a set rate per minute to a collection society. This income is, in turn, passed onto the songwriter and publisher, after administration commission is deducted. Internet sites which play copyrighted music also require performing rights licences. The application of traditional music publishing procedures and rights to the online environment is still in its infancy. In time, however, online licences should become more structured and manageable, thus providing additional income for songwriters and publishers.

**Overall, in terms of logistics, performing and broadcasting income are rather difficult to collect and administer.** Mechanical royalty income is easier to collect; however, the main problem for mechanical rights societies (and record companies) is piracy and illegal duplication. Such piracy can range from large-scale operators (sometimes financing organised crime), to individuals illegally burning music onto CD-R's, at home.

**Synchronisation Fees** - Some publishers are better than others at securing synchronisation income. This income is generated when songs are integrated into moving images such as films, TV programmes, TV commercials, and multimedia software. Such synchronisation agreements are individually negotiated between the publisher and the production company. The fee generated depends on the politics of the situation - how keen is the production company to use a particular song? Note that synchronisation can be very lucrative and that some fees have generated seven figure sums for songwriters and publishers.

**Sales of Sheet Music** - This is the traditional activity of the music publisher. Even in our hi-tech age, a market still exists for items such as songbooks and sheet music. Note that music publishers usually take a much greater royalty rate for this activity (*e.g.*, 90%-10% in favour of the publisher) for sheet music income.

**Cover Versions** - These can be particularly lucrative sources of income. As the song is separate from the record, artists recording a cover version must

therefore forsake the mechanical royalties for manufacturing, as well as broadcasting income from airplay, etc. Instead, these royalties are payable to the original songwriter. Note that sampling without approval is illegal. A common music industry myth is that sampling is acceptable if limited to a short excerpt. In fact, all samples require written approval from both the music publisher, and the record company (if lifted from a copyrighted sound recording).

**The Printing of Lyrics** - As the lyrics of a song are also subject to copyright control, the publisher can negotiate printing fees with other publishers - such as magazines - for re-producing these lyrics. Some records also contain these lyrics within the sleeve, thus generating more income for the songwriter and the publisher.

### **Music Publishing Contracts**

After writing a song, the songwriter automatically holds a copyright in the work (once in 'fixed form') under intellectual property law in most developed countries. He may then, if they wish, assign this copyright to a third party music publisher. It is essential in most countries that such a music publishing contract be in writing. In the UK, for example, this must be done under Section 90 of the *Copyright, Designs and Patents Act 1988*.

To obtain the rights to the songs, the publisher may offer a financial incentive (an advance), and a subsequent royalty rate. The worst case scenario royalty rate for a songwriter would be 50% of income received. Note how favourable this rate is when compared to a record company contract, where the recording artist may only receive around 18% of the wholesale price (minus a substantial number of deductions - such as packaging charges).

Record companies, of course, have the potential to reach a huge audience, and to make their artists famous. But they also take significant risks and have large running costs, hence their justification (rightly or wrongly) for their royalty rates, which, traditionally, are strongly biased in the record company's favour.

The publisher, however, will recoup any advance before paying royalties to the songwriter (as a record company does with its artists). This situation becomes complex where there are certain caveats - some performing right societies, for example, will automatically pay 50% of income directly to the songwriter anyway.

In terms of income then, music publishing contracts are generally more favourable to the songwriter than the publisher. Furthermore, control of songs usually (eventually) reverts back to the songwriters, as the publisher is often only able to exploit copyrights for an agreed and limited period of time. This means that the songwriter may sign a second publishing deal, after the expiry of the first.

This situation is in sharp contrast to recording agreements, where the recordings are generally owned by the record company for the full duration of the copyright period (known as the 'phonographic copyright period' and 'in perpetuity').

Music publishing contracts should be thoroughly vetted by an experienced music industry lawyer. Key clauses will usually cover: assignment of copyright, term of copyright, territories, advances, royalties, accounting arrangements, sub-publishing arrangements, warranties and the governing laws clause.

Songwriters should ensure that their contract contains a 'reversion clause'. This clause ensures that copyright in their songs will automatically revert back to the songwriters at a specified time, due to a failure on the publisher's part to exploit their works (known as the 'cure period'), or in the eventuality that the publisher goes into liquidation. Note, however, that this term will usually have two components - one covering an initial songwriting period (*e.g.*, 2 years), and a much longer second period, called the 'retention period' (*e.g.*, 20 years), which outlines the additional term that the songs will remain assigned to the control of the publisher.

Most songwriters agree to assign full control of their works to music publishers. In doing so, they are surrendering a portion of their songwriting income (usually 20-40%) to the publisher. However, a good publisher can justify this assignment through the generation of further income from exploitation, enhanced copyright protection, and the provision of an efficient administration and management system.

Some publishers, of course, are better than others at managing and exploiting their catalogues. Despite this, many songwriters will still sign over their copyrights, through the incentive of a 'quick fix' in the form of a financial advance from the music publisher.

Some contracts are 'administration deals' only, *i.e.*, where the publisher will receive a percentage of the income generated by the song catalogue for undertaking certain necessary tasks - such as administration, registration, monitoring and royalty collection.

Interestingly, some small music publishing companies are affiliated to small record labels. In certain cases, the songwriter may be signing to a company with little infrastructure, and little contacts for lucrative synchronisation deals. In effect, some of these publishing companies exist largely due to the fact that they allow the label to claim back some of their mechanical royalty costs (*e.g.*, via a 50:50 publishing agreement with the songwriting artist).

Some people in the music industry would advise against signing to the same recording and publishing company, regardless of the size of the operations.

A useful online overview of features of music publishing contracts can be found at: [Lee & Thompson's Music Guide](#) © Lee & Thompson Solicitors 2000.

**Songwriting Members** - A song usually has several components - namely, the music, the arrangement, and the lyrics. As a result, a song may be written by a number of composers and lyricists, working collaboratively. Consequently, the parties involved will have to establish a clear definition for apportioning the percentages of their income from exploitation of the works.

With regard to music publishing income, it is therefore common for the various members of an act to receive vastly different levels of income (depending on which members write the songs). This can cause tension, and often leads to internal resentment. Many acts have actually split up as a result of this financial disharmony (note the much used expression 'musical differences'). Some songwriters appease the other non-songwriting members of their act by allowing them to share (to varying extents) in their music publishing income. Artist managers are often instrumental in solving this problem (behind closed doors). Most artist managers will also seek a percentage of their songwriting act's income also.

**Sub-Publishing** - Songwriters are advised to be very careful when signing music publishing contracts which contain sub-publishing provisions. A publisher, with little international presence, may wish to enter into sub-publishing agreements with other third-party publishers in foreign lands. The net effect may mean, though, that the songwriter is actually paying double commission, as both publishers may collect their percentage before passing the remainder onto the songwriter.

**To avoid this situation, the writer should ensure that the two key words, 'at source', are included in their contracts.** This means that they can receive their full royalty percentage *at source* from each publisher. The songwriter and their representatives should also be kept fully informed of all sub-publishing arrangements.

Sub-publishers can be useful, as they are better placed to monitor local exploitation of songs, as well to collect local income, where appropriate. Some songwriters, however, prefer to sign music publishing agreements with the established corporate bodies - as they already have an international presence and internal infrastructure across the key global music markets.

As publishing is considered to be a very specialised task, many people do not feel confident enough to start their own business in this area. Furthermore, some of those who do often regret it due to the workload required. Consequently, many

successful songwriters still prefer to assign their works to a music publisher, rather than administer their own catalogue of songs.

Songwriters who have no music publishing deal, and are unwilling to set up their own firm, can still join the relevant collection societies *directly* as songwriting members. This involves some registration paperwork (and usually a joining fee), but it then allows them to benefit from the extensive services offered by the international collection societies.

*The full article by JoJo Gould from which these extracts are taken was called "Music Publishing: A Guide to Understanding the Management of Songs" (© Music Business Journal 2001-2003). It is hard to find this full article on the Internet. It can be accessed on <http://www.songwritingessentials.com/wp-content/uploads/2013/01/AboutMusicPublishing-JoJoGould.pdf>*

---

Material about **setting up your own publishing company** - while at the same time identifying the key ingredients of an effective publishing company - can be found in the above referenced article by JoJo Gould. Please read pages 9-11 in particular.

---

## Merchandising Contract Basics by Ben McLane

Signed artists, as well as unsigned artists who tour and have a strong following, can make a considerable amount of money by selling merchandise such as T-shirts, jackets, buttons, bumper stickers, posters, etc.

When an artist is preparing to tour, the artist will enter into a merchandising agreement with a merchandiser. The artist licenses to the merchandiser the right to use the artist's name, likeness or logo for the manufacture and sale of merchandise. In exchange for the license, the merchandiser pays the artist a royalty on the goods sold. Artists and their representatives beware because many record companies try to obtain the exclusive merchandising rights to the artist when the artist signs a recording contract.

The merchandising agreement consists of a few basic deal points:

**Royalty.** The royalty will either be a percentage of the gross sales of the item sold (usually from 25%-50%), or it will be in the form of a flat fee per unit sold.

**Advances.** Although the amount of the advance depends upon the commercial profile of the artist, it can range anywhere from \$0 to over \$1,000,000. As with record royalties, merchandising advances are recoupable from royalties.

**Term.** This period is usually one or more years, or until the advance is recouped. The artist should make sure he/she has the right to repay the advance so that the deal does not drag on if sales are slow. The merchandiser will want to have a sell-off period (generally six months) after the deal ends in order to finish selling the goods that were manufactured. However, there should be no right to manufacture any further items.

**Territory.** The territory can be worldwide or rights can be licensed on a region by region basis.

**Creative Control.** The artist should insist that he/she has approval over any artwork which will be marketed so that shoddy or negative merchandise does not enter the marketplace.

The sale of merchandise can be very lucrative depending upon the type of artist because some forms of music lend themselves better to the sale of merchandise. Since most popular artists will enter into some type of merchandising agreement, knowledge of the parameters of the contract will help ensure a fair deal.

**Article Source:** <http://benmclane.blogspot.com/2011/04/music-businesslaw-tips-merchandising.html>

## Writing for the Movies: the Contract

From "Music, Money, Success & the Movies: Part Two"

By Jeffrey Brabec and Todd Brabec

When a producer hires a composer or lyricist to write a song for a film, the compensation as well as the rights of all the parties are set forth in a commissioning agreement. These contracts typically state that the producer employs the composer or lyricist to write a song within a stated period of time in accordance with certain ideas and instructions supplied by the producer. A due date for a demo record is set forth in the agreement, and the producer almost always reserves the right to make any changes.

Upon delivery of the song, the writer receives an initial fee (for example, \$25,000 for a song; \$2,500 for the lyrics) as well as a guarantee of additional future compensation in the form of songwriter royalties which are contained either in the body of the agreement or attached as a separate schedule (i.e. 50 percent of mechanical income earned from record, tape and CD sales; a set rate for sheet music; 50 percent for any synchronization income from the uses of the song in television series, other motion pictures, or advertising commercials, etc.). The writer also normally receives screen credit for the composition.

In consideration for the writing fee, the writer usually grants all rights to the producer (with exception of his or her share of royalty income) under an employee-for-hire or work-for-hire contract.

A list of all the standard songwriter royalties will always be made part of the contract. This is so regardless of whether the contract is a "work for hire" or a standard songwriter or songwriter co-publishing agreement. These include the writer's share of performance, synchronization and mechanical income, sheet music and folio income, digital download income, foreign income, etc.

If the writer is also the record producer of the song as well as the recording artist, artist and producer percentage royalties will also be negotiated and set forth in the contract.

The producer owns the worldwide copyright for the entire term of copyright protection. The typical grant-of-rights provision signed by composers gives the studio the exclusive right to publish the composition, to make and sell sound recordings, to execute all licenses regarding the use of the work, to change the work, to combine the work with other works, and to transmit the work by any means now available or to be available in the future.

The cue sheet is the cornerstone of all royalty payments for a film. Considering the amount of music used in most films, this cue sheet is usually completed within 30 days after theatrical release, but depending on the producer and available staff, it can be longer.

**Article source:** <http://www.ascap.com/music-career/articles-advice/music-money-success-movies/movies-part2.aspx>