

This is a set of articles which originally appeared on the FMC website. The topics covered are -

1. Performance booking agreement (sample)
2. Mass production of CDs
3. Music copyright basics
4. You've written the songs so what next? (studio / recording pre-planning)
5. DIY gig booking tips
6. How do I get my label distributed?
7. Setting up an independent record label
8. Music acronyms
9. Music law
10. Music publishing
11. Press and publicity
12. Releasing a record
13. Rights in a song explained
14. Running a charity gig
15. 12 steps to recording: going into the studio
16. What is a manager and how do I get one?
17. What is the law regarding sampling?
18. Writing a music business plan

Some of the information is out of date but most of it remains relevant and useful.

**DJ/ Artist/ Performer/ Musician  
PERFORMANCE BOOKING AGREEMENT**

NOTE: This is a standard, basic booking agreement meant to offer a structure for a booking contract based on various booking contracts that the FMC have devised and provided information on, It has no legal status and all legal agreements should be cleared by a registered solicitor.

This agreement ("Agreement") is mutually agreed upon by \_\_\_\_\_ also known as \_\_\_\_\_ ("Artist / Band / DJ") and \_\_\_\_\_, representative of \_\_\_\_\_ ("Promoter") on the \_\_\_\_\_ (date of Agreement).

**1. SERVICES TO BE PROVIDED BY ARTIST / BAND / DJ**

a) Provide at least a \_\_\_\_\_ DJing appearance at a dance party ("Event") located in the \_\_\_\_\_ (city and state/country) geographic area on \_\_\_\_\_ ("Date") between the hours of \_\_\_\_\_ (start time) and \_\_\_\_\_ (end time) ("Time").

**2. SERVICES TO BE PROVIDED BY THE PROMOTER**

a) Promoter agrees to provide all entertainment at the Event other than Artist / Band / DJ.

b) Promoter agrees to provide a venue for the Event, all necessary permits and licenses to lawfully conduct the Event, including obtaining and paying all work visas for Artist / Band / DJ as necessary, and all equipment for the operation of the Event and the performance by Artist / Band / DJ.

c) Promoter agrees to contact the following travel agent to make any and all necessary arrangements for prompt payment of airline costs incurred in Artist / Band / DJ's transportation to and from Event: \_\_\_\_\_ (travel agent) \_\_\_\_\_ (phone number) for travel reservations from \_\_\_\_\_ to \_\_\_\_\_ and back, to arrive on \_\_\_\_\_ (arrival date), no later than three (3) hours prior to Event, and to depart on \_\_\_\_\_ (departure date) on \_\_\_\_\_ (airline).

d) Promoter agrees to provide Artist / Band / DJ hotel accommodations with a checkout time no earlier than three (3) hours before the airline departure time, consisting of \_\_\_\_\_ room(s) with 24 hour room service for a period of \_\_\_\_\_ night(s).

e) Promoter agrees to provide transportation, car service, or shuttle for Artist / Band / DJ to and from airports and Event location. If Artist / Band / DJ handles any transportation costs, Promoter agrees to promptly reimburse Artist / Band / DJ for the reasonable costs of such transportation.

f) Promoter agrees to provide a sober, (i.e. not intoxicated or inebriated by alcohol, narcotics and/or otherwise), responsible, trusted person ("Driver"), in their employ to escort Artist / Band / DJ to and from hotel, airport, venue, etc as well as to assist her in the event of problems checking in hotel, getting in venue, boarding flight, etc.

g) Driver is required to remain "on call" by way of cellular communication and/or pager throughout the duration of Artist / Band / DJ's stay, be in possession of a valid driver's license, hold current auto insurance on vehicle driven in amounts customary and reasonable and be in possession of detailed directions both to, from and including hotel, airport and Event location.

### 3. COMPENSATION OF ARTIST / BAND / DJ

a) Promoter shall pay Artist / Band / DJ the sum of £\_\_\_\_.\_\_\_\_ in IR PUNTS ("Fee") for the rendering of service(s) hereunder. Payment, along with any correspondence pertaining to this Agreement is to be mailed to:

\_\_\_\_\_  
(address)

b) Promoter shall pay promptly the sum total of all receipts for lodging Artist / Band / DJ unless either Promoter or Artist / Band / DJ has made other arrangements or reservations to accommodate Artist / Band / DJ.

c) Promoter shall pay Artist / Band / DJ 50 percent of the Fee as a good faith non-refundable deposit no later than one (1) week after receipt of this contract in order to secure booking engagements. Payment should be made in the form of cash in IR£ (via wire transfer), cashiers cheque, or money order made payable to Artist / Band / DJ.

d) Promoter shall pay Artist / Band / DJ the remaining Fee no later than one (1) hour after her arrival in the form of cash in IR£ unless otherwise agreed, and prior to the commencement of Artist / Band / DJ's performance.

e) Promoter shall not offset any expenses or taxes of any type against the Fee.

### 4. CANCELLATION

a) In the event that the Promoter cancels the Event with at least 30 days prior notice from its scheduled Date and Time as detailed hereunder, no refund of any monies paid in advance to Artist / Band / DJ shall be made and the balance of the monies due to Artist / Band / DJ shall be waived.

b) In the event that within 30 days of the Event, as detailed hereunder, the Promoter cancels the Event or if the Event fails to happen for any reason including Act(s) of God and/or closure by any local, state, or EU Law the full amount due shall be payable to Artist / Band / DJ.

c) Notice of cancellation in advance shall be deemed received only upon direct voice contact between Artist / Band / DJ and Promoter. In the event that this is not possible Promoter should notify Artist / Band / DJ by written communication sent via overnight express delivery.

d) It is hereby agreed and understood that should Artist / Band / DJ fail to appear for reasons such as any Act of God, civil war, natural disaster or airline or other transportation problem over which Artist / Band / DJ has no control, this Agreement still stands.

### 5. INVOICING AND PROMOTIONS

a) Artist / Band / DJ shall be billed on all promotional materials as: \_\_\_\_\_ [name and affiliations of Artist / Band / DJ]

b) Promoter shall not represent Artist / Band / DJ on any promotional materials through the use of derogatory descriptions, gender specific terms or unsuitable images (such as obscene, violent or degrading depictions of women). Any questions regarding the appropriateness of a word, phrase or image should be directed to Artist / Band / DJ.

c) The production of and/or distribution of any/all promotional materials displaying Artist / Band / DJ's name(s) or likeness prior to Artist / Band / DJ being in receipt of the deposit required by paragraph 3(c) is unacceptable.

d) Promoter agrees to provide Artist / Band / DJ with copies of all promotional material involved in Event, such as fliers, posters, advertisements, photographs, video and audio recordings, within one week of end of Event.

## 6. EQUIPMENT PROVISIONS

a) Equipment shall be provided by the Promoter as follows:  
Two (2) Technic model 1200 or 1210 Professional grade turntables including needle cartridges. (or whatever equip needed)

At least one (1) spare needle cartridge, per turntable, to be made readily available to Artist / Band / DJ during performance.

Professional grade mixer with cross fader. · Two (2) loud monitor speakers or one (1) loud monitor speaker that may be moved either to left and/or to right of the turntables.

Monitor volume must be accessible to Artist / Band / DJ during the performance.  
Monitor power must be derived from a source other than that of the house system.

## 7. MISCELLANEOUS

a) Promoter indemnifies Artist / Band / DJ from any liability arising from actions of the Event Promoter, or Promoter's officers, directors, shareholders, principals, employees or agents, or arising out of the Event itself.

b) In the event that any legal action is brought against Artist / Band / DJ as a result of the Event Promoter, or Promoter's officers, directors, shareholders, principals, employees or agents, or arising out of the Event itself, Promoter agrees to bear all costs associated in the defence of itself and Artist / Band / DJ in such action(s).

c) This Agreement may be changed only by mutual agreement of authorized representatives of the parties in writing.

d) This Agreement and conduct pursuant thereto shall be governed in all respects by the laws of Ireland without reference to its principles of conflict of laws. Any disputes between the parties as to the Agreement shall be litigated before a court in California and each party hereto consents and submits to the jurisdiction of such court over such dispute.

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e) If Promoter signs below as any entity other than himself or herself as an individual, Promoter agrees that s/he is lawfully authorized to enter into this Agreement on behalf of such entity and that the entity represented is in good standing with any local, state, EU jurisdictions.

f) In the event that (1) Artist / Band / DJ is advertised for event but is not sent deposit or (2) proper travel arrangements to secure the booking have not been made, Promoter agrees that it is responsible for paying Artist / Band / DJ the full amount of the deposit regardless of whether Artist / Band / DJ is present at event. This payment should be sent via overnight express delivery no later than one (1) week following the event.

g) Promoter is required to ensure that the stage/DJ booth is kept locked at all times. Promoter is to ensure that no other person other than the Artist / Band / DJ and/or Event technical staff are to enter stage/DJ booth area, at any time, before and/or during Artist / Band / DJ's performance.

h) Promoter is required to fulfill all of Artist / Band / DJ's reasonable requests in regards to food and beverage needs and guest list privileges at the Event.

i) The number of persons attending Event shall not affect the said terms and conditions contained herein.

j) Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

k) This Agreement may not be assigned, in whole or in part, by either party without the prior written approval of the other party to this Agreement. This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns.

l) This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Promoter(s): \_\_\_\_\_ (signature)

Representative of: \_\_\_\_\_

Artist / Band / DJ: \_\_\_\_\_ (signature)

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## MASS PRODUCTION OF CDs

You've decided to go it alone as an independent record label and get the CDs made yourself, so where do you start, and what do you need?

**Money.** No CD manufacturer will give you credit, they'll want payment (cash, credit card, banker's draft) up front. Some even require payment with the order, although most will accept payment when the goods are ready for collection. The bigger your budget, the more CDs you can buy as the unit cost goes down as the quantity goes up; if 500 CDs cost, for example, EUR 1,400 you may find that 1,000 CDs will only cost another EUR 300!

**ISRC Codes.** Before you do the final Mastering, get onto PPI for these. Without these embedded in your PQ Master, royalty payments - which should be paid to you on every radio play - may not be paid.

**A Registered Barcode.** How would you feel if your CD was selling better than U2, but does not show up on the charts? It can happen. You need a registered barcode printed onto your CD packaging. Make sure your CD plant can supply this to you.

**Master CD or DAT.** Ideally this should be "Mastered" and contain PQ and ISRC codes, as many CD plants require all materials "ready to go". Some plants, such as Trend Studios, offer a full Mastering service. Most recording studios also claim to offer this service but, while their recording facilities may be superb, the Mastering process is a very specialised art, a marriage of human skill and technology, and it may be best to go to a specialist house.

**Packaging.** Have you decided how you want your CDs packaged? Look at your own CD collection, see what's in the shops, decide what you want and give a sample to your designer (we'll get to him/her next.) Bear in mind that the more sophisticated packaging options may be costly, especially if you only have a budget to produce one thousand CDs, or less.

**A Designer.** It's no good giving a CD plant a worn photograph of the band and a handwritten list of the songs, they will require finished artwork. This means a professional design produced in QuarkXpress or similar - and doing something on your home computer in Word or a cheap "design programme" does not count as finished artwork. If you do, this will lead to - at best - delays, at worst, your lovely colour pictures coming out in black and white.

**Delivery and Storage.** Consider how you will get your finished CDs home, to your distributor or to the shops. The driver of the 51 bus may object to letting you on with 10 large boxes, and your mum's Ka or Clio may not be big enough to carry 1,000 CDs; your bedroom might get a bit crowded if you try to store them there.

Talk to your chosen CD plant ahead of the project and get as much advice and information as possible from them. Do NOT book the venue for the launch before

you have a solid commitment from the CD plant on a completion date; they will not give this to you until your masters and artwork are ready.

~~CD Plants in Ireland:~~

~~MPO 01-8221363~~

~~Senopress 01-8409000~~

~~Trend Studios 01-6160600~~

~~Zomax 01-4056200~~

Note that there are numerous brokers or agents who claim to be manufacturers, but who simply take your materials and forward them to a third party (possibly in a foreign country). If in doubt, ask if they'll show you around their plant!

Paul Waldron  
General Manager  
Trend Studios

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**MUSIC COPYRIGHT BASICS**

by FMC 2001

The Irish Music Rights Organisation is a national organisation of songwriters, composers and music publishers. It administers various rights, including the performing rights in copyright music, in Ireland on behalf of its members and on behalf of the members of the 63 overseas societies affiliated to it.

IMRO is a not-for-profit company, limited by guarantee. Its principal activity is the collection of royalties when copyright music is broadcast or performed in public (e.g. in discos, hotels, restaurants, pubs, etc.) and the distribution of those royalties to the relevant songwriters and publishers.

**Who can become a Member of IMRO?**

Songwriters, composers and music publishers may become members of IMRO, subject to satisfying certain criteria. For further information please telephone or e-mail Membership Services in IMRO on 01 - 661 4844 or at [info@imro.ie](mailto:info@imro.ie).

**What is Copyright?**

Copyright is a property right, regulated by statute (the Copyright Act 2000) which gives the owner of a creative work (e.g. a song or a piece of music) the right to permit or prevent the use of that work by others. Copyright confers on the creator of a work the right to allow or prevent a number of 'restricted acts'. These restricted acts include making a copy of the work, making the work available to the public and making an adaptation of the work.

Intellectual property refers to all intangible property such as copyrights or patents.

**Can I Copyright a Creative Work?**

There is no actual system for copyrighting a work of creativity. Copyright automatically subsists by virtue of an original work being produced in material form, e.g. tape, manuscript. If a dispute over ownership of a work arises it is important for the owner to be able to prove that he/she owned the work at a particular date. The following system may be used:-

1. Put the tape or sheet music or the lyrics of a song/work into an envelope.
2. Address the envelope to yourself and write the name of the song/work on the outside.
3. Post the envelope to yourself by registered post.
4. When you receive the envelope DO NOT OPEN IT. Make sure that the date is clearly stamped and that the envelope is completely sealed.
5. Keep the envelope in a safe place (e.g. your solicitor's office or a bank).

**How Long Does Copyright Last in Ireland?**

The copyright in a musical work expires 70 years after the death of the songwriter/composer who wrote the work or if two or more people are responsible for the work 70 years after the death of whoever dies last. The copyright in a sound recording expires 50 years after the date it was first lawfully made available to the public.

**How Does IMRO Collect Royalties?**

IMRO collects royalties by issuing licences, in return for a fee (a royalty), to TV and radio stations that broadcast copyright music and venues such as discos, pubs, etc. that perform copyright music in public. Royalties are payable whether the music is live or recorded.

Who Needs an IMRO Licence?

It is illegal to use copyright music without first obtaining the permission of the owner of the music. This permission is normally obtained by paying a royalty to IMRO in return for which a licence is issued. The owner of any premises where copyright is performed in public needs an IMRO licence. For further information please contact IMRO on 01-661 4844.

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**YOU'VE WRITTEN THE SONGS, SO WHAT NEXT?**

**Step one: Deciding the songs**

The most important thing to consider when approaching this whole process is to have all your decisions about what songs you are going to record and why, made before you as much as book a studio. There are three common reasons people record a demo

To send to a record label. To send to a publisher. To send to venues to book gigs

In each of these there are common rules of thumb

Choose a versatile set. Rather than putting songs that sound the same on your demo you should use it as an opportunity to showcase your range both vocally and lyrically.

Put your best song first (self explanatory really) Keep in mind that A&R receive quite a number of demos on a daily basis you should be aiming to grab their attention as soon as possible so no instrumental solos at the beginning of the song!!!!

**Step two: Booking the studio**

Know in advance what equipment you will need or will be working on. If you are unsure then arrange to have a preliminary meeting with the studio manager, most reputable studios have no problem with this.

It doesn't have to look good to sound good. Studios with frappecinno makers and leather sofas will usually have a price that matches. While comfort is important, especially if you have booked a couple a days, the equipment, acoustics and engineers should be top of your priority list. It is always a good idea to ask about past clientele of the studio, have a listen and see if this is what you're looking for.

How the end product turns out is up to you. The more the help you can give the engineer, the better he can help to give you the best possible result. It's always a good idea to bring recordings of rehearsals so the engineer has an idea of your sound. Also you should bring in example of other bands / musicians whose productions you like so the engineer knows what direction you want to go in.

**Step three: In the studio.**

There's an unspoken etiquette to being in a studio, here are a couple of dos and don'ts.

*Do:*

- turn up on time, it's your money you're wasting if you don't
- tune all instruments (including your voice) before the start of a session

*Don't:*

- bring all your friends along. avoid having your time in studio turn into a social event. You need to concentrate on getting the best possible results from this opportunity.

**Step four: the BEWARE list**

Beware of studios trying to keep your master tape. Depending on the type of system used (digital or analog) you will either get your material on tape (analog €250) or dat (digital €25). Most analog studios will rent you space on a tape allowing you up to two weeks to change your mind about your finished mix. Make sure that the studio has no ownership of your tapes; the only instance in which this happens is if you don't pay your final fee.

Beware of studios looking for royalty points. Under no circumstances should you include a signing away of royalties to a studio. They are legally entitled to nothing other than the agreed payment for studio hire. Get all costs and conditions for both parties in a signed contract before payment and have someone (fmc) look over it before you sign. Do all this in advance of your recording session.

DO NOT SIGN ANYTHING OTHER THAN A HIRE CONTRACT. Some studios have conned artists in to deals they have found impossible to get out of be they publishing or recording. If in doubt about anything you are being asked to sign then ask for time to look over it and show it to someone in the industry (fmc).

While these are actual events it is true to say that for the most part recording studios are staffed with great and talented professionals who will make your time with them as enjoyable and productive as they possibly can.

### **Demo studios**

Here are samples of demo studios around Ireland. For more detailed information or more numbers please ring the FMC office.

~~Cork: Blue Monkey Studios, 087 9335033~~

~~Spectre Studios 086 2776927~~

~~Dublin: Sun studios. 01 6777255~~

~~Fusebox music media. 01 4763918~~

~~Limerick: Rock on Studios 087 2681969~~

~~Best Cellars: 048 90 486290~~

~~Derry: The Nerve Centre: 048 71 260562~~

~~Blast Furnace: 048 71 377870~~

~~Pressing Plants: Mid Atlantic Digital : 048 663 29437, Tony Mohan~~

~~A to Z: 00 44 181 9030046~~

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**D.I.Y. GIG BOOKING TIPS**

by Tim Sweeney

(This article is written with a USA context in mind, but all the info is transferable to Ireland and the Europe)

"My band seems to have this ongoing discussion, (more like an argument), about how many times a month we should be playing in our home town. Friends in other bands tell us not to play in town more than twice a month. According to them, we will "burn out our fans." But I think they are wrong and we should play as much as we can. What's the right answer?"

The answer to this ongoing question is to try to play in your home market between 2-4 times a month. But instead of just leaving you with that thought, lets explore the answer so you can have a full understanding of why this is the right number.

As I have always preached, your career needs to be anchored on your live shows and it needs to start in your home market. Especially since your live shows and the "proper" pre-show promotion will be 75% of all your future sales.

Your home market needs to be a large metropolitan city near you or that you are living in, that preferably has over 1 million people living there. If not, focus on the largest metropolitan city in your state that has at least 500,000 people. With that in mind, lets get down to business.

Artists will quickly say, "don't play more than a couple times a month because you will burn out your mailing list." They are right! If your primary focus for promoting your next show is to merely let your mailing list know, then it is true, your existing fans will get tired of being promoted to. Especially if they have come to a couple of your shows in the past and have bought your CD. You can bet they are "burnt out" by your ongoing requests for them to come to your future shows.

Most artists do not think creatively when promoting their next show. They make the mistakes of handing out flyers instead of sample tapes or sample CDs, or spending hundreds of dollars on a newspaper or magazine advertisements, that no one can hear their music through. So lets start from scratch.

Lets use Los Angeles as the major market that you live in. LA itself is approximately 90 miles in size (counting in the smaller cities around it). This is important to know because of the following reasons:

Music fans who go out to live shows will generally stay in their "own area" when it comes time to see an independent artist. (If it is a major, established artist, who rarely plays in the area, fans will travel further to see them.) One of the primary reasons people stick close to home is the issue of drinking and driving.

Research has shown that people feel they can have a couple of drinks (or more) and safely drive home if its only 2 or 3 miles away. Most people as you can imagine, don't have a desire to be on Cops or the nightly news with the police chasing them down the freeway. Wrong in their thinking about drinking and driving or not, that's one of the main reasons people don't drive 20 or 30 miles to your future shows.

However, that brings up a good point for us to talk about. If people generally won't drive more than a few miles to go to a show, doesn't that mean you will have different audiences at each show? That's right. Using LA for an example, even though Santa Monica and West Hollywood are right next to each other, people from the respective areas "hate to drive" 5-10 miles. Beside the concerns about drinking and driving, they complain about finding parking and the "safety" of each other's respective areas.

So doesn't this mean, since there are clubs spread throughout the major market you live in, shouldn't you play 2 or 3 times a week all over the city? No. The reason I suggest 2-4 times a month has nothing to do with your existing list, who has come to past shows and already bought your CD. It is based upon allowing yourself enough time to "effectively" pre-promote your shows.

Creating the sample tapes and CDs, doing your market research on the targeted areas around the club, where your potential fans hang out and shop, allowing for the time to hand out the 200-300 tapes or CDs minimum, you are going to need to generate new fans. Plus the extra time, you will need to "redesign" the club for your show. If you find that you can do a couple of shows in the South part of your city and 1 or 2 in the North, East or West and adequately promote them, you can consider 4 to 6 shows per month.

Keep in mind that your city is a big place with over a million people. You are not going to get the same people at your next show, unless you invite them. Even though your city may seem limited in places to play, or even geographically on the map, don't let your mind become "limited" on what's available to you.

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Tim Sweeney is head of Tim Sweeney & Associates, an artist development company based in Temecula, California. His book, *The Complete Guide To Internet Promotion For Musicians, Artists & Songwriters*, has an excellent outline of exactly what a web site that generate sales should look like and what you should have in it.

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## HOW DO I GET MY LABEL DISTRIBUTED

This document was prepared by Twinbrook Music. It originally appeared on the Music Business Solutions Web site and refers mainly to distribution in the US but is also helpful for the European market. [www.mbsolutions.com](http://www.mbsolutions.com) // Reprinted with permission.

If some of this seems ridiculously basic, you're way ahead of the game!

**1. What's the first step?** Send us a sample of your product. Most distributors accept finished product for consideration only. CD's are the format of choice. Most distributors rarely consider cassette only releases for distribution, and they no longer deal with vinyl for the moment. Most distributors are strictly a distributors and not a label (i.e. they do not manufacture finished CD's from your master). The music should be professionally recorded, and the artwork should be appropriate for the genre.

If you are pressing your own CDs and selling them, in distributor's eyes you are a label. A label must have its own name, catalog numbers, and Universal Product Code. We recommend a trademark search when naming your company. When designing the packaging, the catalog number (preferably consisting of a three letter label abbreviation followed by the number, [or instance ARC 1001) should be clearly visible on the spines, The catalog number should be the same for CD and Cassette. The UPC Code Bar Code) must be on the back cover of the CD and Cassette. Most distributors cannot distribute any product that is not bar coded, All of their important accounts currently insist on bar codes to track product. If you already have salable product manufactured without bar codes, this can be remedied by having decals printed with the appropriate codes. For information on obtaining our own UPC code, contact FMC.

**2. How do distributors decide what to pick up for distribution?** The most important thing to remember is that the distributor is your customer. They purchase pre-recorded music that they believe they can sell to stores, who then sell to the consumer. There are a great number of factors that weigh upon their decision to distribute a particular recording or catalogue. Some of the most important questions they ask upon presentation of finished product are:

- Is the artist well known with an established following?
- Does the artist have a sales track record in the mainstream record trade?
- Is there independent radio and/or retail promotion?
- Is there a co-op ad budget? (see #10 below)
- If this is a new artist, what sort of promotion can they expect from the label or the artist that will help sell records?
- Is the artist actively performing or touring in their area?
- Is there any current radioactivity on this title?
- Are there any well-known guest musicians?
- Does the label have the resources to press enough products if the demand becomes great?
- What are the label's upcoming releases, and when can they expect them?
- Does the label have a sellable back catalogue?
- Does the label also sell to competing distributors in their territory?
- How much of the catalogue is already on store shelves?
- Does the quality of the recording, and the artwork measure up to the standards of its genre?

All of these concerns will have a bearing on the distributor's decision to pick up a label for distribution. Unfortunately, it takes a lot more than just the inherent quality of the music to sell records.

**3. Suppose the distributor has decided to distribute your label-what next?** The distributor will place an initial purchase order for goods to be shipped to the distributor's warehouse. // The distributor may need a letter from the label authorizing our exclusivity for certain accounts in their territory. // Some distributors ask that new labels advertise a page in their monthly new release mailing which goes out to all their nearby accounts. The distributor will charge back the cost of this advertising against our account with you.

In order for them to effectively solicit your product, most distributors ask that you provide them with a suitable quantity of "One Sheets" and promotional goods with your initial shipment. The "One Sheet" is a single 8 1/2" x 11" page describing your release in the terms that you feel will present your product in the most favorable light to the store buyer. This can include descriptions of the music, a list of the musicians, a reproduction of the cover, reviews, etc. The most important function of the "One Sheet" is for data entry, so it MUST include the catalog number and UPC code (either the numbers or a reproduction of the bar code will suffice). Most distributors will be happy to provide you with examples of effective "OneSheets" if you are interested. // Distributors prefer at least a box of promotional CDs (Also known as DJ's). The artwork should be clipped, punched, drilled or otherwise marked to discourage stores from returning promotional goods for credit. In store play is a great way to sell CD's. A lot of stores try a new CD only if the distributor can furnish them with an in store promo copy. In the long term it is not practical try to save a few dollars by not sending promos. No one will buy your music without an idea of what it sounds like.

**4. What about your price to the distributor?** As a general rule of thumb, labels sell to the distributor at 50% of the list price. The most common price points for front line new releases are: For a \$14.98 list CD, the distributor pays \$7.50, and for an \$8.98 list cassette, they pay \$4.50. Most distributors will tell you have that lower price points will stimulate sales on new artists and catalogue re-issues. If you sell CD's by mail order, the distributor will want you to charge list price plus a handling charge, in order to provide consumers the incentive to purchase your product through record stores.

**5. How does your label get paid?** Some distributor's terms for labels that have established themselves by releasing product which consistently sells through at retail and is not returned by the distributor's customers pay on a 2% 60 days/end of month. That is, if the distributor receives your invoice on January 10, the invoice will be paid, with a 2% prompt payment discount taken on March 31.

Labels just getting started, or labels coming into a distributor's system for the first time can expect to be paid down to the distributor's floor inventory level plus an allowance for product still on store shelves on the above explained 60 day end of month basis. Let's say, for example, a label has billed a distributor for a total of \$5,000 worth of product. Let's then assume that \$1,500 worth of this product remains in the distributor's warehouse at the end of the first billing cycle. This means that the distributor has "placed" \$3,500 worth of product at retail, some of which still remains on the stores' shelves unsold. The distributor is responsible for paying for the \$3,500 worth of product placed less a reserve of 15% to 20% for the label's product which may be returned to the distributor by the stores. The label should look for a check for about \$2,800 to \$3,000.

Payment for Christmas product is generally made at the end of March, after all returns have been taken from the stores and the distributor has returned all excess products to the label.

**6. Returns?** One of the unique and unfortunate aspects of the American record business is the industry-wide returns policy. All goods must be 100% guaranteed against defects and overstocks, returnable for full credit for any reason. All the independent distributors must extend a 100% guarantee against defectives and overstocks to all of our customers. We

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regularly accept returns from our customers, issuing full credit for all acceptable product returned. If the distributor deletes a label from their roster, it will take them from 6 to 12 months to receive all the returns. Additionally, some of the larger chains currently practice withholding up to 20% of their payables to distributors as a reserve against returns. From time to time, the distributor will return defective and overstocked product to their labels for full credit. Distributors hate returns, so they should try to order conservatively and often.

**7. Shipping and Invoices?** For all shipments to the distributors, you should enclose a packing slip detailing what was ordered, what has been shipped, the number of cartons in the shipment, and the Distributor Purchase Order number. CDs and cassettes should be shrink-wrapped and in saleable condition. CD's should be sent jewel box only. Product sent in blister packs or longbox will often be subject to a repackaging charge. Invoices should be sent separately, under separate cover, to the distributor's Accounts Payable. The invoice should include an invoice number, invoice date, a detail of what was shipped, a ship date, unit prices, the distributor's Purchase Order number, and the total amount due. Each shipment should have its own invoice; do not bill separate shipments on the same invoice. Often times this is ABSOLUTELY NECESSARY for any payment to be made. The distributor warehouse guys don't usually write checks from your packing slips; it is imperative that they have the proper documentation to process payment.

**8. Who is responsible for promotion?** Generally, distributors look to the labels to provide most of the promotion directed toward the consumer. This includes getting the records on radio, national advertising, publicity to print and other media. The object is to get people to go to their local record store looking to buy titles on your label.

**9. What can I expect from the distributor?** The distributor's responsibility is to make the buyers in their territory aware of your releases, using their sales tools, promos, one sheets, airplay reports, touring information, etc., to convince the buyers that they should stock your product. The distributor can provide a flow of information to the retailers so that they can order the product that suits their clientele, and anticipate consumer demand. Many distributors don't provide store by store sales reports, but they may run an inventory report by request to gauge product placement and estimate sell through. If your title is a hit, it is the distributor's responsibility to make sure that their accounts are serviced with a consistent product flow. When you call them with leads, stores that are interested in your product, they should follow them up right away. Additionally, they may arrange co op advertising for radio and local print media.

**10. What is Co-op advertising?** Co-op advertising is a method by which a label can effectively pay for media space with product, preserving cash flow and maximizing the use of excess inventory. For example if you want to run an ad in a local newspaper advertising your new release and promote a local performance by your artist, the retailer will purchase the ad, deduct the cost of the media buy from its account with the distributor, then the distributor will deduct this amount from its account with the label. In return, the ad features your new release and the retailer is expected to make a significant "buy-in" of the product, give it favorable placement (end racks, etc.) and put the product on sale for a specified time period. This is a great way to get more media and retail exposure for your money. However, the distributors balance with the label should be significant enough to support this expenditure.

**11. What if you take your label to another distributor?** For a variety of reasons, labels and distributors part ways. If you decide to have a third party distributor sell your product into your first distributor's account base you should expect the following:

The first distributor should ship its floor inventory to your new distributor, or to any location that you decide. The label will pay shipping.

The label should issue the first distributor credit for the product shipped to your new distributor.

The first distributor should pay the account down to approximately 15% of the previous total. This is to allow the distributor to make a deletion announcement to its accounts and to allow the stores return any of the labels' product to the distributor.

After 6 months, the first distributor should zero its account, making one final return of product sent back to it by the stores.

**12. How can you help the distributor sell more records?** Keep them informed of your artist's whereabouts, tour schedules, etc. They need advance notice when your artist is playing in their territory. Then they can effectively solicit the stores to pay more attention to your product. If your artists are good with people, send them into the stores to meet with the buyers. Send them your radio tracking so that they know what stations are playing your music.

**13. What is their territory? What about the rest of the country?** Many distributors belong to a coalition of independent regional distributors, and they can recommend that the other members pick up your label if potential national sales can justify their involvement.

**14. What about overseas?** Does the distributor do any export business to areas outside North America? Some distributors look to the labels to provide them with a discount price for export, which they should pass on directly to their foreign territory customers, (who often bear all the freight and promotional expenses). Because export sales are one way (no returns) this can work out to be a pretty good deal.

by **Peter Spellman** // Copyright © 1999-2000 MUSIC BUSINESS SOLUTIONS

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## SETTING UP AN INDEPENDENT RECORD LABEL

### *Why set up your own record company?*

Recording and releasing music by a new and/or unknown artist is a very risky and costly venture. Most of the major record companies are not famous as risk takers and are reluctant to advance large sums of money to bands or artist whose recordings may not recoup the initial investment. Now that the recording industry is gripped by a world-wide recession, the major labels are becoming more careful than ever by concentrating their resources on successful existing artists and back catalogue sales. Many of their unprofitable portfolios of artists are dropped and potential new artists are lucky to have their demos listened to. Most independent record labels are usually set up in order to get the music of a band or artist to the ears of a wider audience, having tried to get a record deal through the usual channels. There are many advantages to owning your own label, but the most obvious initial benefit is the fact that you're in complete control of your own destiny.

### *The Product*

The product (i.e. record) must be of significantly high quality. If the music itself is bad, no amount of plugging or advertising is going to entice people to buy it.

### *The Boss*

Any would-be independent record label boss must possess personality traits such as initiative, persistence, resilience, responsibility and imagination. If you don't possess all those qualities (if it's an effort for you even to get your band a gig), then don't even think about going in to business. Running a label is a full time job (on top of the full-time job you may well have anyway). Most importantly, it requires tireless determination.

### *The Market*

You need to understand thoroughly your potential audience. It is not enough to rely on what you think you know (i.e. your "gut feeling"). It is essential to actively research your target market. Augment your knowledge of the music genre you intend to target by reading as many specialist magazines as you can find. From this you can compile databases of specialist distributors, labels, publishers, DJs, press and shops.

At this stage, it's essential to establish that there really is an audience and market for your type of music. Carry out some basic market research - find out what people really think about it (not just friends and relatives- go for a cross-section), and whether they would part with their money to listen to it, then apply your findings on a larger scale. Bands tend towards overriding belief that their music is utterly fabulous, but are you prepared to put your money (and sometimes other peoples) where your mouth is? You have got to look at the record from a cold, clinical and objective business viewpoint.

A website can provide a good forum for judging reaction to your product, but people need to be able to find it. It is crucial to have links to other sites dealing with the same musical genre and to ensure your site is on all the search engines.

### *Finance*

In order to convince other parties ( family, friends, business associates) to invest money in your label, you have to convince them that you're capable of running it properly and successfully. A business plan includes proposed marketing and promotion of your product, and also its costing. By working out how much money you need to earn in order to cover business and personal expenses, you can decide on a price for your record, and work out how many units you need to sell in order to break even (i.e. the point where sales income equals

costs). Make sure that this price is similar to the market price of new records. If you find that your prices would be ridiculously high and that your costs cannot be lowered any more, then it is time to consider cutting your losses and getting out of the venture.

You also need to draw up a cash flow forecast which predicts income and expenditure for the next twelve months, and a longer- term forecast covering the next three or four years. The income will be related to the amount of product sales. Make sure to include all the costs incurred such as recording, manufacturing, artwork, packaging, distribution, promotion, etc.

Admittedly, all this financial stuff can get a little complicated, but there are plenty of organisations which can offer advice and assistance. Not only banks and accountants, but Enterprise Centres, Chambers of Commerce, Trade Associations and LEDU, in Northern Ireland, can be invaluable . These organisations generally have local offices: (these would usually be listed in your phone book under Government Departments)

It may be possible to start up the label without any outside financial assistance by using savings, money borrowed from relatives, or day jobs in order to keep things ticking over. It doesn't take much initial capital investment to start a record label, but money will be needed for recording and pressing your first record (single, EP or album) and for its promotional costs. If you decide that you will need outside finance in order to get the venture off the ground, there are a number of options. The most obvious way of raising working capital is to approach a bank .

When one considers that for every record which sells over 15,000 units in Ireland, 150 others sell less than 1,000 units, it is not surprising that banks are unlikely to advance funds without some form of security (i.e. property , stocks and shares or life policies with cash surrender value). It is worth considering an overdraft on your regular bank account if the amount to be borrowed isn't too great. If you can't raise finance from 'normal' sources, there are a number of other bodies who might provide funding. You can find out who they are by contacting your local Enterprise Centre.

How much will you need to borrow? The cost of starting up a company starts at zero, but if you want to make a fair go of it, you'll need to join various industry organisations listed below which will cost about 150, and if you plan to employ a public relations (PR) company, you should set aside at least 500 for that. When approaching funding bodies, bear in mind that business loans rarely cover stock (i.e. the cost of recording and pressing your records), but a personal loan probably will, as long as you're sure you can meet the repayments.

### ***Legal considerations***

Legally, it's a lot simpler than you might think. There are three types of companies: (1) the sole trader; (2) the partnership; and (3) the limited company. If you plan to

operate as a sole trader (i.e. just you, working for your self ), you only need to tell the Revenue Commissioners and the Department of Social Welfare (or Training and Employment Agency in Northern Ireland ) that you're working for yourself. Similarly with a partnership, but, as the name implies, you'll be working with one or more partners. It is therefore wise to draw up a partnership agreement with the assistance of a solicitor. This outlines exactly who has put what in to the partnership, how profits will be split, how the work is to be shared, and what happens if the business is wound up . It could save a lot of bad blood and legal wrangling in the long run. Option (3) is the limited company. In order to set up a limited company, you need to register with the companies registration office Dublin Castle for the South of Ireland. (£51). In addition to protecting your company name (nobody else can use

it), you're protecting your liability if the company folds with huge debts. This means that you won't have to pay out money from your own pocket since the company is, legally, a separate entity. In the case of the sole trader or partnership you could lose your house if your business goes under. There are other limited liability company criteria which need to be satisfied, not least the presentation of annual audited accounts which involves employing an accountant. For these and other criteria, again contact your Companies Registration Office.

If you think your annual turnover is going to exceed £20,000 (UK stg£40,000 (although it's worth noting that you can register voluntarily to charge V.A.T as this will also allow you claim all the VAT back on purchases such as equipment, services etc.)) you have to register for Value Added Tax (V.A.T), but consult a qualified accountant before you do this. Once the company has a name, you should open a business bank account in that name, start thinking about logos and the printing of stationery, and get a telephone connected if you don't already have one. Also the Internet, a fax and an answer phone can prove invaluable.

### ***Official bodies***

There are a number of official organisations you should join. By law you are not required to be a member of any of them, but if you're serious about your enterprise, they should be borne in mind. The main ones are The Mechanical Copyright Protection Society (M.C.P.S.) and IRMA and if you want access to current marketing information and, statistics, subsidised rates for trade shows like MIDEM, and blanket agreement negotiations facilities, you should join the International Federation of Phonographic Industries (I.F.P.I.). MCPS need to be notified of your releases and if you cover someone else's song the royalties will be paid to them through M.C.P.S.

It may also be worthwhile keeping in touch with umbrella groups such as the Northern Ireland Music Industry Commission, The Trade Board and The B.P.I as contacts are essential and seminars are often run by these groups.

Chart track compile the weekly Irish music chart and for a fee of £30 they'll put you on their Record Labels Register - which ensures that nobody else ( on the register) is using your label name or catalogue numbers.

Also consider getting a barcode for your release, since this is how 95% of record sales are now registered with Chart-track. Just think, if your single started selling in huge amounts, and you didn't have a barcode , you'd never make the national chart. Barcodes are administered by the EAN (European Article Number). You pay them £ for a company which has just started trading, plus a one-off entry fee of £60 plus V.A.T. Barcodes comprise of 12 digits: EAN will give you the first seven , which form your exclusive company number, and you supply the final five. To ensure that Chart-

track is aware of your release, and its barcode number, just send them two copies of the record.

### ***Taxation and Pay Related Social Insurance***

The biggest potential headache at this stage is keeping regular accounts. You can employ an accountant to do this for you, which will obviously cost money, or you can keep the books yourself. Although it's tempting not to bother, especially if your business turnover isn't significant, consider the fact that company tax is assessed at the end of each tax year, and what you pay depends on how much profit you've made (i.e. the higher your profits are, the more tax you will have to pay). If you can't estimate your own tax liability the Revenue Commissioners will come up with their own figure.

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The good part of this is that legitimate business expenses can be deducted from the final tax bill, and the downside is that if you can't prove how much profit your company has made, a figure will be assumed. Always keep sales receipts and expenses. Even if you don't enter them in a book, at least you'll have something to show the taxman when he comes looking for money. Also, Pay Related Social Insurance (P.R.S.I.) must be paid regularly. Most independent labels are initially run by band members, but if your plans include employing other people, there are legal obligations you need to know about. If you have any questions or doubts contact a solicitor. It is worthwhile checking with Fas and the T&EA as there may be grants or schemes to encourage job creation.

### ***Control***

You're in complete control of your own destiny. There's nobody making you compromise your music in any way. Your career is in nobody's hands but your own. Remember you will also own the 'sound recording right' in the songs that you release, which means you profit from them further if you license tracks for compilations or for use on TV, in films and in adverts.

### ***Success***

This is possible, but can mean a very long slog in terms of time, effort and money. However, by running your own label you're effectively cutting out the middle man (the record company), so you stand to make a lot more money in the long term.

### ***Money***

There are higher profits to be made by cutting out the involvement of a record company. The overall sales value of the company increases with the quality and success of its portfolio of bands and artists. Chris Blackwell sold Island Records to PolyGram (Seagram) for Stg300 million and Richard Branson sold Virgin Music to EMI for Stg210 million.

### ***Useful Contacts***

#### ***Manufacturers:***

MPO 01-8221363

Sonopress 01-8409000

Trend Studios 01-6160600

Zomax 01-4056200

#### ***Industry Bodies and Organisations:***

First Music Contact 01-8782244

The Irish Trade Board 01-2695011

Companies Registration Office 01-8045201

IDB House NI 0801232234488

International Federation of Phonographic Industries 01-2693344

Irish Music Rights Organisation 01-6614844

PRS NI and Scotland 0044 131 2265320

Mechanical Copyright Protection Society 01-6766940

Phonographic Performance (Ireland) Ltd. 01-2882464

**LIST OF ACRONYMS**

*AURA*

Formerly the royalty paid for the public performance and broadcast of records had been distributed solely to record companies but since performers have become legally entitled to a proportion of this income a plethora of organisations has emerged to offer to administer this right on their behalf. AURA (The Association of United Recording Artists) is one of a number of organisations set up to administer the payments due to performers on records.

*ASCI*

The Association of Songwriters and Composers of Ireland, is an information service. Newly formed and at its embryonic stage. Our aim is to tackle important issues such as: Perpetuity of Copyright and a higher content ruling on all licensed radio stations in Ireland for Irish songwriters and composers works.

*BMR*

British Music Rights - BMR is a lobbying body aimed at improving the legal framework within which everyone in the music industry operates. It addresses the issues both within Britain and on a European level, pressing for legislation in such areas as improved anti-piracy measures or stronger copyright enforcement measures.

*BPI*

BPI is the umbrella group for the entire record industry in the UK. It aims to raise the profile of recorded music. It is best known for the annual 'Brits' awards which have, alongside the Mercury Music Prize and the MTV Awards, done much to glitzy music in the same way the Oscars did for film.

*CAI*

While the Copyright Association of Ireland is not primarily concerned with music, it is committed to the improvement of the conditions under which all copyright owners operate. They run lectures and seminars on copyright issues and act as a forum for copyright owners, copyright users and lawyers working in the field.

*FMC*

The Federation of Music Collectives is an all-Ireland umbrella group set up to promote, develop and encourage the work of music collectives in facilitating the needs of grass roots musicians. FMC also provide an information and advice service for musicians.

*IMRO*

The Irish Music Rights Organisation is the body which administers the performing right on behalf of its members, be they publishers or individual members. If you are a songwriter whose work is performed in public or broadcast then membership is a must.

*IRMA*

The Irish Recorded Music Association is an umbrella group for the Irish record industry. In addition to its lobbying role IRMA also commissions the charts for Ireland and organises the annual IRMA Awards. IRMA has recently set up the IRMA Trust which provides instruments to young performers who would not otherwise be able to afford them. This may yet prove to be one of the most vital contributions to the future of Irish music.

*MCPS*

MCPS administer the mysterious 'mechanical' right in music. The mechanical right in fact means the right to make a recording or physical copy of a musical work. So if someone is releasing your music on record, or if they wish to use it in a film or advertising campaign or store it on a computer somewhere, membership of MCPS is a must. Like IMRO, MCPS operates worldwide through a network of related organisations.

*MPAI*

The Music Publishers' Association of Ireland is the umbrella body for publishers whose catalogue of musical works is used in Ireland.

*MU*

The Musicians' Union is the organisation which presses for improved working conditions for professional musicians, especially those who make a living from session work where MU Guidelines will determine what they are paid for a session and what breaks they will have etc. The MU also offers a legal advice service to members.

*PPI*

Phonographic Performance Ireland is the umbrella body for record companies in Ireland and it administers the performance right in its members' releases. It licences broadcasters to use records, as well as premises where records are played, and distributes this income to its members and to those artists who have performed on records released in Ireland.

*PRS*

The Performing Right Society is the equivalent of IMRO in the UK, and in fact before the establishment of IMRO was the body which administered the performing right in Ireland.

*RAAP*

Recorded Artist and Performers is a not-for-profit Irish Performers Association which will collect and distribute Royalties to Irish Performers for public plays of their Material.

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**Q&A ON MUSIC LAW**

This factsheet was written for FMC by Gary McSharry, a lawyer with the Arthur Cox Media & Entertainment Law Group  
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What are the most important legal considerations for any new artist or band?

**Find a good Lawyer**

This is crucial. Never sign any legally binding document without it first being reviewed by a lawyer who has experience of the specialised music industry. Documents signed now can have serious long term repercussions so getting things right from the beginning is essential. An experienced music lawyer will read between the lines of all contracts, balancing the scales of negotiation between the artist and the record label.

**Protect your Copyright**

There is no statutory registration system in Ireland for copyright material. Under the Copyright and Related Rights Act, 2000 certain types of work are protected. For people involved in the music industry, the relevant protectable works are likely to be:

1. Literary work - the lyrics and musical score to songs;
2. Musical work - the actual music to the piece; and
3. Sound recording - the actual fixation of the music on a tangible medium (such as a CD).

Copyright will automatically vest in the author of a work, but not until it is recorded in writing or otherwise. The author of the work will be deemed to be the person who creates the work. In the case of lyrics, manuscript and the actual music the writer or composer would be the author. In the case of a sound recording the producer would be the author. To alter this, a written agreement transferring rights would be necessary. If the author wishes to protect the actual music, that is the sound or melody, it first must be fixed (that is, put into a form where the sound can be reproduced or communicated i.e. recorded).

There will be no copyright protection available if a work copies a previously existing work. There are a few practical steps the author can take to assist in establishing rights to their work. Should a dispute ever arise, being able to provide evidence that you are the author would be beneficial. The following are just a few examples of the practical steps the author can take:

1. Make and keep the physical representations of the musical work. This can either be the written words, manuscript or a recording (or fixation) of the work.
2. Keep copies of all correspondence (which should be dated) relating to the work, for example, when sending lyrics to a music publisher.
3. It is common practice, although it is not a legal requirement, for people to send their work to themselves by registered post making sure that the date stamp is clear. They keep the envelope unopened and in a safe place. Then in the event that they ever have to prove/enforce their rights against someone they think has made use of their work without permission, this envelope can then be opened in Court as evidence to support the claim of authorship.
4. Swear an affidavit. This can be lodged, together with the physical representation of the work, with a law firm or other reputable body on a certain date and stored in their strong room.

It is important to note that except for physical representation or fixation, the methods set out above are not required by law. In other words, if the author does not take such steps this will

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not necessarily disentitle them to copyright protection. Not taking such steps may however make it more difficult to prove/enforce the author's rights against someone they believe has breached their rights.

**What are the most dangerous pitfalls that an artist or band should watch out for when dealing with contracts?**

The agreements an artist will normally come across in the music industry include the following: (i) Artist Management Agreements, (ii) Recording Agreements, and (iii) Publishing Agreements.

There are potential pitfalls in each of these contracts. An experienced lawyer will be familiar with the issues that need to be addressed.

Once an artist has found a trustworthy manager who will do a good job, it is time to consider entering into an Artist Management Agreement. The Artist Management Agreement is normally the first contract encountered and may cause the most problems later because it is entered into when the artist is most vulnerable (this is because s/he is at the least developed stage and expectations are at the highest level).

Although some managers/artists prefer to work without any written contract, this is not advisable. It is highly recommended that each party receive independent legal advice. Listed below are just some of the issues that should be included in an Artist Management Agreement (this list is by no means complete, it is only a sample for this interview):

Take note of the territory clause. This is the geographical area covered by the agreement. Is it a defined area or global

Scope of the agreement. Does the agreement cover everything the artist does in the entertainment business or just her/his activities in the music business?

Key-man provisions. This arises where the manager manages other artists or is part of a management company with a number of acts on their books. The manager can be named as a key man and it can be provided that the contract may be terminated if s/he is unavailable to the artist as and when s/he needs him/her.

The manager's term. How long will this manager act on the artist's behalf? Three years is the recommended fixed term within the industry.

Duties of the manager. Some contracts list specific things they expect the manager to do, for example advise on clothes, image, voice training, etc.

A recommended clause would be as follows: "the manager is to do all s/he reasonably can to further the artist's career and to do all things expected of a manager in the music and entertainment business".

What is the manager paid? The average rate of commission tends to be 20% of the artist's gross income.

And what about post-term commission? Generally, managers only get paid commission on work done, recordings made and songs composed while they were the manager. In the U.S., however, managers sometimes expect commission on the first if not several albums made after they have ceased to act for the artist.

Signing agreements. It is common and practical to allow the manager to sign one-off short-term contracts in the artist's name, for example, a short release/consent form when an artist/band does an appearance on "Top of the Pops."

An experienced lawyer will know how to properly address and advise you on these and other relevant issues. They will be able to look at your situation and personalise the contracts to your particular needs and wishes.

Because of the expense, access to legal advice in the industry often seems restricted. What are the alternatives, if any?

Most music lawyers will give initial advice and guidance at little or no cost or only charge you when your first deal is in place. You must remember that if you wish to protect your interests there are no alternatives to legal representation. Record labels and managers have their own legal advisors who will protect their interests. The bottom line is this: If they want to sign you it is because they feel you can make them money so be professional and smart about your talent. Your talent is your product, you should do all you can to protect it.

**General advice/suggestions for new groups:**

Realise that the music business is a commercial industry and that without guidance and the correct business/legal advice, brilliant talent can fall by the way side.

Source funds and resources available for Irish talent such as through the Federation of Music Collectives and the Arts Council.

Be careful in building the management, legal and financial team. Check them all out fully.

Never sign a contract without the obligations and conditions being explained clearly by a lawyer with experience in the industry.

Never make a move and approach record labels etc. until the product is perfect. Artists generally only get one chance to make that all-important first impression that leads to success in this industry.

*This q&a contains a general summary of the law and is not a complete or definitive statement of the law. Specific legal advice should always be sought before taking action.*

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## MUSIC PUBLISHING

A publisher is a manager of songs. Those artists who do not write their own material very often consult a publisher, in search of a song that feels right for them; so it can be said that a publisher places songs.

### *Royalties*

There are two societies which collect royalties on behalf of their publisher members.

(1) The Irish Music Rights Organisation (I.M.R.O.) licenses and collects royalties for the public performance of music e.g. on the radio, in supermarkets, in pubs etc., on behalf of its members and the members of foreign-based affiliated societies. I.M.R.O. distributes these moneys four times per year. The criteria for writer membership vary, so it is worth checking with the I.M.R.O. Membership Officer. Broadly speaking, a writer needs to have three works which have been (a) commercially recorded or (b) performed in public at IMRO licenced venues on a specified number of occasions within the previous year.

(2) The Mechanical Copyright Protection Society (M.C.P.S.) collects royalties on behalf of its composers and publisher members every time music is mechanically reproduced i.e. pressed (with most major record labels and their subsidiaries mechanical are only paid on songs pressed and sold). Royalties are collected from record companies and the mechanical rate is currently 8.5% of the published dealer price exclusive of Value Added Tax, e.g. this works out as €1.75 on a €24.99 CD. Record companies pay the M.C.P.S. which remits royalties to its members on a monthly basis. The M.C.P.S. also collects royalties when music is synchronized onto TV and radio advertisements, films and videos.

### *Publishing deal*

There is no standard deal between a publisher and a songwriter, but I.M.R.O. rules state that a publisher cannot control more than 50%. Deals vary from 50/50 upwards in favour of the writer of the song. Nowadays deals are rarely signed for the full duration of copyright instead opting to sign for shorter periods, assigning the work to the publisher for a finite time during which they can exploit the works and then having the songs revert back to the songwriter. Kick out clause or exploitation clause are common today, these clauses allow the writer to take back their work if the publisher fails to exploit the work.

### *Life of Copyright*

Life of Copyright is the life of the author plus seventy years. Nowadays, songwriters rarely sign for the full period of copyright, and five or ten years is the norm. If a songwriter decides to sign for the full period of copyright, he or she should ensure that a “kick-out” or “exploitation” clause is in the contract; i.e. if the publisher does not exploit the song, the rights revert to the author.

### *Submitting a Song to a Publisher*

It is important to consider the publisher’s portfolio: some publishers specialise in a particular type of song - some do not. Writers should put two to three songs on a demo, including a lyric sheet and some background information on themselves.

**PRESS & PUBLICITY**

by Emma Warren

**Publicity: The Rules...**

In the hands of a genius, press and publicity becomes an art form. Take the KLF. When not burning a million pounds, or awarding alternative Turner Prizes, Jimmy Cauty and partner Bill Drummond took publicity into new realms. They blindfolded journalists and took them to the Scottish island of Jura. They wrote a book called 'How To Have A Number One Hit' (tip: get yourself a copy now). They dropped a dead sheep at the BPI awards. The KLF are an extreme example of the three golden rules of publicity. Keep it interesting. Have a laugh. And don't be afraid to make things up.

Think Dexy's Midnight Runners' Kevin Rowland wearing a dress as part of the promotion for his new album. Rave band Altern 8 bumrushing the queue at a rave to do a gig on a tank. The blue dummies that littered the streets of London before the release of Portishead's debut LP 'Dummy'. All of these, contrived or real, helped create a profile and press presence for the artist. Even a refusal to do press can create publicity; something proved by the anonymous Techno artists of late eighties Detroit. The point is that publicity comes in many forms. While the donkey work of mailing records, getting reviews and collating information needs to be done, you need a bigger picture, a plan. The music is the starting point, but the media need interesting, lively, opinionated people to write about. Magazines will always choose a mouthy band over a mousy one. No matter what the tunes are like (unless you are Supergrass)

**Hype or Hit & Hope**

So to the bottom line: there are two ways of approaching press and publicity. You either take the KLF's starting point, which is to point out that all a publicist needs is a phone, a fax, and a capacity to lie, or you scatter-fire your release across the media. This can be summed up thus: Hype or Hit & Hope. The former necessitates you being able to build up a buzz, and a word-of-mouth reputation that will get magazines running after you eventually, the latter suggests the more prosaic route of attempting to get coverage through reviews and magazine coverage.

The Hype route is clearly more fun, and often more profitable. What you need is an unassailable sense of belief in your band and your music, unstoppable energy, and often, a big gob. You need lots of friends to kick-start your fanbase, people who know people who can get journalists to hear your music, and good ideas. It's slightly different for bedroom dance acts, who just need to get their music to DJs, but for bands the rules haven't changed since Elvis. You need good ideas. The Stones were helped by a manager who told the previously nice boys not to take their sunglasses off in interviews (it made them seem harder, more mysterious, more sexy). The Jam and The Clash had agendas. Every band needs something.

Don't dismiss Hit & Hope as Hype's boring younger brother. The basics of press and publicity are as important as the big plans. Reviews in magazines help your distributor sell your music to shops. Coverage in the press helps other journalists and music industry figures become aware that you exist. It can help sales. Everyone in the music industry reads the music press, and it can help your ability to get signed. Take the case of future Folkie, Badly Drawn Boy. At the start of 1997, Damon Gough had just put out his first record on cool-but-tiny Manchester label Twisted Nerve. Thanks to a local journalist who freelanced for Select Magazine, Gough was included in a 'tips for the top' feature the magazine ran on the best new artists of the year, and ended up as the focal point of an A&R scramble. He was then signed

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by XL Recordings (home to The Prodigy, Basement Jaxx and electronic enigma Leila) for a reckoned £250,000. Press can help interest, but only your tunes can take you higher.

### DIY Press

For most small bands and acts, DIY press is as effective as hired PR. It's cheaper (although you will need a budget for postage, stationary and phone bills) and you'll probably get similar results. As already mentioned, you need a phone and fax and capacity to lie. Know your medium: if you are a Rock band, read the Rock press, if you're a knob-tweaking bedroom boy, locate the Techno reviewer at Muzik or DJ. It's worth going to a good city newsagent (not just the crap one at the end of your road which sells OK and Bella!) and spending a tenner on an armful of magazines. Browse the ones which cover your kind of music, and buy the kind of magazines you would like to be in. Take them home and study them like a map.

Things you need to know about magazines: journalists get sent hundreds of records a week. Most freelancers don't work at magazines, they work from home. Most journalists don't listen to everything they get sent (and then they sell them, the bastards!). Despite the hurdles, you *can* get your records to journalists, but in order not to waste precious resources, you need to plan and target carefully. Remember that monthly magazines work six to eight weeks ahead of their street date, and that many of them won't review music once it's been released. So you need to send a record to a journalist approximately two months before it is released (although you can of course lie about the release date - everyone else does). Look on the masthead to find out who does what at the publication. Read the reviews and music features to see who reviews what. Identify the people who you think might like your music, based on the preferences they display in their reviews. See if they have a staff job (they'll be the people with titles on the masthead - freelancers just go under 'Contributors') and if they do, you can send records to the magazines' offices. If not, ring the magazines and ask if they forward records to specific journalists, or if they come to pick them up. Send information and make sure you put a phone number on. Do a press release to go with the release, not a letter. And if you are unsigned, don't say so. Just make up a name for your own label and say you are signed to label X. You might not get any results. Ultra-new bands can sometimes get coverage in specialised sections of magazines - both NME and Melody Maker have sections like this - or by having a well-placed industry fan mention them in interviews. The dance press are much less bothered by pedigree or a (ahem) track record, and a good new record can get quite extensive coverage in dance magazines. You just need to get it to the right person.

### 'Proper' PR

Proper PR can be worth it too. Bear in mind most professional companies charge at least €750 for promotion on a single (although you might find a few who will do your first PR for a few hundred less if they really like your music) and they *can't* guarantee results. What they *can* do, is provide a journalist swamped by a stream of free records with an idea of what's inside the mailer. If it comes from Phuture Trax, it's club music. If Hall Or Nothing is stamped on the front, you're likely to find Rock. And so on. A PR company does all the hard work for you. They already know the journalists, they know all the sections of all the magazines, they have the freelancers' home addresses. They have the knowledge that you don't (yet). The other main benefit of professional PR is the fact that they can get responses from journalists. They have relationships with journalists, and can ring them to find out what they thought.

### Hiring a PR

In order to find the right PR for you, you need to find out who they already deal with. You

need a PR that really likes your music (or they aren't going to do a good job). Usually they will ask to be sent a copy of the record before agreeing to work for you. When they have done, you should talk to them about the record, what they thought, where they see it being covered, and the kind of response they realistically think they could achieve. Once you've agreed to work together, you should expect regular reports on the progress of the record - who they've sent it to, what responses they've got and what reviews or features they expect. You can also expect a cuttings file of all the coverage they've obtained for you at the end of the promotion.

**What else?**

People with mega-budgets like UNKLE can afford to send out limited edition stickers, cut-outs, dolls, and small houses, but anyone with a bit of imagination can think of something to brand and send out. T-shirts and frisbees seem to be very popular, but you need to make sure that any merchandising you send is really good or it will devalue the perception of your record. A club once sent me a piece of toast in an envelope and followed it up with a fax about a club called 'Toast', so really you can do anything.

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**RELEASING A RECORD**

by Greg McAteer, MCPS

Anyone can release a record as long as they observe a few simple guidelines.

1. You must notify the copyright owners or their agents (normally MCPS) of your intention to manufacture a record at least 14 days before you do it. MCPS will send you a form called a Statutory Notice which you use to submit the relevant details i.e. the track sequence, song titles, writers, copyright owners (if known) and name and address of pressing plant and quantity to be manufactured. Doing this early has advantages for the record company. MCPS can identify the correct copyright owners at the time of making the record and this can save reprinting of sleeves if the copyright owner of a song has changed. You are required by law to correctly identify the writer and copyright owner on the record/CD sleeve.

2. You must arrange to pay a fee, known as a mechanical royalty, to the owners of any copyright musical works on the recording. Most musical works are owned by composers or publishers who are members of the MCPS and it is to MCPS that you pay their mechanical royalties.

3. If the copyright owner is not a member of the MCPS then you must pay the mechanical royalty directly to them. If you can't trace the copyright owner you must arrange to hold a sum in reserve with which to pay the royalty if they subsequently make themselves known to you.

4. If you want to use a song which has never been released on a record before you must seek the permission of the copyright owner before doing so. If the song has been released you are free to release your version as long as you pay the mechanical royalty and notify the owners or MCPS.

*Do I have to be an MCPS member to release a record?*

No. MCPS represents the people who own the copyright works which appear on records so record companies are not normally members of MCPS.

*How are mechanical royalties worked out?*

The mechanical royalty is worked out as a percentage (currently 8.5%) of the dealer price, i.e. the price the record shop pays for the record. If all the copyright musical works on the record are owned by MCPS members, then the entire mechanical royalty of 8.5% of the dealer price is collected and distributed to the copyright owners. If some works are owned by publishers or songwriters who are not MCPS members MCPS do not collect their portion. MCPS only collects as much of the royalty as it represents.

*What about royalties on a demo?*

If the music on a demo is owned by MCPS members then you will have to pay for its use on your demo. Of course, in practice most songs on demos are written by the bands themselves and the writers will rarely have joined MCPS this early in their career so if the songs haven't been assigned to an MCPS publisher member there would be no royalty collected.

## **RIGHTS IN A SONG EXPLAINED**

*There are many different rights in every song written.*

*Greg McAteer of MCPS, gets us to grips with them through a little story!*

I'm all rights, Jack

One day, with nothing else to do you wander down as far as the local record shop 'Mickey's Mental Metal and Bluegrass Hut'. As you're drawing near you hear what sounds like a Ten Speed Racer song you've never heard before coming out of the shops huge sound system. Your curiosity roused, you nip in and Fat Charlie, the ex-roadie who runs the place tells you he has just got TSR's new album in stock. You ask if you can hear another track and being an obliging kind of guy Fat Charlie lets you hear the entire album at full volume.

You trot home a happier bunny and sit down for an afternoon of trash TV. In between Blue's Clues and Kipper you notice a familiar sound and realise that one of the tracks from the album is being used on an advert already.

It's a really catchy tune and you decide you have to have it as a ringtone. A quick SMS later, a questionable rendition of the song is bleeping and burbling out of your Nokia.

That evening, you're sitting around having put away the dishes and washed the cat and that song is still going through your head. You're driving your girlfriend mad humming it and you're desperate to hear it again. A brainwave strikes and you phone a request into the Tom Dunne show. You're in luck, Tom loves the song too and a few minutes later your radio is aglow.

Next morning first thing you head down to Fat Charlie's and part with your hard earned in return for a copy of the CD. As you're scuttling off home who should you run slap bang into but ten speed racer themselves. You tell them about how much you adore the album and the whole story of how you came to buy it.

'So', you ask them 'are you making any money out of this yet?'

'Well', they reply, 'because Fat Charlie played the album in the shop we'll get a performance royalty payment from IMRO for writing the song, and our record company will get a performance royalty from PPI, and because we're also the featured performers on the tracks we'll get a payment from RAAP as well. Now, none of these organisations run around taking notes of everything that gets played in a public place, but they carry out an analysis of what happens and we'll get a share of the overall pie based on how popular our music is.'

'What about the advert, then?' you enquire.

'Well with the advert, because we wrote the song they had to ask our permission to use the track and we licenced the use and charged them a one-off fee. So did the record company, because there is a separate copyright in the recording. Plus, we'll get a broadcast royalty from IMRO for every time it goes out on air and the record company will get a broadcast royalty from PPI.

'Wow', you say, 'that's amazing. What about my ringtone, though? You're not telling me you get paid for that.'

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‘Yep’ ‘Every time someone downloads a ringtone we get a royalty from MCPS, who control the mechanical right. That’s the right that comes into play whenever a recording is made.’

‘So do your record company get paid for ringtones too?’

‘Nope, because the ringtone doesn’t use the original recording the record company doesn’t control the rights – they would be owned by who ever codes the ringtone’

‘Poor them’, you say, ‘but they must do all right out of selling the album’.

‘Too right’ they reply ‘but so do we. As part of our deal with the record company we get an artist royalty payment from them for every copy they sell, and because we wrote all the songs as well MCPS collect a royalty of 8.5% of the dealer price on every copy that’s sold and we get that too’.

‘But you wouldn’t get that if someone did a cover version would you?’ you ask.

‘Indeed we would’ he enlightens you, ‘the mechanical royalty goes to the songwriter whether they record the song themselves or someone else covers it!’

‘Jeez’, you say ‘it’s been a real eye opener. Nice to see you again. So, where are you off to now?’

‘Well, first we’re stopping by Fred’s Cuban Cigars, then we’re off to Alfie’s Shiny Red Ferrari Shop. Ciao!’

*Written by Greg McAteer, MCPS for fmc © 2003*

## **RUNNING A CHARITY GIG**

A charity, or benefit gig is one where musicians donate their services either for nothing or for a percentage of their normal fee.

Charity gigs have been known to lose money before now, either through bad production or bad luck. Therefore it is important to decide at the outset why one is running the gig: is it for publicity or fundraising? Gigs are quite a good way of publicising a cause, but an uncertain way of raising funds. Have you a network of ticket sellers or do you depend on your artists drawing power?

Some examples of approximate production costs:

1. Pub venue: €100 to €600, depending on printing and advertising costs.
2. Largish ballroom (capacity c.800+): €4,500 to €10,000, depending on size of PA, number of crew, advertising costs and insurance.
3. Theatre: €3,800 to €8,000, depending on size of PA, number of crew, advertising costs and insurance.

Timing is important in two ways:

1. Try to find out what other concerts are planned around the time of the benefit, and be prepared to change the planned date if necessary. Your gig is doomed if the biggest draw is a singer/songwriter who already plays down the road once a week, while the opposition is featuring a “flavour of the month” band and publicising it three times a night on television.
2. Give yourself two to three months run up to the gig. The advertisement in the newspapers on the day of the gig should confirm what people already know: i.e. do not rely on a newspaper ad to fill a venue - you need to have:
  - posters designed, printed and erected.
  - a press release sent to music press, local and national newspapers, a few weeks in advance of the show, followed by
  - telephone calls to music journalists
  - as many mentions as possible on local radio stations,
  - handbills left in pubs, restaurants, colleges etc.
  - word of mouth - perhaps use the “grapevine” which is part of the charity for which you are running the gig.

If, on the other hand, you can get a church or community hall free, fill it with no publicity at €5 a head and have a local band with its own PA play for nothing, go for it.

### 12 STEPS TO RECORDING: GOING INTO THE STUDIO

Recording your first demo is essential to the development of any young artist. It's the ultimate reference to your sound/style/attitude. There are many ways to approach your first recording, these are a few tips that should make the recording a successful experience.

- Establish who the tape is aimed at (record companies or venues/promoters). If it's a record company it needs to sound like a marketable product, if it's for a venue/promoter, it needs to sound like the best gig you've ever done.
- Decide where you are going to do the recording (budget and availability will go towards determining this) meet the engineer and find out what other work she/he has done before.
- Familiarise yourself with what the recording process is. (what is multi-tracking? What is an overdub? Can we play to a click? What is a click?)
- Record yourself rehearsing before you go into a studio situation, a portable cassette will do. (Now you have a reference to give the engineer)
- Know what you want to sound like (bring reference CDs i.e. "I like the guitar sound on this" or "the drum sound on this is what I want"). This can save hours of unnecessary time wasting).
- How many songs do you include on your tape? Three songs is more than adequate, avoid the fifteen minute masterpiece ...a demonstration [DEMO] is all that's usually required.
- Ensure that the songs chosen are well rehearsed and the structure/arrangement of the songs are familiar to all members of the group.
- Have a copy of the lyrics/arrangement (of all songs) for the engineer recording the session.
- Find out what the studio charge for the master tapes. (sometimes it's cheaper to purchase your own).
- Always bring your own D.A.T.. Some studios do not provide these tapes, if you want a cassette copy, bring your own cassettes (it's a recording studio, not a music supply shop!)
- Do a thorough check on all instruments needed for the session. Re-string and set-up any stringed instruments, re-skin and re-tune drums, check all FX for batteries/ correct power supplies, have a spare set of batteries, guitar leads and straps, always have two good quality electronic tuners.
- Come to the studio a little before the session and ensure that all members turn up on time.

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**WHAT IS A MANAGER AND HOW DO I GET ONE?**

by Michael McCready (Attorney at Law)

The term "manager" does not have a precise definition in the music industry. A manager can range from a friend who helps book shows for you, to a corporation that handles dozens of artists. This column will focus on professional managers.

A manager is someone who takes an interest in an artist's career and invests his or her time and energy in helping the artist succeed. The duties of managers are rather ambiguous. They include counselling the artist as to all aspects of the entertainment industry including record companies, advertising and merchandising. Overall, a manager is your link to the entertainment industry. He will advise you as to standard practices, reputations, etc..

Therefore, it is of the utmost importance to get a manager who knows what she is doing. Since the manager will be getting a percentage of your income, be sure you get what you pay for. Some managers will sign you up for a percentage of income and sit back and do very little and wait for the band to hit it on their own.

There are various things you should look for in a manager. First, make sure you like the manager personally. You will have more contact with your manager than with anyone else. If you don't get along, don't feel comfortable or trust him, don't hire him as your manager. Second, make sure the person respects your music and your abilities as an artist. Your manager should be your biggest fan and supporter. Third, check out the person's reputation. Call people in the industry and ask what the manager's reputation is in the entertainment community. Remember, this person will be representing you, you don't want someone who is generally viewed as a jerk as your representative. Finally, find out if the manager has contacts in the record industry. If you are desperate, you can ignore the previously mentioned three criteria if the manager can secure you a record deal. There are some people who have incredible contacts. However, be forewarned, my experience has shown that managers talk a good talk about industry "contacts" but seldom deliver. Therefore, I would stick with the first three criteria as paramount. If someone says they can get you a record deal, allow them to "shop" your tape non-exclusively, but don't let them be your manager.

Most professional managers will present you with a contract to sign. Like any music contract, have someone who knows the industry look it over for you. There are generally accepted terms in manager's contracts and there are people who try to take advantage of a band's naivete. The best managers, i.e. professional, will hand you a fair contract. A fair contract is for a term of 3 years with an option period and 15-20% of the artists' total income. A fair contract will also have escape clauses for the artist such as, "if manager fails to secure a record contract within one year, contract is void," or "if artists' gross income fails to reach \$X in the second year, artist may terminate this contract." A professional manager will agree to these type of provisions. An unscrupulous manager will take a large percentage, do little work, and not allow the artist to get out of the contract.

Most managers will demand (and get) power of attorney for the band. This means that the manager can sign his name and bind the band as if they signed themselves. This power is important, but once again, you must be able to trust your manager. You should specifically list what power the manager has to bind the band. It is advisable to limit his authority to spend your money to a specific amount. For instance, you may chose to give the manager power of attorney to spend under \$200, but for amounts over that, he must consult with the band. There are infinite combinations, but the possibility for abuse is clear without these limitations.

The final issue in management contracts is that of assignability. Beware the contract that states that the manager has the power to assign his rights under the contract. This means that the manager can give her management rights to another person. This clause completely defeats all my criteria for selecting a manager. If you picked your manager based on my criteria, why allow the manager an opportunity to get out of the job of managing you and appoint someone else in his place? Insist that the manager not be allowed to assign the contract. A scrupulous manager will agree to this. She will either be with the band for the long haul or not at all.

Unfortunately, there are no easy answers to the question, "how do I get a manager?". Finding a manager can be as difficult as getting a record contract. In fact, a first step to getting a record contract is getting a manager. It is a classic Catch 22 situation. Here are a few suggestions. First, network among entertainment industry professionals. Get to meet the bar owners, the recording studio owners, journalists, and do I dare say, lawyers. Word of mouth and personal salesmanship is the best route in the entertainment industry. You should also pursue a manager as you would a record company; send your tape, invite them to your shows, send publicity, etc.. There are a couple of good resources that list managers. Try the Yellow Pages of Rock, Recording Industry Sourcebook and Billboard Buyers' Guides. Even if a manager says, "solicited material only," send your tape anyway. This standard warning serves to lessen the number of tapes one has to listen to and chances are they will listen to everything they receive.

by Michael McCready  
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*Michael McCready represents clients in all areas of the music industry including music, radio, television, stage, and book publishing. His music law practice includes representing bands, record labels, production companies, recording studios, promoters, and music publishers. His work includes copyrights, analyzing and drafting contracts, trademarks, publishing, and litigation.*

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**WHAT IS THE LAW REGARDING SAMPLING?**

by Michael McCready

Sampling is the use of portions of prior recordings which are incorporated into a new composition. Sampling has become an integral part of many genres of music today. When you sample someone's song without permission, it is an instant copyright violation. It is the unauthorized use of copyrighted material owned by another. Sampling without permission violates two copyrights-the sound recording copyright (usually owned by the record company) and the copyright in the song itself (usually owned by the songwriter or the publishing company).

If you want to use a sample legally, you must obtain permission from the copyright owner. The copyright owner is usually a publishing company or record label. Remember that you must obtain permission from both the owner of the sound recording and the copyright owner of the underlying musical work. The fee for a license to use a sample can vary tremendously. The fee will depend on how much of the sample you intend to use (a quarter second is a minor use; five seconds, a major use), the music you intend to sample (a Madonna chorus will cost more than an obscure drum beat), and the intended use of the sample in your song (it is more costly to build your entire song around the sample than to give it only minor attention).

There are two different ways to pay for a license. First, you can pay a flat fee for the usage. A buy-out fee can range from \$250 to \$10,000 on a major label. Most fees fall between \$1,000 and \$2,000. The other way to pay for the license is a percentage of the mechanical royalty rate. The mechanical royalty rate is the amount a person pays to the copyright owner to make a mechanical reproduction (copy) of the song. A license which is a percentage of the mechanical royalty rate is generally between  $\frac{1}{2}$  ¢ and 3¢ per record pressed. Everything is negotiable and it is not unusual to get a license for free, if you ask.

If all of this sounds confusing, there's hope. There are businesses devoted entirely to securing and negotiating clearances for samples. These firms charge less than an entertainment attorney would charge and are generally more knowledgeable about the going rates for uses. If you use samples without obtaining the proper clearance licenses, you have to be aware of the penalties. A copyright infringer is liable for "statutory damages" that generally run from \$500 to \$20,000 for a single act of copyright infringement. If the court determines there has been wilful infringement, damages can run as high as \$100,000. The copyright owner can also get a court to issue an injunction forcing you to cease violating the copyright owner's rights. The court can also force you to recall all your albums and destroy them.

There is also a rumour going around that you can use four notes of any song under the "fair use" doctrine. There is no "four note" rule in the copyright law. One note from a sound recording is a copyright violation. Saturday Night Live was sued for using the jingle, "I Love New York" which is only four notes. The test for infringement is whether the sample is "substantially similar" to the original. Remember, a judge or jury is the one who determines this and these people may be much less receptive to your music than your fans. My point is you cannot rely on fair use as a defence.

Sampling can also have tremendous consequences if you have a record contract. Most record contracts have provisions called "Warranties", "Indemnifications" and "Representations". These provisions constitute a promise that you created all the music on your album and an

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agreement to reimburse the label if it is sued. These same provisions are included in all contracts throughout the entertainment distribution chain. The record company has them with the artist, the distributors with the record company, the record stores with the distributors, and so on. Well, all these warranties point back at the artist who is responsible to everyone else! Therefore, if you violate someone else's copyright, you will be paying all the bills of your record company, distributor and any stores which incur expenses as a result of your infringement. This can run into serious money as you can imagine. You will also be in breach of your record contract. Read your record contract carefully before using any samples.

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**WRITING A MUSIC BUSINESS PLAN**

by Peter Spellman

One thing I would never do is invite friends to Boston without first sending them a map. More than most cities, Boston (for the out-of-towner) is an urban tangle with few rivals. I remember my first visit to the city back in '77. It was a psychological and emotional roller coaster to say the least. And I had a map!

Maps - they lay out the land and point us in the right direction. A good music business plan is a lot like a map, though the "land" you'll be dealing with here - the music industry - is both more tangled than the city of Boston and can end up pointing you in any variety of "right" directions at the same time.

A good music business plan is the map to the fulfilment of your goals. Whether you're a band, soloist, production house or some other business, a plan can turn foggy notions into operational strategies, hunches into actions, dreams into reality.

Dreams. This is where it all begins isn't it? For this reason I like to think of one's business plan as a "vision/mission." It starts with vision. Before your first gig you envisioned yourself playing it. Remember? Vision precedes mission and fuels it with the necessary energy to go the distance. A mission implement vision and provides the vehicle that moves you towards your goal. Together they're unstoppable!

**Why Write A Music Business Plan?**

There are a number of specific benefits to writing a music business plan. A well-thought out business plan will:

- *Clear the way for creative thinking*
- *Pinpoint strengths and weaknesses*
- *Identify obstacles and problems*
- *Expose hidden opportunities*
- *Set proper priorities*
- *Coordinate your marketing program*
- *Take the guesswork out of budgeting*
- *Allow for meaningful review and revision*

Your business plan should never be viewed as a one-time draft written in stone but instead as a provisional guideline to help you take strategic and effective steps toward the achievement of your goals. It is never really complete because it parallels and reflects the dynamics of your own growth and development.

Besides the benefit of self-revelation, there is another important reason to draw up a business plan: To attract investors and secure loans. No one needs to tell you how much it costs to launch a successful music career in the 90's. Between equipment, insurance, taxes, travel, recording, mixing, manufacturing, promotion, advertising and various fees and commissions, today's musicians and bands are left with little else to call their own. Enter investors.

Investors are willing to put up a certain amount of dollars to launch your music project with the hope and expectation of a return on their investment. The most important thing they'll need in order to decide to invest in you or not is a well-thought out business plan. The same

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goes for seeking bank loans. A plan reflects professional responsibility to the lending institution and greatly increases your chances of securing a loan.

### **How to Structure A Music Business Plan**

A music business plan will have six main components.

- *A summary page*
- *A description of your business*
- *A marketing plan*
- *An operations statement*
- *A project time-line*
- *Financial projections*

We will look at each in turn. You may want to make a rough outline for your own plan as you read this article. Don't be surprised, however, if your complete plan ends up being forty pages long! This should be expected.

Would you like some free help drafting your plan? Then contact your local SBDC (Small Business Development Center). This is a federal program that is part of the SBA (Small Business Administration) designed to provide small business owners with counsel and resources. Your tax dollars pay this so use it! The SBA has a Small Business Answering Desk (800-827-5722). which can answer many general business questions including the location of the SBDC office nearest you.

While you may not find them to be experts on the music industry, they are experts in creating and developing small businesses, and you are one. Let's first get an overall sense of where we're going by displaying a complete outline of a business plan:

#### I. Summary statement

#### II. Description of your business or project.

- A. History and background
- B. Management description
- C. Business structure

#### III. The market for your product or service

##### A. Market description

1. General market information
2. Specific market information
3. Competition profile

##### B. Marketing plan

1. Positioning
2. Marketing mix
3. Pricing philosophy
4. Method of sales/distribution
5. Customer service policy

#### Operations

##### A. Facilities and equipment

B. Plans for growth and expansion

C. Risks

V. Project time-line

VI. Financial information

A. Financing required

B. Current financial statements

C. Financial projections

### **I. Summary Statement.**

Here you want to answer the following questions as succinctly as possible: Who are you? What will you do? (goals). Why will the business be successful? How will it be financed? - and When do you think it will turn a profit? (Remember, a 'profit' is not how much money you make, but how much you keep). Be ruthlessly realistic!

It is also in the summary statement that you list the products or services being offered (e.g. CDs, tapes, performances, etc.) as well as the names and positions of all personnel involved. The summary should close with mention of anything that is unique about your project.

### **II. Description of your business or project**

This section begins to flesh out the summarization above.

A. Begin first with the history and background of your project. This provides the overall context in which to view your current work. List all data that pertains to the various facets of your present business. Don't pad it with your whole life story, just the pertinent highlights that have brought you to the present moment.

B. A management description should follow next. How is your business project organized? What does the leadership look like? (it's style and command chain.) How are decisions made and facilitated? What kind of ongoing business meeting schedule will be followed to insure smooth operation?

C. Decide on the business structure you will use (i.e. sole proprietorship, partnership, corporation, etc.). This is one of the first questions the start-up business person should ask. The answer to this question has many legal and tax implications, varies greatly from state to state and from time to time. Again, seek the advice of your small business advisor at your local SBDC office.

### **III. The Market for your Product and/or Service**

Now we are getting into the essence of what you're uniquely about. Marketing means selling and it is an absolute truth that unless a start-up business can sell its offering it will not survive. Getting orders - selling your recordings or performances to paying customers - is of crucial importance to a new business.

To compete successfully in the music business, then, you must follow the same strategy that every successful business person uses. You must:

- Develop a product- in this case, your music.
- Locate clients for your product - do market research.
- Bring your product to the marketplace - use sales technique to convince potential clients to buy your music.

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Does this mean you're "selling out"? NO! Or I should say, it all depends on your attitude. If you have a killer recording or a hot performance to sell and you market it accordingly, then you're not selling out. You're simply bringing a desirable product to a ready audience.

If, on the other hand, you would sacrifice your mother for a chance to claw your way to the top, then yes, you're probably selling out. Again, it's attitude. And you have to determine this for yourself. O.K., now that we've cleared that up let's look at some of the various facets of your marketing plan.

### **A. Description of the market for your product/service.**

The first thing you need is information about your market in order to correctly position your product and find your own unique niche within it. This is called market research and, like all of your planning, should be viewed as an ongoing process. You will need both general and specific information about your market.

**1. General Market Information.** The general market for musicians is the music industry. Without a general understanding about this larger market context you will have a difficult time trying to find your way within it. It is crucial, therefore, for today's musician to have a grasp of such things as record company structures, music publishing, recording contracts, distribution and music media, and how all of these work together to bring music to people. You can learn about the industry by talking with industry people, taking courses and reading books and trade magazines (see free resource list offer at end of article).

**2. Specific Market Information.** Here you will want to ask: What part of this larger market do I fit into? In other words, who are my customers? What is their general age, their sex, professions, lifestyle and interests? This information will prove crucial to the development of your marketing strategy.

In addition to your customers you'll also want to describe your competition. Be as specific as possible. Gather information on three or four successful competitors, assess the relative strengths and weaknesses of each, and compare your product or service with similar ones in terms of price, promotion, distribution and customer satisfaction.

### **B. Marketing Plan**

Now that you've gathered information on both your general and specific market share, you're now ready to develop your marketing plan or strategy. This too can be broken down into several component parts.

**1. Positioning** - This is related to finding your market "niche." No matter what products or services you provide, you can carve out a niche for them based on your experience, skills, and interests and then build up that niche as you work to serve it. Ask yourself questions like: What do I do best? Who needs that the most? Where can I provide that product or service that will give me a chance to expand what I do to utilize my other interests? What do I have to offer that is special or unique? The answers to these questions will help you "position" yourself to most effectively promote what you're selling.

**2. Marketing Mix** - The particular combination of marketing methods you choose for your marketing campaign is referred to as your "marketing mix." Methods can include news releases, sponsorships, networking, publicity flyers, contests and giveaways, classified ads, trade shows, radio spots, charitable donations and literally hundreds more.

When making your selection, keep in mind this fundamental rule of successful marketing: The measure of a successful marketing campaign is the extent to which it reaches at the

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lowest possible cost the greatest number of people who can and will buy your product or service. Generally speaking, the more of your time a marketing activity requires, the less money it costs you, and vice-versa. For example, networking costs almost nothing in money but plenty in time. On the other hand, advertising in a city newspaper costs a bundle while requiring little in time.

**3. Pricing Philosophy** - How much you charge for your product or service will depend on many variables. Here is where your research about your competitors comes in especially handy. Undercutting your competition is one common way to gain market share. But there is another approach. Research has shown that buyers, when making a purchase decision, select what they consider to be the best value - all things considered. And this suggests that value is equal to the benefits they perceive divided by the price. Price, therefore, is only one part of the purchase decision process. If you want to increase your customers' perceived value of your product, you can do so by either increasing the benefits or decreasing the price. It is almost always preferable to work on the benefits, both tangible and intangible, both rational and emotional, both large and small, that will make it possible to sell at a higher price.

**4. Method of Sales/Distribution** - This is related to your marketing mix and details the methods you will employ in implementing the various parts of your mix. For a musician, one method might be the use of a booking agent. Another might be a record distributor or, perhaps, mail order.

**5. Customer Service Policy** - When considering customer service it is always useful to ask yourself why you continue to frequent certain businesses. More than price more than product quality, you will often return again and again to these businesses because you feel taken care of. The people of those businesses go the all important extra mile to make you feel special. They anticipate your needs and provide for them in the various ways they deal with you. See if you can translate elements of this customer service policy into your own. Write down your philosophy and then list all applications you can imagine related to your business. How can you go the extra mile with your clients? Find ways of distinguishing yourself from your competitors in this area and you will insure a faithful clientele for years to come.

#### **IV. Operations -**

This has to do with the overall physical and logistical manufacturing of your product or service. It typically has three parts to it:

**A. Facilities and Equipment** will encompass such things as your rehearsal space, office space, studio, manufacturers you use, your instruments, sound and light equipment and vehicles you use to haul it all around. A brief note on equipment insurance should also be included here. Investors like to see the founders of a company have a cash investment in the business in addition to "sweat equity".

**B. Plans for Growth or Expansion** - Here is where you project your more general goals three to five years into the future, What will you need when you progress from local to regional success? Regional to national? National to international? Perhaps you'll want to develop sub companies within your primary company. Maybe a publishing wing, or a video branch, or perhaps a recording studio. Think it through as clearly and completely as possible.

**C. Risks** - This is another very important part of the plan. Not only does it show you're being open and honest with your financing source, but it forces you to consider and assess alternative strategies in the event your original assumptions do not materialize.

### **V. Project Time Line -**

Here you want to articulate the schedule for your goal achievement, both short-range (e.g., obtaining radio airplay, booking high-profile gigs, procuring management, etc.) and long-range (e.g., signing a recording contract, having your song performed by a mega-star, etc.). Think through the essential steps needed for the attainment of each goal.

### **VI. Financial Information -**

No matter how wonderful your plan is it isn't going anywhere without capital investment, whether it's yours or someone else's. This final section of your plan should be broken down into three sub-sections: The financing required, current financial statements, and a three-year financial forecast. Needless to say, this is the part of the plan potential investors and lenders will concentrate on the most. So the following is written primarily with seeking investors in mind.

**A. Financing Required** - While your first thought may be to ask for cash exclusively, there may be other resources that would help you even more. Perhaps what you really need is some people power assistance, or a touring van, or a new computer. These can sometimes be provided more easily than cash.

Whatever you decide you need, make sure it's based on a hardheaded and realistic assessment of the true costs of achieving your goals. A basic rule of thumb in estimating costs is to add 15% onto whatever figure you come up with. This covers all those additional "hidden" and unexpected expenses, which inevitably accrue.

**B. Current Financial Projection:** Financial projections are a key part of a business plan. They provide the reader with an idea of where you think the business is going. Perhaps more importantly, they tell a lot about your intrinsic good sense and understanding of the difficulties your company faces.

Often, financial projections are optimistic to an outlandish extent. They are usually prefaced with words like, "Our conservative forecast is..." Do not use the word "conservative" when describing your forecast. Be careful also not to use the "hockey stick" approach to forecasting, that is, little growth in sales and earnings for the first couple of years followed by a sudden rapid upward surge in sales and totally unrealistic profit margins. Excessively optimistic projections ruin your credibility as a responsible business person.

Include monthly cash flow projections, and quarterly or annual order projections (e.g. for studio time, CO manufacturing, etc.) profit and loss projections, and capital expenditure projections (see your accountant for explanations of the above terms). In making financial projections it is usually a good idea to include "best guess," "high side," and "low side" numbers. Sensible investors want to know what returns they can expect and especially how they will achieve liquidity. Tell them. Again, include alternative strategies.

Don't worry if you feel a bit overwhelmed by the avalanche of detail your business plan requires. Who wouldn't? Give yourself time. It's helpful to set yourself a goal for completing the first draft of your plan - say three months from now.

Begin with one section at a time and meet periodically with your small business advisor to review your plan's development. He or she will be able to discern blind spots as well as affirm the plan's overall direction. If you're thinking of foregoing the effort altogether and just "winging" it, just remember that no planning inevitably leads to wasted time, money and energy - all three in short supply.

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Remember too that the musicians you currently respect rose to their success with strategic planning and a keen sense of what "doing business" really means. Furthermore, today we are seeing the smarter bands being brought home because they know the inner workings of the music business and how to best organize their limited resources in order to penetrate it. How about you? Are you planning for success?

*by Peter Spellman - Copyright © 1999-2000 MUSIC BUSINESS SOLUTIONS*

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