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## **Music Contracts**

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### **What is a contract?**

A contract is an agreement between two or more parties in which an offer is made and accepted and each party benefits. The parties must be competent when they enter this agreement – such as being above a certain age; and the agreement must be binding and enforceable in a court of law or in arbitration – so for example, it cannot be for an illegal activity.

A contract can be written or oral, and as formal or as simple as the parties want. Some contracts have been known to have been written on bar napkins and upheld as valid – though it is not recommended.

### **What issues get covered in a contract?**

The contract's purpose is to lay out in a clear and concise manner what each party has agreed to. Terms, or specific issues in a contract, can cover a variety of topics.

For music contracts the most popular clauses focus on:

Exclusivity of the artists for a recording or publishing label; Recording and release requirements; Artists' Royalties; Recording Costs and Funds; Publishing Rights; Tour Support; Video/Digital/Technology Rights; Copyright Ownership and Use of Masters; Compensation and timing of payments; Performance Parameters; Incidentals/Riders; and others.

The contract clauses focus on specific rights the musician has (ex. copyrights in a musical composition) and the specific rights he is "giving up" or assigning to another party – whether that be a publisher, a furnishing company, a record label, or other. You hear a lot today about the assignment of 360 Rights – these are ancillary rights to the recording agreement usually involving passive participation on the part of the record label or furnishing company. A furnishing company is usually a smaller label who will invest the resources, including time and money, to develop a musician and then sop them to one of the big labels. Examples of 360 requests are usually between 20-30% of revenue obtained from any activity beyond the recording itself – speaking engagements, television appearances, merchandise – just about everything. The reasoning behind this is that "if it were not for the recording, you as the musician would not have these other opportunities." Passive means that the record company does not have to do anything to receive this fee – they don't have to find the opportunities for the musician, they just benefit from them.

A side note: The genre of the music and the location of the music deal are two factors that affect the ultimate value of a music deal – a country singer/songwriter in Nashville may receive \$35,000 advance in a bidding war while a hip/hop pop artist in Atlanta may receive a contract for \$250,000 to help offset recording costs. This

takes into account that in Atlanta it is not unusual for a hip/hop pop producer to receive \$75,000 to produce just one track on an album!

Each clause can be a point of negotiation – it is a balancing act based on the musician (where he/she is in their career, is there a fan base, genre of music, etc.) and the record label or furnishing company (what their goals are and how much they are willing to upfront costs, etc.).

### **What Kinds of Contracts are used in the Music Business?**

The music industry makes use of an array of contracts depending on the parties and the specific issue involved. Some examples include: Management Contracts, such as Agent/Manager or Producer/Artist Agreements; Copyright Assignments and Ownership, such as a “Split Sheet;” Membership Agreements to Performance Rights Organizations; Labor Agreements; Performance/Concert/Touring Contracts; Songwriter Contracts & Royalties; Licensing Contracts for Recordings for TV/Film, Video Games, etc.; Foreign Distribution Agreements; and more.

### **The Value of an Attorney**

Why spend money on an attorney when standard contract templates are available in books, compact disks and online for little or no-cost? An attorney has been specially trained to draft and negotiate contracts that protect the interests of their clients. Consider the money you spend as an investment in your long-term music and entertainment career. But heed this word of caution – make sure you select an entertainment lawyer who has experience in the industry. A bankruptcy lawyer may know how to read a contract, but he/she will not know the entertainment language, customs and practices, little details that can have significant financial impact. Make sure to review credentials. Speak with other musicians who have used the attorney’s services. Meet the attorney in person to get a feel about them, their expertise, and their style. This is especially important if they are going to represent you and/or your band as your career takes off.

### **Last Point**

Make sure you have a contract – it protects your most important creative asset – your talent – and you may need more than one. Read the entire contract – read the fine print. Then read it again. If you do not understand anything do not sign. Have the contract reviewed by an entertainment attorney who knows the music business and ask them questions. Make sure you understand your responsibilities, as well as the benefits due you, before signing. Remember once you’ve signed the contract you’ve lost the greatest leverage you had to negotiate for a better deal.