



How to Make a Living from Music

By David Stopps

Creative industries – No. 4



How to Make a Living from Music

Music

INDUSTRIES

ON AIR

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PREFACE

The World Intellectual Property Organization (WIPO) is pleased to present this latest *Creative Industries* publication entitled *How to Make a Living from Music*.

The publication is designed for musicians and music professionals who wish to hone their knowledge of the music business. It offers practical information to help authors and performers appreciate the importance of proper management of their intellectual property rights in addition to providing instructive advice on how to build a successful career in music by generating income from musical talent.

The publication presents useful definitions of grassroots concepts and identifies the basic income streams for authors and performers. Special attention is given to copyright and related rights and their particular application in the music context. The booklet underscores the importance of artist development and management and provides guidelines on establishing fair arrangements for benefit sharing resulting from songwriting and performances.

How to Make a Living from Music is written first and foremost as a practical tool for creators in the world of music who are still in the process of establishing themselves in the market. Hence it offers a style that is envisaged to reach out to a broad audience. Secondly, the publication explores the interface between the creative process and all the necessary management arrangements which need to be in place from the moment of creating the music material until the moment it reaches the audience. As such it provides valuable insights on synergies between creative and entrepreneurial approaches. Thirdly, the publication looks into the importance of using the enabling infrastructure such as collecting societies, registration systems, and available compensation schemes. The value of the presented practical material is reinforced by the detailed annexes which can guide music professionals throughout the practical complexities of the music business.



This publication is intended as a tool for performers both in developed and developing countries. It presents a national perspective, yet many international examples have been included which transform it into a useful instrument for creators worldwide. The content is not meant to be used as a substitute for professional advice on specific legal issues.

How to Make a Living from Music was commissioned by WIPO and written by David Stopps,¹ a seasoned music manager with vast international experience. The views expressed in the booklet are those of the author and do not necessarily reflect those of the Organization.

March 2008

¹ For more information about David Stopps please turn to page 149.



INTRODUCTION

This is a very exciting time for authors and performers. Never before in the history of the world music business have there been so many opportunities for authors and performers to get their music heard and sold. As the Internet is geographically neutral, it has become far less important as to where an artist is based. In previous times, it was often advisable for an author (a songwriter, composer and/or lyricist) or performer (someone who sings and/or plays a musical instrument) to move to one of the world's major music business centres such as Los Angeles, Paris, Hamburg, London, New York or Nashville. With the advent of the Internet that is less important. Provided authors or performers can access the Internet, build a good website and have a presence on social networking sites such as MySpace and YouTube all the world's markets are at their fingertips no matter where they live.

The whole world is mad on music. That is a fact. Even in the very poorest countries, singing, dancing and making music are an important part of daily life. In the developed world, interest in music is increasing all the time mainly due to the access the Internet is providing. Music is deeply imbedded in the culture of every country. In the past, the only music that could easily be purchased was that stocked by record stores. Due to the limitations of the size of any particular record store, the stock carried represented only a small fraction of the music that had been recorded worldwide. The Internet has changed all that. The diversity of music now available means that anyone with an Internet connection has access to a record shop measuring ten kilometres by ten kilometres and it is always expanding.

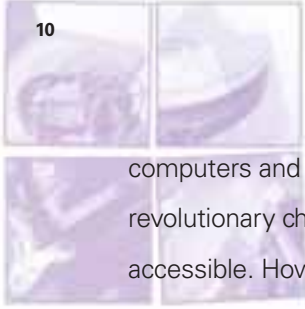
This publication is designed to explain and identify the basic income streams that exist in the worldwide music industry for authors and performers. It is intended primarily to reveal to them how they can generate income from their talent and endeavours, and the best way to achieve fair arrangements for the exploitation of their songwriting and performances without being ripped off. It also explains the importance of good



management and provides guidelines on finding a manager and reaching a fair agreement regarding the conditions of an artist/management contract. A comprehensive example of a long-form artist management agreement can be found in Annexe C on page 127. Artists and managers have found this to be particularly useful. It also fulfils the function of pulling together all that is contained within this publication in a practical way. Basic guidelines on starting a record label, publishing agreements, recording agreements, band agreements, music in film and TV, collection societies, live work and the importance of building a good website are all to be found here with some recommendations for further reading or website information if the reader wishes to find out more about a particular topic.

I have had over 40 years experience in the music business. I started out as a rather bad musician, became a manager, switched to being a promoter for 15 years and then returned to management, so it should be clear that this publication has been written by a manager. However, as explained in the section on artist management, once the artist/management agreement has been concluded the manager and artist are essentially in the same boat rowing together. Since the manager earns a commission based on the amount of money the artist actually receives the interests of the artist and the manager should be the same, and that's why I feel passionately about artists' rights. My business has always been based in the UK but I was fortunate to have success for the artists I managed in many countries across the globe which resulted in my spending considerable amounts of time in the US, Ireland, Japan and across Europe. As a result, this publication is written mainly from a UK perspective but I have tried to include as many international examples as possible.

Whilst it is hoped that this publication will be useful to anyone wishing to be part, or who is already part, of the music industry in the developed world, it is also intended to address the opportunities for authors and performers in developing countries. There has never been more interest in the developed world for music originating from developing countries. The world music sections of record stores and on-line stores based in North America, Europe, Japan, Australasia and other developed countries are constantly expanding as music fans discover the richness of the wonderful music emerging from the world's developing countries. Whilst legitimate sales of the best selling 5000 albums in the world are declining, sales of the next best selling albums from 5001 to 10,000 are increasing, showing that diversity is becoming a reality. With the introduction of low cost



computers and low cost broadband connection to the Internet, we live in a time of revolutionary change, and music is in the front line. Never before has music been so accessible. However, the Internet has also created a situation where copyright, particularly in recordings, is under constant attack and it will probably be some time before new compensation structures emerge to properly pay writers, performers, phonogram producers and publishers, and which protect or compensate them for the illegal use of their works and performances. In the interim those artists who are both authors and performers are finding that the majority of their income is coming from publishing and live performances rather than from the exploitation of their recordings.

In developing countries some of the institutions and basic structures such as collecting societies, access to the Internet and the ability to open a bank account may not exist or may only now be in the process of being established. It is hoped that this publication will be of use to such authors and performers to give them an insight as to how things work in the developed world and what may be just around the corner in their own countries. It may be that where a country has no national collection societies, authors and performers can join foreign collection societies. If Internet access and access to a bank account are problematic it may also be possible for authors and performers to get together and form a collective with Internet access and a joint bank account so that they can receive income from sales of their music on the Internet. In other cases it may be that governments are able to provide these facilities to authors and performers with network access being provided by a local satellite dish connected to a community centre. Where money has been mentioned in this publication it is expressed in US dollars as this is the most widely-used currency worldwide.

As we move into the digital age the role of collection societies will become more and more important and the efficient operation and regulation of these societies will be increasingly highlighted. This publication will explain the importance of registration with collection societies to ensure proper compensation for authors and performers.

I should make clear that the opinions and views expressed in this publication are not those of WIPO, but are my own views and observations based on my personal experience. It is hoped that this publication will provide a useful overview of the various income streams available, and that it may open doors so that authors and performers can reap the benefits that they so richly deserve.

David Stopps




DEFINITIONS

In this publication it is a good idea to refer to the definitions section (Annexe A on page 113) to fully understand all the terms used. The term 'author' will be used to describe songwriters and composers. This includes those who write lyrics for songs and those who write both the music and the lyrics, as well as those who write or compose instrumental music. For example, Elton John writes the music for his songs whilst Bernie Taupin writes the lyrics for most Elton John songs. Both Elton and Bernie are therefore 'authors'. The output from a songwriter, lyricist or composer will be defined as a 'work'.

The term 'performer' will be used to describe those who sing or play musical instruments. This could be in front of an audience or in the recording studio, in which case their performance would be 'fixed' and become a recording. Some performers are pure performers and do not write the songs or music which they perform, whilst others are both authors and performers.

In the previous example, Elton John is both an author and a performer whereas Bernie Taupin, who does not perform on stage or in the recording studio with Elton, is an author only. The result of a performer's work will be defined as a 'performance'. The broad term 'artist' will be used to describe performers and performers who are also authors.

There are some definitions that can be a little confusing. For example the term 'producer' is commonly used to describe the person who supervises the recording process in a recording studio. George Martin, for example, who supervised the Beatles recordings, is often referred to as a 'producer' or as a 'record producer' whereas the record label EMI Records who are the copyright owners of the Beatles recordings are referred to as the 'record company'. In the world of copyright law and intellectual property, however, EMI, in this example, would be referred to as the



'record producer' or more accurately as a 'phonogram producer'. For the purposes of this publication we will call the George Martin role a 'studio producer' and the EMI role a 'phonogram producer'.

The World Intellectual Property Organization (WIPO) is an agency of the United Nations, based in Geneva, Switzerland. It seeks to create and harmonise rules and practices to protect intellectual property rights and to promote cultural diversity, economic growth and ensure a fair balance of rights in the field of intellectual property. The vast majority of the world's countries are members of WIPO and they are referred to as Member States: in 2007 there were 183 Member States participating in WIPO processes. By providing a stable environment for the marketing of intellectual property products such as music, WIPO and the WIPO treaties enable Member States to trade with each other with legal certainty, for the economic benefit of all participants. (www.wipo.int).



CHAPTER 1

WHERE THE MONEY COMES FROM

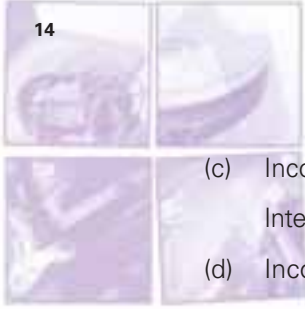
In the modern world there are many different income streams available to authors and performers. Here is a summary of the main income streams:

1.i Authors

- (a) Income from public performances on radio, television, downloads and streaming on the Internet, live performances, concerts, bars, shops, hairdressing salons and anywhere a work is played or heard in public.
- (b) Income from mechanical licences when recordings on such sound carriers as CDs, cassettes and vinyl are sold to the public. Mechanical licences are licences issued by authors and publishers to phonogram producers, allowing them to legally sell records containing a work.
- (c) Income from mechanical licences when works are the subject of downloads, streaming on the Internet or as ring tones or real tones.
- (d) Income from synchronisation licences when the work is synchronised to visual images, video or film.
- (e) Income from the sale of printed sheet music or scores or from graphic downloads on the internet.
- (f) Income from home copying levies.

1.ii Performers

- (a) Income from fees for live performances in front of audiences at festivals, concert venues, clubs and private events.
- (b) Income from royalties when a phonogram producer (record company or label) sells a fixed performance (recording) to the public on a physical sound carrier such as vinyl, cassettes or CDs.

- 
- (c) Income from royalties when a phonogram producer sells a recording on the Internet as a download, by streaming or as a mobile phone ring tone or real tone.
 - (d) Income from public performances when a recording is played on the radio, on television, or in public (such as in an arena, a discothèque, club, juke box, shop or a hairdressing salon etc.).
 - (e) Income from 'master re-use' or synchronisation when a recording is synchronised to visual images, video or film.
 - (f) Income from home copying levies.
 - (g) Income from sponsorship and branding.

As can be seen from the above, there are many different ways of making a living from the creation of music, but how do authors or performers ensure they are getting paid properly for all these different uses? In the early days of an artist's musical career when there is not much money available he/she will almost certainly have to do everything. This will involve becoming a member of the appropriate collection societies and correctly registering all works and/or recordings with the collection societies as soon as possible after they have been created or recorded. (See the section on collection societies on page 59 for more information on how to do that.)


If things go well, it will then be necessary for an author or a performer to build a team around their creative endeavours. This team could include the following:

Authors

- (a) A manager (or a music-in-film agent)
- (b) A publisher
- (c) A lawyer
- (d) An accountant
- (e) A film composition agent
- (f) A webmaster for the author's website

Performers

- (a) A manager
- (b) A phonogram producer
- (c) A booking agent for live appearances
- (d) A lawyer
- (e) An accountant

- 
- (f) A tour manager
 - (g) Sound and lighting engineers
 - (h) 'Roadies' who set up and supervise the equipment on stage
 - (i) A choreographer (if help is needed with special dance movements)
 - (j) A make-up artist
 - (k) A wardrobe assistant
 - (l) A publicist
 - (m) A photographer
 - (n) A plugger (someone who works to get records played on the radio or on television)
 - (o) A graphic designer (for artwork on CDs etc.)
 - (p) A studio producer
 - (q) A travel agent
 - (r) A visa or work permit agent
 - (s) A freight agent
 - (t) A merchandiser
 - (u) A webmaster for the performer's website

Of course it may be that an author or performer feels that only two or three of the above are necessary, at least to start with. Most authors and performers wish to focus on what they do best, which is to write and perform music and don't wish to spend too much time on the business aspect. They will usually engage a manager to look after all their business dealings but they should still engage a specialist music business lawyer, if possible, for independent advice.

As can be seen from the above lists, an author has much less to do than does a performer. An author who is not a performer will generally rely heavily on his/her publisher and/or manager to exploit the works by encouraging performers to record them and by placing them on television, in films and advertising. Most authors are also performers so they will need a combination of the above.

A phonogram producer will often supply many of the services included in the performer's list, such as a publicist, plugger, graphic designer, photographer, etc. as part of the recording contract. The performer should try and obtain as much artistic control as possible in such contracts in order to have a say in who these people are and how they operate. (See the section on recording contracts on page 48.)



CHAPTER 2

COPYRIGHT AND RELATED RIGHTS

'Copyright' is one of the better words in the English language in that it means exactly what it says. It is the 'right to copy'. If an artist writes a song or makes a recording no one else has the right to make copies of it without the artist's permission. With the parallel evolution of technology and law, copyright has evolved to cover control by the author of other uses of a work such as public performance, broadcasting and distribution.

Traditionally the term 'copyright' refers to an author's works whereas rights of performers, phonogram producers and broadcasting organisations are usually referred to as 'related rights' or 'neighbouring rights' but in essence they are all forms of intellectual property rights. In some countries such as the UK and the US related rights are regarded as another form of copyright, but for the purposes of this publication we will define the rights of performers, phonogram producers and broadcasting organisations as 'related rights'.

One has to go back to the invention and evolution of the printing press in the sixteenth century to find the first regulations concerning copyright. The right to copy books was limited to certain copyright holders. The first real copyright legislation came along in 1710 in England but it was not until the mid-nineteenth century in France that modern copyright law began to take shape.

One of the main factors to be understood is that there are two systems in law. The system applied in continental Europe and which originated in France is referred to as civil law whereas the English legal system is referred to as common law. Civil law systems place far greater emphasis on the rights of the author (songwriter, composer or author of the lyrics) referred to as *droit d'auteur*, whereas common law systems put more emphasis on the concept of copyright ownership. The civil law, *droit d'auteur*,

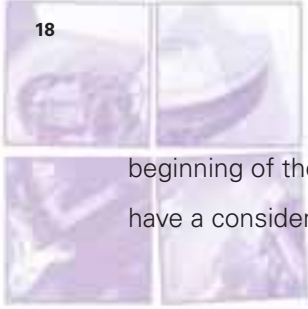


treats the rights of authors almost in the same way as human rights, whereas the common law system is more focused on the economic issues.

As England 'spawned' the legal systems in the US, Australia, Singapore etc. as former colonies, the common law system is also to be found in those territories. The interesting thing to note here is that in the UK, Scotland operates under the civil law system whereas England, Wales and Northern Ireland all operate under the common law system. Similarly in Canada the French-speaking region of Quebec operates under civil law whereas the rest of Canada, with British roots, operates under the common law system.

In both cases one thing is true: the legislation of rights for authors had over a 100-year head start on those for performers. As a result the rights of authors tend to be much stronger and last longer than those for performers. For example, one of the most important income streams for performers at the beginning of the 21st century is the income from public performance on radio. This right means that every time a radio station plays a record, it must pay the phonogram producer and the performers who performed on the recording in addition to the publisher and the author of the work. Most countries have incorporated this right as harmonised by the WIPO Performances and Phonograms Treaty 1996 (WPPT). However under the WPPT, Member States have the right to opt out of this provision. The largest music market in the world, the US, decided to do this and at the time of publication, it still has no public performance right for performers or phonogram producers when records are played on free-to-air radio. The US does, however, have a digital public performance right if the record is played on satellite radio or over the Internet. For free-to-air radio broadcasts in the US, which is by far the biggest sector, the author and the author's publisher receive payment but the performers and the phonogram producers do not.

Also, the duration of rights tends to be considerably shorter for performers and performances than for authors' works. In the European Union (EU), for example, the duration of rights protection for performers and performances is harmonised at 50 years after first release of the phonogram whereas the duration of rights for authors is 70 years after the death of the author. In reality this could be as much as 150 years if the author wrote a work at age 15 and died at the age of 95. In other words the author's rights can last up to three times longer than those of a performer. The reason for this is entirely historical in that recording devices and radio only came along at the



beginning of the 20th century, so the rights for performers and phonogram producers have a considerable amount of catching up to do.

International agreements for authors' rights first came into being in 1886 with the creation of the Berne Convention for the Protection of Literary and Artistic Works. Since then it has been updated seven times, most recently in 1971. As of July 2007, 162 countries had signed the Berne Convention. Two other international treaties, The World Trade Organisation's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights 1995 (the TRIPS Agreement) has also had an effect on authors' global rights in as much as it includes nearly all the conditions of the Berne Convention. As most countries in the world are members of the WTO, this effectively brought the laws of those countries that had not signed the Berne Convention into harmony with those that had. The WIPO Copyright Treaty (WCT) further extended the rights of authors, particularly in the context of the Internet.

The most important International agreement for performers, phonogram producers and broadcasters was the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. Further rights were included in the TRIPS Agreement and in the 1996 WIPO Performances and Phonograms Treaty (WPPT). As of July 2007, 86 countries were signatories to the Rome Convention and 62 countries were signatories to the WPPT.

In practice it needs to be remembered that there are fundamentally two rights to consider when making records.

- 1) The copyright in the work (songwriting, composition and/or lyrics).
- 2) The related rights in the recording.

However music is used, everyone involved needs to keep these two separate rights in mind at all times. The importance of understanding these two distinct and separate rights cannot be over-emphasised, and anyone involved with music needs to be very clear on how they are dealt with in all transactions concerning music.

For example, if an artist wanted to 'borrow' a small section of someone else's recording and incorporate it into one of his/her recordings as is often done in modern recording



(referred to as a 'sample' or 'sampling') the artist would need to obtain permission from not one, but two different rights holders. Permission would be necessary from whoever owns the rights in the recording (usually a phonogram producer) but also from whoever owns the rights in the work (usually a publisher). Not until an artist has received both of these permissions can he/she legally go ahead and use the sample.

WIPO and the WIPO Internet treaties play a very important role in how the rules of copyright and related rights are formulated so as to provide certain minimum rights which each Member State is obliged to incorporate in its national laws. In this way reciprocal arrangements are more easily possible between collection societies in different countries, giving music greater value in terms of international trade.

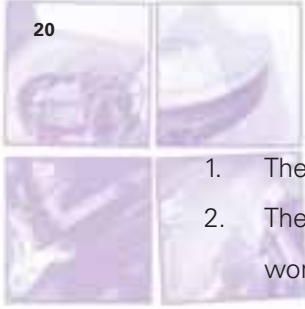
For example, if an author is resident in Singapore and his/her work is broadcast on Hungarian radio, the author will still get paid via the Singapore collection society COMPASS, which will receive the income from the Hungarian collection society ARTISJUS. ARTISJUS and COMPASS have reciprocal agreements with most of the other authors' collection societies all over the world.

So we see here that with appropriate reciprocal international agreements and laws it is possible to earn money from far beyond the borders of an artist's country, from radio, television, the Internet, record sales and audiovisual usage.

The WIPO Internet treaties have been particularly valuable in bringing copyright law up to date. The role of WIPO will become increasingly important in the future particularly concerning improvements in the rights of audiovisual performers and the new challenges constantly being introduced by the rapid development of technology. Let us now look at the main rights these and previous treaties and agreements provide. Some may find the following information too legalistic and may wish to proceed to the next section but for others it may provide an understanding of the different rights that exist.

2.i Rights for Authors

According to the Berne Convention and the WCT authors have the following exclusive rights, described in general terms:

- 
1. The right of reproduction (the right to copy the work).
 2. The right of distribution (the right to issue and distribute copies of the work to the public).
 3. The right of rental (the right to authorise commercial rental to the public of copies of the work).
 4. The right of communication to the public (the right to authorise any communication to the public, by wire or wireless means, including 'the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them.' The quoted expression especially covers on-demand, interactive communication through the Internet).
 5. The right of broadcasting (broadcasting is generally considered to be a subset of 'communication to the public').
 6. The right to translate.
 7. The right to make adaptations and arrangements of the work.
 8. The right to perform the work in public (public performance right).
 9. The moral rights (the rights of integrity and the right of paternity).

2.ii Rights for Performers

Performers have the following exclusive rights (with the exception of point 5 which refers to equitable remuneration) in their recordings if their country of residence has signed the WPPT. Here we will use the treaty term 'phonogram' to mean 'recording' or 'fixed performance'.

1. The right of reproduction (the right to make copies of the phonogram).
2. The right of distribution (the right to issue and distribute copies of the phonogram to the public).
3. The right of rental (the right to authorise the commercial rental to the public of the original and copies of the phonogram as determined in the national law of the Contracting Parties (except countries that since April 15, 1994 have in force a system of equitable remuneration for such rental),
4. The right of making available (the right to authorise the making available to the public, by wire or wireless means, of any performance fixed in a



phonogram, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them. This right especially covers on-demand, interactive making available through the Internet).

5. The right to equitable remuneration for broadcasting and communication to the public. (This is the public performance right for sound recordings. Under WPPT, countries can opt out of this right if they wish.)
6. The moral rights (the right of integrity and the right of paternity. Again, countries can opt out).

2.iii Rights for Phonogram Producers

Phonogram producers have the following exclusive rights (with the exception of point 5 below which is a right of equitable remuneration) in their recordings if the country of residence has signed the WPPT:

1. The right of reproduction (the right to authorize direct or indirect reproduction of the phonogram in any manner or form).
2. The right of distribution (the right to authorize the making available to the public of the original and copies of the phonogram through sale or other transfer of ownership).
3. The right of rental (the right to authorize the commercial rental to the public of the original and copies of the phonogram as determined in the national law of the Contracting Parties (except for countries that since April 15, 1994 have in force a system of equitable remuneration for such rental).
4. The right of making available (the right to authorize making available the phonogram, by wire or wireless means, in such a way that members of the public may access the phonogram from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the Internet).
5. The right to equitable remuneration for broadcasting and communication to the public. (This is the public performance right for sound recordings. Countries can opt out of this right if they wish.)

2.iv Exclusive Rights and Rights of Remuneration

Exclusive rights are the right to authorize or prohibit a particular action such as making copies of a work or a recording, and they provide complete control for the right holder, except for certain limitations and exceptions as described below. In many countries exclusive rights are transferable by assignment or by licence whereas in other countries they can only be transferred by licence. If an author signs a publishing agreement with a publisher, or a performer signs a recording agreement with a phonogram producer, the publisher or phonogram producer will require the author or performer to assign or license all or most of the exclusive rights held by the author or performer for the term of the agreement. An exception to this would be if the agreement were an administration-only agreement in which case the exclusive rights would remain with the author or performer and the publisher or phonogram producer would only administer the rights on behalf of the author or performer.

A right to remuneration provides less control over a work or recording, as the use can take place without the authorization of the right owner. However, remuneration rights provide for payment at a specified rate to be made to the author, performer, publisher or phonogram producer each time the work or recording is used in public. The most widely-used right of remuneration is that applied to a public performance in sound recordings. This right of remuneration is often non-transferable in contract which is very good news for authors or performers who have such rights. In other words if the right of remuneration is not transferable in contract, an author or performer who has signed an exclusive publishing or recording agreement will still continue to receive his/her share of the income from the remuneration right for the public performance of their recordings.

2.v Limitations and Exceptions and the Three Step Test

All the treaties mentioned above contain provisions on exceptions and limitations to the rights specified. It may be, for example, that if a work is used for reporting news, for review or for educational purposes then no copyright permission is required by the user. One of the basic rules applied to define such limitations and exceptions was first included in the Berne Convention for reproduction and generalised to cover all rights by TRIPS, the



WCT and WPPT treaties. It is known as the Three Step Test and allows limitations:

1. in certain special cases;
2. that do not conflict with the normal exploitation of the work; and
3. that do not unreasonably prejudice the legitimate interests of the author/right-holder.

2.vi Moral Rights

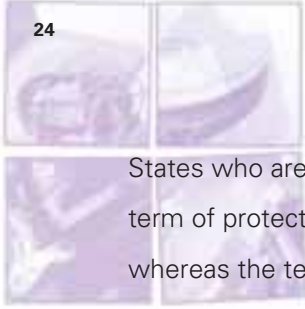
Moral rights are essentially in two parts:

1. The right of integrity (this provides that no one can change a work or a recording without the author or performer's permission).
2. The right of paternity (this provides the author or performer with the right to be named or credited if their work or recording is used or played in public).

Moral rights are exclusive rights and are not transferable in contract. They stay with the right owner even after any transfer of economic rights. In many countries, however, they are able to be waived in contract which means that the author or performer may agree in the publishing or recording agreement that he/she will not assert his/her moral rights. Whilst nearly every publisher and phonogram producer will insist on the inclusion of this waiver, if the law allows, it may be possible to insert other wording in the contract which goes some way towards obliging the publisher or phonogram producer to provide some of the aspects of moral rights such as being credited where possible.

2.vii National Treatment and the Public Domain

The term of copyright or related right protection is governed by what is known as 'national treatment'. This means that although the country of residence of the author or performer may have reciprocal agreements with other countries via international treaties, the term of protection in the foreign country is usually limited to the term of protection in that foreign country. A more accurate definition would be that Member States are obliged to grant exactly the same protection (the same rights, with the same exceptions and under the same conditions) to the nationals of other Member



States who are party to a treaty as they do to their own nationals. For example, the term of protection for sound recordings is 50 years from first release in France whereas the term of protection for sound recordings in the US is 95 years. If a French artist with French residency has recordings released in the US he/she will enjoy 95 years of protection in the US but only 50 years of protection in his/her own country. If an American performer who is resident in the US releases a recording in France he/she will only have copyright protection for 50 years in France even though he/she will enjoy 95 years' protection in his/her own country for the same recording.

An example is the earliest recordings by American singer Elvis Presley which were recorded and released in 1957. In 2007, 50 years later, those recordings went into the public domain in the EU and other countries where the term of protection for sound recordings is 50 years. 'In the public domain' means that the work or recording is no longer protected by copyright or related rights and anyone in that territory can use it without needing to obtain permission or authorisation. In this example, from 2007 onwards, anyone can release the early Elvis Presley recordings in those countries where the term of protection for sound recordings is 50 years, without needing authorisation and without having to pay the owners of the original recording any royalties. In the US, however, the term of protection will be 95 years (subject to the specific provisions of US law). The same recordings should still be protected until 2052 which is 95 years from first release in that territory. In this example a company called Memphis Recording Service (MRS) managed to get one of the early Elvis Presley recordings *My Baby Left Me* into the UK national top forty singles chart quite legally in 2007 without any permissions or authorisations in regard to the recording being required.

It should always be remembered that even though the recording may be in the public domain, the work and the artwork may not be. If the work was written in the previous 150 years the chances are it is still protected by copyright so royalties will still be payable to the author or the author's publisher even if the recording no longer has protection. The same will be true of any photographs and/or artwork used on the packaging of the original recording. In the above Elvis Presley example, whilst the recording is in the public domain in the UK, the work and the original artwork still have copyright protection. The company issuing the public domain recording will still have to obtain permission from the author or the author's publisher and will still have to pay mechanical royalties to them. They will also have to obtain permission from whoever owns the original artwork/photographs on the original packaging if they wish to use them.



2.viii Copyright Registration

It is important to understand that it is unnecessary to formally register works with a government or a government institution of a particular country, in order to obtain the benefit of copyright protection. Copyright exists automatically as soon as the work is created. Most countries require the original work of creativity to be fixed in a tangible form, such as by writing down the musical notation with the associated lyrics, if any, or by making a recording which contains the work.


Similarly, when a performance has been fixed as a recording, the right in the recording exists and does not need to be formally registered with a government or deposited with a government institution for it to be protected by the related rights that exist. Some countries, such as the US, have a voluntary registration system intended to make a public record of a particular copyright. Copyrighted works may be registered with the U.S. Copyright Office and although it is not necessary to register a work or a sound recording to enjoy copyright protection, there are certain advantages in doing so, particularly in a case of copyright infringement. (See www.copyright.gov.)

That said, it is important to join any collection societies as soon as possible and to register the works or recordings with the appropriate societies. (See the section on collection societies on page 59.)

2.ix Trademarks

Another aspect of copy protection is that of trademarks. This is particularly important in the context of a band or artist name. As will be discussed later on page 28, it is advisable to choose an unusual name that is unlikely to have been used by anyone else. Once the band name has been chosen and some moderate success achieved, it is important to register it together with any logo or artwork designed around the name with the artist's local or regional trademark office. There are always fees associated with this registration but the expenditure is well worthwhile as soon as finances allow.

The next step is to obtain international trademark registration. This is a service offered by WIPO to all countries that have signed the Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol. A person who has a link with a country that is a party to one or both of these treaties may, on the basis of a



registration or application with the trademark office of that country, obtain an international registration having effect in some or all of the other countries of the Madrid Union. At present, more than 60 countries are party to one or both of these Agreements.

For more information on copyright and related rights as well as trademarks, consult the WIPO website at www.wipo.int.

2.x Piracy

Whilst nearly every country in the world has copyright laws enshrined in its national law there is still a major problem with what is known as 'piracy'. This is the practice of, usually, small businesses and individual traders illegally selling physical sound carriers such as CDs and cassettes without obtaining permission from, or paying, the copyright owners. Until the digital CD came along analogue pirated copies of music were usually of inferior quality to those available from the legitimate phonogram producers so most consumers preferred to purchase legitimate copies. With the advent of the digital CD, however, all that changed. Counterfeit copies could be made that were 'clones' of the original, i.e. almost perfect copies could easily be manufactured by pirate traders. This has resulted in every country needing to police local markets and enforce copyright laws. Some countries have been much more successful at this than others and it is hoped that all countries will pay more attention to the problem in the future. Piracy involves traders making money illegally from authors, performers, publishers and phonogram producers and undermines the entire music industry.

On the Internet the problem of piracy is more complex and copyright is much more difficult to enforce. In addition to individual traders and organisations making money illegally out of selling music, consumers are sharing music with each other with no reference or payment to the copyright owners. There is a big difference here as file sharers are generally not necessarily making money, but authors, performers, publishers and phonogram producers are certainly losing money. As we shall see in the section on the Internet on page 100 a new system of compensation will need to be developed in the on-line world to properly compensate authors, performers and copyright holders.

The International Federation of the Phonographic Industry (IFPI) publishes regular reports on world piracy of sound carriers. Go to www.ifpi.org for more information.



Creative Heritage Project

WIPO is also doing substantial work in providing information, including intellectual property (IP) related protocols, policies, best practices and guidelines to developing countries and indigenous groups, concerning control over their cultural heritage. For example, the artist project Deep Forest used some UNESCO field recordings made in the Solomon Islands as samples in their highly successful albums which have sold millions of copies worldwide. As far as the author of this publication is aware none of the money made from the sales of these Deep Forest albums found its way back to the Solomon Islands where the original sample recordings were made. It is this type of issue that the Creative Heritage Project seeks to address. For more information go to www.wipo.int/tk/en/folklore/culturalheritage/.

CHAPTER 3

ARTIST DEVELOPMENT AND ARTIST MANAGEMENT

3.i Choosing a Name

One of the first things an artist will have to decide is the name by which he/she wishes to be known. If the artist is a solo performer, or one who wishes to hire other musicians to accompany him or her, they may choose to use their own real name. Alternatively they may wish to make up a new 'stage' name under which they will be known. For example Elton John's real name is Reginald Dwight, whereas Elton John is his stage name or artist name.

If the artist is a band, the name of the band needs to be chosen carefully. It is best to opt for a very unusual name to avoid confusion with other existing artists. Searching one of the Internet search engines such as Google or Yahoo is a good place to start. There have been many cases in the past where bands have had to change their name or contest their title in court as it comes to light that there is another band in existence with the same name. For example, in the 1980s there was a very successful British band called 'Yazoo'. They discovered that there was already a band with that name in the US, so they changed their name to 'Yaz' for the US only which served to avoid any legal action against them in that territory. It did, however, lead to some confusion globally.

If finances allow, it is a good idea to trademark the artist or band name as soon as possible, at least in the country of residence. This name can then be trademark registered in other countries or perhaps worldwide as the artist or band becomes more successful. (See the section on trademarks on page 25.)



3.ii Artist Management

As soon as an author or performer, or an artist who is both author and performer, starts to become successful he/she will need to find a manager. A manager is someone who will look after the business side of the artist's career and will interface with all other parties involved in contributing to the artist's commercial success. Commerce and art do not always sit happily together and it is the manager's job to provide that often difficult interface, and make it work. Managers are the only group of people in the worldwide music industry who have to know about every aspect of the music industry. They are the ones who have to make the rules of copyright work on a daily basis and it is they who have to grapple with the rapid developments in technology and make sure, as far as possible, that the artist is paid.

Let us consider the main aspects of management. We will refer to an individual artist or a group or band of musicians or singers as the 'artist'.

3.iii Artists seeking Management

In the early stages it is often a good idea for artists to manage themselves until they reach the point where they need outside help. Alternatively it may be that a friend or relative of the artist or band takes on the management role at this early stage. It is very important that the artist, as soon as possible, is conscious of the need to build up a fan base. A fan base is a database of people who are interested in the artist and wish to find out where he/she is performing, and if and when he/she is releasing records etc. If a phonogram producer comes to see an artist play live and the venue is full the artist stands a much better chance of being offered a recording contract, if that is the artist's aim. Phonogram producers want to sell as many records as possible and if they see that an artist already has a substantial and enthusiastic fan base they will be reassured that there will be a market for the artist's recordings.

In the early stages it is a good idea for the artist to try and secure as many live appearances as possible. By doing this he/she can improve his/her skills and build up a fan base. One of the best ways of building the fan base is to get a friend of the band to hand out forms and pens and encourage members of the audience to complete and return them on the night of the performance. Typically the forms should have the name of the artist at the top and request:


 Name

Address

E-Mail address

Tel No: (optional)

Any comments on tonight's performance

This information should then be recorded in a book or transferred to a computer database. Every time the artist has a new show or some other event is taking place such as a new recording becoming available, the artist should e-mail or mail the database well in advance with the information. By doing this a fan base will be created which should greatly improve audience numbers at live performances and generally stimulate interest in the artist. (See the section on live work and touring on page 85.)

If possible, the artist should create his/her own website and have web pages on community sites such as MySpace (www.myspace.com – see the section on the Internet on page 100). With the establishment of a good and interesting website the artist is immediately making him/herself known to the entire world. Companies such as Intel and Microsoft in conjunction with UNESCO are making available very basic personal computers (PCs) for as little as US\$100, specifically aimed at developing countries. The access this will provide is very exciting, both for artists and for consumers.

When things start building the artist should consider engaging a manager but where does an artist find the right one? Having no manager is preferable to having a bad one, but a good and honest manager can make all the difference between success and failure. A good place to start is for the artist to find out who manages his/her own favourite artists by searching the web or by looking at his/her favourite artists' recordings. There are also lists of managers and their contact details in publications such as Pollstar (www.pollstar.com) and Billboard (www.billboard.com). It is also worth asking other artists and people in the music business for recommendations. If an artist already has a music lawyer or accountant these professionals can also sometimes recommend a suitable manager.

Yet another approach is to ask a family member or friend who has good entrepreneurial and administrative skills to be the manager. If this route is taken it is really important that the relative or family friend is prepared to learn and train in the complexities of the music business and never take his/her position for granted.



A good manager should:

1. Be honest.
2. Be an enabler (he or she should be able to create opportunities that the artist would not otherwise have achieved alone).
3. Be a good administrator (he or she should be good at keeping accurate and up-to-date financial records and be effective in ensuring that income streams are maximised and that the artist is paid).
4. Be a good communicator (relate well to other people and be good at networking).
5. Be a good negotiator.


3.iv Managers seeking Artists

Let us now consider the issue from a manager's perspective. If someone wants to become a manager and they have good communication, administrative, networking, business and negotiating skills how do they find an artist to work with?

The first thing is to make sure the manager understands how the music industry works by reading publications, such as this one, or by participating in educational courses. No matter how experienced a manager becomes it is always important to be updating and improving his/her knowledge by participating in training courses or simply by reading the latest books, magazines, or obtaining information from the Internet. This applies to all professionals in all occupations.

Networking is the next important step. By networking we mean getting to know as many people as possible in the industry. This will include record companies, publishers, promoters, journalists, film and advertising people and collection societies amongst others. Knowing all the right people will help a manager to open doors further down the road, and its importance cannot be underestimated. Such relationships can often result in recommendations from a record company, publisher, lawyer or accountant to an artist on the manager's behalf.

Another way to find an artist is for a manager to simply visit clubs and small venues and to trust his/her own judgement to find an artist with real potential.



One way for a manager to learn more about artist management is to join the Music Managers Forum (MMF). This organisation is mainly concerned with artists' rights but also offers workshops and information for managers and artists. There are Music Managers Forums in Australia, Belgium, Canada, Denmark, Finland, France, Germany, the Netherlands, New Zealand, Norway, Poland, South Africa, Sweden, the UK and the US. The international umbrella body is the International Music Managers Forum (www.immf.com).

3.v Short-Term Letter of Agreement

Let us now consider the situation where the manager or would-be manager has found an artist that he or she wishes to manage and the artist wishes to engage the manager. After the initial meetings and discussions it is sensible for both the artist and the manager to put something down in writing to cover a temporary trial period to see if both sides could work well together. An example of a simple temporary letter of engagement is shown as Annexe B on page 124. It is usual for such a short-term agreement to have a maximum term of six months but it could be as little as three months.

If, when the term of this temporary agreement expires, the artist and the manager wish to continue with the relationship, the manager or the manager's lawyer will need to present the artist with a long-form agreement.

3.vi Long-Form Artist Management Agreements

Let us now consider moving on from the short-term letter of engagement to a long-form artist management agreement, which contains much more detail as to how the relationship will work in the long term.

It is best to think of longer-term artist management as a kind of marriage. It is essential that both sides get on with each other. The long-form artist management agreement should be the only time in the artist's career in which the artist and the manager sit on opposite sides of a table. Thereafter, they should work together as a team with success being their common goal. When an agreement is reached, both sides should feel reasonably comfortable with it. If one side feels very happy and the other unhappy it will not have achieved the balance needed for a good working arrangement.



The artist/manager relationship has to be based on trust and regular discussion on all the issues. It is important that the artist is told as much as possible, both good news and bad news at the appropriate time (e.g. it is not a good idea for a manager to deliver bad news just before the artist goes on stage).

The agreement itself should clearly lay down the ground rules but there will always be unusual situations which will need discussion and which should be resolved within a spirit of common sense and compromise by all concerned. If there are any special arrangements made, they should always be made in writing and signed by both parties.

From the manager's point of view it is important that the conditions in the agreement fall broadly in line with industry norms in the country of residence, and are not unreasonable. If the contract as a whole is too harsh a court may take the view that it is in restraint of trade. In other words, the contract is unduly restrictive from the artist's point of view.

Both the manager and the artist should clearly understand that time is valuable. The manager's expert advice, whilst not charged at an hourly rate as in the case of lawyers and accountants, clearly has a substantial value. If the manager is investing large amounts of time and/or money he/she needs to be compensated for this risk in a way which is reflected in the commission structures.

In the end the most contentious issues in these agreements are likely to be the post-term commission arrangements and the touring income commission arrangements. It is important for both the manager and the artist that a fair workable agreement is achieved in these areas.

It is very important for a manager to try and provide high-quality management services to the artist. It is therefore a better idea for managers to focus on one or two artists than to represent too many and spread themselves too thinly, unless their businesses are structured with enough full-time staff to adequately administer a larger number of artists.

Before drafting a long-form artist management agreement it is a good idea to draw up a one-page 'heads of agreement' to establish the main points. Some of the factors that will have to be decided in a heads of agreement are as follows:



Term (how long will the agreement last?)

Territory (will it be worldwide or for just one or several countries?)

Commission rate (usually 20 percent but can be between 10 and 50 percent)

Commission rate for touring income (a rate lower than the commission rate)

Commission term (stated term plus a post-term period)

Commissionable income (what income is commissionable and what is not)

Scope of the agreement (the entertainment industry as a whole or just music?)

The manager's duties

The artist's duties

The manager's allowable expenses (an example of a typical expenses schedule can be seen in Annex B on page 125).

It is important that the artist receives independent legal advice, preferably from a lawyer specialising in the music business.

The manager and the artist should follow the standard industry practice in the country in which they are based. For example in many countries the following types of income are not generally commissionable by the manager:

- i) Recording costs (sums provided by a phonogram producer for making recordings).
- ii) Video costs (sums provided by a phonogram producer for making promotional videos).
- iii) Tour support (sums provided by a phonogram producer to allow the artist to tour).

3.vii The Importance of Independent Legal Advice

The important point with all these agreements is that the artist must have independent legal advice, preferably from a lawyer specialising in the music business or one who has some experience of music contracts. If the artist does not receive independent advice the contract will be weakened considerably with the manager being open to a charge of undue influence.

In some countries such specialised lawyers simply do not exist. In such cases any independent advice is preferable to none. If it is financially viable the artist and the



manager could consider using lawyers in a different country where such specialisation does exist. In this case it may well be that the contract would be governed by the law of the country in which the specialist lawyers work. Another advantage is that the foreign specialist lawyer may be able to assist the manager and the artist with opportunities in the country in which the lawyer is based. In making this decision both the manager and the artist should decide where they think their music will find the biggest audience and consider engaging lawyers in that territory.

By typing 'music business lawyer' plus the country of interest into an Internet search engines such as Google or Yahoo, it should be easy to find the right specialist lawyers.

When an artist is starting out there is usually very little money available and the prospect of incurring substantial legal fees is daunting. Most lawyers are aware of this and are often prepared to either charge a low fee or postpone payment until a recording or publishing advance is secured, in the hope that future work will be forthcoming. Sometimes the manager will be prepared to pay the artist's legal fees on the basis that reimbursement will be forthcoming when income starts to flow through. In either case it is very important that the artist and the manager obtain a quote from their respective lawyers before work commences. It is essential that both the manager and the artist use different lawyers.

If the artist is a member of a musicians' union, this union can also sometimes provide legal advice for a comparatively low fee or free of charge. Information on musicians' unions worldwide can be obtained by going to the *Fédération internationale des Musiciens* (FIM) website at www.fim-musicians.com.

This process of a verbal agreement initially followed by a short-term trial period agreement followed by a long-form agreement is a fair and reasonable way to proceed. Many agreements have failed due to a manager being too demanding in the initial stages by perhaps insisting that a full long-form management agreement is signed before starting work. An artist's lawyer might well advise the artist against this hasty and perhaps heavy-handed approach which could instil doubts in the artist's mind about the suitability and possibly the integrity of the manager. All these negotiations need to be handled sensitively and diplomatically so that both the artist and the manager retain their enthusiasm for moving forward together. It can be traumatic for the artist to have just met a suitable manager only to be thrown into heavy negotiations with that manager right at the beginning.

3.viii Verbal Agreements

Some very high-level managers operate using verbal or 'handshake' agreements and seem to make them work. They may be so confident in their own abilities that they feel secure enough that the artist will not be tempted to go elsewhere.

In the UK and in some other countries verbal agreements for services such as an artist management agreement are enforceable by law whereas in the US that is not the case and such agreements have to be in writing.

The problem of course with a verbal agreement is that whilst it may work when things are going well, it can prove problematic if there is a dispute. In such a dispute it can often be one person's word against another, especially if there were no witnesses when the verbal agreement was made. It is therefore advisable, if possible, to have reliable witnesses to such an agreement and to try and cover as many of the issues such as term, commission rates, what is commissionable, post-term commission arrangements, touring commission rates, reimbursable expenses etc. as clearly and as precisely as possible.

Another advantage of a verbal agreement is that it is more likely to be acceptable to the artist, at least in the initial stages, as he/she will not feel quite so committed. In general, even if at the very beginning the agreement is verbal, it is always better to get a short-term letter of agreement as shown in Annex B on page 124 or a long-form agreement in writing as soon as practicable. This allows both sides to know as clearly as possible what their rights and obligations are, although as stated above, in a way that does not damage the spirit of the relationship.

3.ix Legal Limitations and Implied Terms for Verbal Contracts

A court may impose certain legal limitations on a relationship between an artist and a manager if there is a dispute and where there is no written agreement. Some of the implied terms a court might impose are:

- 1) The manager will not allow a conflict of interest to arise with the artist.
- 2) The manager will represent the artist with fiduciary care, i.e. the manager will diligently and honestly represent the artist and will not misuse



confidential information regarding the artist or misrepresent the artist in such a way as to cause the artist damage.

- 3) The manager will keep accurate books of account in regard to an artist's income and expenditure together with all bank statements, invoices and receipts etc.

3.x Alternative Agreements

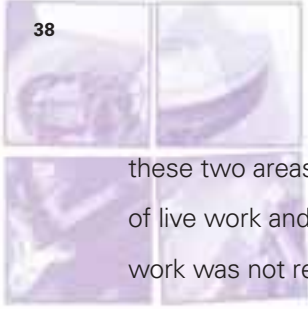
The problem of traditional artist management agreements from the manager's point of view is that they are service agreements or agency agreements with no intellectual property being owned by the manager. They are therefore fairly weak agreements with the manager always vulnerable to being dismissed. If the relationship breaks down the only recourse that the manager has is either to come to a settlement with the artist or to sue for damages in the courts. No court will ever force an artist to continue working with a manager if he/she does not wish to. Rather they will award the aggrieved party damages based on the situation presented to the court. There is therefore a tendency for managers to look to other forms of agreements with the artist which involve some intellectual property rights, such as production agreements and publishing agreements. Let us now consider these alternative agreements.

3.xi Production and Publishing Agreements as Alternatives to Management Agreements

There are two ways in which a manager can become a licensee or co-owner of the copyright or related rights created by the artist.

1. Production agreements (where the manager pays for and licences or co-owns the artist's recordings for a period of years).
2. Publishing agreements (where the manager acts as publisher and licences or co-owns the copyright in the artist's songwriting/compositions for a number of years).

The manager may agree with the artist to fill both of the above roles and will enter into two separate agreements as a production company and as a publisher. It is essential that, if the manager becomes the production company and/or publisher, or both, he/she does not 'double dip', i.e. the manager should not apply management commission in



these two areas. The manager could however have a third agreement for management of live work and other income such as sponsorship income only. Provided the other work was not recording (making, distributing and selling records) or publishing (exploiting songwriting and compositions) management commission could be taken.

In some countries the above arrangement may be illegal as it may be considered a conflict of interest, but in the developed world this type of intellectual property licensing or co-ownership agreement with the artist is becoming more common. There are other business models being developed wherein the manager and the artist form a corporation and the manager is appointed managing director or Chief Executive Officer (CEO). The artist and the manager will be directors and shareholders. In this business model all copyrights are owned by the corporation and income is split according to the shareholders' agreement. Yet another possibility is for the manager and the artist to form a partnership, administered by the manager, where the copyrights are owned by the partnership.

In the production agreement business model the manager may cease to be the manager of the artist's recording career in title but may nevertheless provide management services without commission. The manager becomes the production company. The difficulty here is that the manager has to find the money to make an album, which can be a very high risk investment. Production agreements are typically 50/50 to 70/30 in the artist's favour. The production company makes the album and then licenses it to phonogram producers around the world. The recording costs for the album are first deducted from any incoming advances together with any other allowable expenses and the net is then split between the production company and the artist according to the split agreed in the production agreement.

The advantage to the artist of a production company agreement is that the copyright in the recording will often be owned by the production company for a far shorter period than would be the case with a direct signing to a phonogram producer. A phonogram producer will often insist that it owns the rights in the recording for the life of the copyright, which currently varies from 50 to 100 years from first release, depending on the country in which it was recorded. The term in a production company agreement might be for only 10 years. On termination the artist would take back ownership of the rights in the recordings (provided perhaps that the album costs have



been recouped) and this is extremely attractive for the artist. In this way the production company can only license the recordings for 10 years to another phonogram producer as those are the only rights it owns. This works to the advantage of the artist. Also, although the artist will have to split the royalties with the production company, the licensee phonogram producer will generally pay a higher royalty to a production company than to an artist signing directly, as it does not have to pay recording costs. The licensee phonogram producer also knows exactly what it is getting, as at least the first album is usually finished when it is licensed, minimising the risk and saving A&R costs. The other significant advantage to the artist who signs to a production company is that the latter can protect the artist from unreasonable demands from the licensee phonogram producer and provide another tier of support to the artist in every area. In some cases this could mean the difference between success and failure. (See the section on recording agreements on page 56.)

If the manager takes this alternative route as the production company or as publisher, or as both, he/she may also provide management services, albeit without charging the artist any commission. The artist would then be free to engage another manager under a traditional agreement for services at any time if they so wish.

If the artist enters into a publishing agreement with the manager it may be possible to provide for the term of the publishing agreement to be for the duration of the management agreement plus, for example, 10 years. If the publishing splits were, say, 75/25 at source in the country of residence and 80/20 on receipts outside the country of residence with no management commission payable, this could give the artist a net financial gain in percentage terms over traditional management arrangements and would give the manager greater security, i.e. If an artist were to enter into a traditional 75 percent at source deal with a major publisher, then a manager would expect to receive commission at perhaps 20 percent leaving the artist with in effect 60 percent of at-source earnings. If the manager sets up a publishing company then the net pay-through to the artist would need to be higher than 60 percent at source for the artist to receive a higher overall percentage. Also, advances from third parties can be paid through to the artist if received by the manager's publishing company, provided that they can be identifiable as advances for the artist's works. Another advantage to the artist of this arrangement is that royalties are likely to be paid through more quickly than would be the case with an outside publisher. (See the section on publishing on page 37.)

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In all these cases it is important for the artist to try and retain ultimate ownership of his/her copyrights and related rights. This can be achieved by licensing these rights for a limited term, rather than assigning them to any production or publishing company or partnership that the manager may set up.



CHAPTER 4

BAND AGREEMENTS

If the artist is a band or group of two or more performers operating under a name, it is important to have a clear understanding of the rules under which the band will operate and what rights exist for the band members. It also helps to avoid arguments and misunderstandings within the band, and is particularly important in regard to who owns the band's name and what happens if a band member leaves or a new band member joins. If no band agreement exists and a band member leaves with no clear written agreement about who owns the name it could be that the member leaving forms a new band with the same name, thus resulting in two bands operating under the same name. These agreements can also cover the way the different income streams are split amongst the band members and what happens if the band ceases to exist.

4.i Legal Status

The first thing to decide is what the legal status of the band will be. It could be a partnership or it could be that the band members form a corporation. Another possible structure is for one member of the band to employ the other musicians/singers in the band. The band members should take advice from their lawyer, accountant and manager as to which structure is best for them. If they choose to be a partnership the band agreement will be the partnership agreement. If they decide to form a corporation or limited company, the band agreement will be the shareholders' agreement.

Band agreements can be difficult and sensitive so it is best to try and conclude an agreement as soon as possible once the band starts to become known. It is far easier to conclude such an agreement whilst everyone is on good terms with each other, rather than wait until a dispute arises.

4.ii Issues covered by Band Agreements

Here are some of the main issues that can be covered by a band agreement:

- How will recording income be split?
- How will public performance income in sound recordings be split?
- How will the publishing income be split?
- How will touring income be split?
- How will merchandising income be split?
- How will income from sponsorship or endorsements be split?
- Who owns the band name and how can it be used if the band splits up?
- What happens if one member leaves and what will the effect of this be on third party agreements?
- What are the audit rights of the leaving member?
- What are the liabilities of the leaving member?
- What notice must a leaving member give?
- Expected conduct of each band member.
- Under what circumstances can band members be hired and fired?
- What is the voting system for decision-making on behalf of the band?
- On what issues does there have to be unanimous agreement from band members for a decision to be made?
- How many band members need to attend third party meetings before a decision can be taken on behalf of the band?
- Who will be the signatories to the band's bank account and what will be the limit for which any single member can write cheques?
- What happens if a band member dies or is incapacitated?
- Will there be a trial period for a new member joining the band?
- Will the joining member be indemnified for liabilities that occurred before he/she joined?
- When an individual member buys equipment with band money is the equipment owned by the band or by the individual?
- Will the individual have the right to buy any band equipment used by that individual from the band if he/she leaves and if so for how much?
- How will band expenses be defined and will they include a basic wage for each band member?



- Will members be able to work on outside projects if third party agreements such as the band's recording and publishing agreements allow?
- If outside projects are allowed, who keeps the income and what happens if the absence affects the band adversely?
- If there is a dispute what will be the mechanism for its resolution (e.g. arbitration or an alternative dispute resolution arrangement)?
- Will the band agreement be confidential?
- What will be the law that governs the agreement?
- How must notices concerning the agreement be given?
- Will there be an obligation for each individual to sign any agreement that has been agreed with a third party under the band's voting system?

A very common situation when the 'artist' is a band is that there will often be a situation where there are only one or two authors in the band, with the other members being purely performers. This can result in the author(s) receiving far higher income than the pure performers which can often lead to bad feeling within the band. In extreme cases this can lead to a situation where the author is driving around in a Mercedes and the other band members are still having to catch buses. One of the bands that the author of this publication managed, found a way around this problem. The author in the band agreed that as long as a band member stayed within the band he/she would receive a percentage of the publishing income even though he/she did not actually write any of the band's songs. In this particular case there was only one writer in the band, who very generously agreed to split the publishing income four ways with the other three members of the band, i.e. each member received 25 percent of the publishing income after it had been received by the band's author from his publisher and the public performance collection society. The sole author took the view that the band was a vehicle for his works and that without the band his writing would stand little chance of success. It is important in such a situation for all registrations with collection societies and publishers to be correct. In other words the works should be registered accurately with the publisher and the appropriate collection society as to who actually wrote the work and not how the income is to be distributed. Once the author has received the income, then he or she can distribute it according to the band agreement. In this particular case it was agreed that if a band member, who was not one of the authors, left the band, or was dismissed, he/she would cease to receive any of the publishing income from that point on.



CHAPTER 5

STARTING A RECORD LABEL

It may be as an artist, or as a manager, or as both working together that a decision is made to create a self-administered record label. If enough finance can be sourced to do this, it provides several major advantages. Firstly it allows the artist to sell physical recordings at live performances, helping to build a fan base, which as we have seen is immensely important. It also allows the flexibility to sign to another phonogram producer if this is desirable, as the recording rights are owned by the artist or by both the artist and the manager.

The other advantage is that the unit income will be far higher for physical sales and/or digital downloads than if the artist signed to a conventional phonogram producer. Instead of receiving a royalty of perhaps 15-20 percent of the wholesale price as is usually the case with a conventional major record company, the artist receives 100 percent. From this 100 percent must be deducted any manufacturing, packaging, marketing and distribution costs but the net income per unit can often be higher than would be received from a major record company. The other advantage is that the artist will have control over his/her rights. Also a major record company will usually require that the entire copyright is assigned to it for the life of the copyright which varies between 50 and 100 years depending on the country in which the contract was signed.

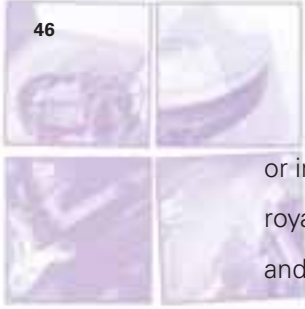
The disadvantage is that the artist will not be able to benefit from the resources of a conventional record company, particularly in regard to recording costs, marketing, distribution and tour support. The one thing the major record companies can offer the artist is money. It is far better to have 15 percent of US\$500,000 (US\$75,000) than 50 percent of US\$50,000 (US\$25,000). Also the higher the sales, the more mechanical royalties are payable for the underlying musical composition to the author and his/her publisher. If the artist is also the author this can mean far greater income. Also,



if sales are higher there may be a lot more radio play so the public performance income is also considerably increased.

Here are the main issues to consider when starting a record company:

1. Choose a business structure. (this could be as a corporation/limited company, a partnership or a sole trader. The artist and/or manager need to obtain advice on this from an accountant or lawyer.
2. Choose an original name for the label (search one of the Internet search engines to check on this).
3. Create a business plan
 - Prepare a business timetable
 - Prepare a cash-flow forecast
 - Obtain several quotes for manufacturing records
 - Obtain several quotes for preparing artwork
 - Make an estimate for distribution costs
 - Make an estimate for advertising and marketing costs
 - Make an estimate for mechanical royalty payments
 - Make an estimate for artist advances (if any) and royalty payments.
4. Build a team
 - The artist and/or artist manager/record label will need:
 - A business bank account
 - A music business accountant
 - A music business lawyer
 - A physical distributor
 - A manufacturer
 - An on-line aggregator/distributor
5. Apply for a licence from a mechanical collection society. The artist/manager/record label will need to apply for a licence from the collection society in the country of residence that collects mechanical royalties on behalf of publishers and authors. For example, in Germany this is GEMA, in the US it is the Harry Fox Agency, in Japan, JASRAC and in the UK, MCPS. It will be necessary to obtain mechanical licences from the mechanical collection society for the works contained in the recordings, after which mechanical royalties will have to be paid to it for every sound carrier or download sold,



or in some cases for every physical sound carrier manufactured. These royalties will then be passed on by the collection society to the publisher and author of the work. In some territories it may also be possible to obtain a mechanical licence directly from the author's publisher.

6. Become a phonogram producer member of the appropriate collection society that collects the public performance income for sound recordings. These collection societies are sometimes known as neighbouring rights collection societies and collect income from radio and television stations as well as other public performance uses when a recording is broadcast or played in public. They then distribute this income to their phonogram producer members. In some countries there is a joint society which distributes to both performers and phonogram producers and in other countries there are separate collection societies for each. Examples of joint or phonogram producer-only collection societies are: SOCINPRO (Brazil), GVL (Germany), Sound Exchange (US – digital only), SENA (the Netherlands) PPL (the UK), GRAMEX (Denmark) and LSG (Austria). The phonogram producer (record label) receives income from these societies whereas with the mechanical collection societies in 5 above, the phonogram producer will have to make payments to the appropriate mechanical collection society.
7. It may also be beneficial to join the trade organisation representing phonogram producers in the country of residence. In some countries there are two such organisations, one which mostly represents the interests of the major phonogram producers and another which represents the interests of smaller independent phonogram producers. The international umbrella organisations for these two types of trade associations are IFPI (www.ifpi.org), which represents the major phonogram producers and others, and IMPALA, (www.impalosite.org) which represents the interests of independent phonogram producers.

The above outlines the procedure for the artist and/or artist manager setting up as a serious phonogram producer even if it is only on a small scale. In the very early days it will probably be just a matter of manufacturing 1000 CDs with a simple one-page printed insert. It is even possible to by-pass the manufacturing process altogether and simply sign up with an on-line distributor or aggregator for downloads only. Even so it

is important to keep good accounting records and to join the appropriate collection societies especially if the author of any of the works recorded and released is someone other than the artist.



CHAPTER 6

SIGNING TO A PHONOGRAM PRODUCER

Let us now consider the situation where a phonogram producer wishes to sign an artist with the intention of selling as many copies of the artist's recordings as possible. Traditionally this was the way for an artist to be successful, but as we will see in the section on the Internet on page 100, there are now other avenues for an artist to consider. In the past major phonogram producers such as Sony-BMG, Warners and Universal would invest in an artist by providing advances, recording costs, marketing, tour support and distribution. The major phonogram producer would generally commit to making and releasing one album with the artist but would want options on as many as eight further albums.

The other important feature of these investment-type recording agreements is that the phonogram producer will generally demand that all recordings made under the agreement are assigned to them for the life of copy protection in the country of residence, i.e. assignment will be sought for the full period of related right copy protection for sound recordings in a particular territory, which could be anything from 50 to 100 years. This means that the artist will earn royalties from any sales during the period that the recordings enjoy protection, but he/she will never own their recordings. In some countries, particularly those governed by civil law, this kind of assignment for life of copy protection is prohibited and can only be transferred by license. However, in the common law countries such as the UK, the US and Australia this assignment is lawful and is often the case. The major phonogram producers will argue that they need this assignment to justify their investment in the artist, which is highly speculative. From the artist's perspective this may appear to be unreasonable, as in these agreements the artist invariably pays all the audio recording costs and usually 50 percent of any video production costs from his/her audio royalty account. This concept of the artist having paid all the recording costs but never owning the recordings is one that is constantly questioned in the music industry.




The way for an artist to avoid this dilemma is to enter into a limited assignment of perhaps 10-25 years rather than the life of copy protection or, better still, to license his/her recordings to the phonogram producer for a limited term.

The licensing approach is far better from the artist's point of view and is becoming far more common, particularly in the case of the smaller independent phonogram producers. It is important to understand that if the artist licenses his/her recordings to a phonogram producer he/she retains ownership of the related rights in the recordings. Even if the licence is for life of copy protection it is preferable to an assignment, as, if the phonogram producer went out of business, the related rights would revert to the artist. Similarly, any material breach of the licensing agreement by the phonogram producer could result in the rights in the recordings reverting to the artist.

The advantage of signing to a major phonogram producer is that they are able to spend large sums of money on marketing campaigns for the artist such as, television and radio advertising, pluggers (people who work to get an artist's records played on radio and television), in-store campaigns and print advertising. They are usually also prepared to spend larger sums on recording costs (even though these will usually be recouped from the artist's royalty account), tour support (providing money to cover any loss on a tour, again usually recoupable from the artist's royalty account) and video production (even though usually 50 percent of these costs will be recouped from the artist's audio royalty account and the other 50 percent from the video account). Whilst the artist may receive lower royalties than can be paid by an independent phonogram producer, he/she could well be better off, purely because of the greater sales that a major phonogram producer can achieve. As mentioned earlier, it is far better to receive a smaller percentage of a large sum rather than a large percentage of a much smaller sum and this is something the artist and the manager will have to consider before committing to a recording contract.


The new digital royalty structures being offered by major phonogram producers to performers have been controversial as digital downloads and streaming replace physical sales. With digital downloads and streaming the phonogram producer has no manufacturing costs, no physical distribution costs such as shipping by road, rail or air, no faulty returns and no packaging costs. Despite these savings the major phonogram producers have continued to set performers' royalty rates at the same level as the



physical product. Some smaller independent phonogram producers have seen an opportunity here and are offering royalties of up to 50 percent of net receipts for digital sales on the Internet, thus giving them a considerable advantage in persuading artists to sign to them rather than to a major phonogram producer.

An additional advantage of signing to a smaller 'independent' phonogram producer is that they are usually much more open to entering into a licensing agreement rather than an assignment agreement. The royalty rates and the royalty structures are also often considerably better than can be negotiated with a major company. For example a typical independent deal might be a licensing agreement for anything between three and 15 years, after which the rights in the recordings will revert to the artist and he/she will be free to either negotiate a further term with the same phonogram producer, negotiate a new agreement with another phonogram producer, or release the recordings on his/her own label. The disadvantage with a licensing agreement is that often the artist has to pay for the audio recording costs, i.e. the artist has to supply the phonogram producer with finished recordings. This can sometimes be financed from the advance that the independent phonogram producer pays. In any case, due to advances in home recording technology, it is far less expensive to record an album than it was in the past.

As we have seen above, it is important to consider carefully the royalty structures of a recording agreement. In the past, major phonogram producers developed very complicated royalty payment structures for physical sales of recordings. These would usually be calculated on a royalty base rate which might increase at certain sales figures and with future albums if the options on them were taken up. These royalty rates could be based on the Published Price to Dealers or Dealer Price (PPD) or on the Recommended Retail Price (RRP), which is sometimes also called Suggested Retail List Price (SRLP). This often resulted in misunderstandings between artists, one of which was paid on a royalty rate based on PPD and another signed to a different company which based its royalties on RRP. The PPD royalty would always be higher than the RRP royalty for the same amount of income per unit sold. All sorts of deductions are applicable to this base royalty rate. There is usually a 'packaging' deduction which is typically 25 percent for CDs. This means that the royalty is instantly reduced by 25 percent. Some phonogram producers have even substituted the packaging deductions for digital downloads and streaming (where there is no



packaging) with 'new technology deductions'. There will also typically be reductions for sales to libraries, the armed forces, record clubs, mail order, sales at budget and mid-price (rather than full price), sales that involve special packaging, and sales when a recording is included in a compilation album.

In 2002, BMG, before they merged with Sony, spent a lot of time attempting to reform these royalty structures into one simple royalty payment which they set at 15 percent of PPD for every record sold. This royalty rate had no packaging deductions or any other deductions which meant a much more streamlined and efficient accounting system for the phonogram producer, and one which was also easier to understand by the artist and manager. This was a really sensible move for both parties, but the majority of major phonogram producers still use the old complex royalty contracts which can sometimes run to over 100 pages.

Before a long-form recording agreement is negotiated the phonogram producer will usually put forward a suggested heads of agreement, which is a brief summary of the main points in the agreement, to start negotiations. An experienced manager will negotiate this directly with the phonogram producer and then bring in a lawyer for the long-form agreement, which will include all the so-called 'boiler plate' legal text. An inexperienced manager or an artist without a manager would be advised to enlist the services of a lawyer as soon as the heads of agreement is received. An experienced manager may approach it the other way around by issuing the phonogram producer with a suggested heads of agreement. Here are the main issues to negotiate at this point:

1. **Type of agreement:** licence or assignment.
2. **Territory:** This could be one country, a group of countries, a continent, several continents or worldwide. Sometimes the world is extended still further to include the solar system or the universe.
3. **Term:** The length of time that the phonogram producer will have to exploit the recordings covered by the agreement. This could be anything from three years to life of copy protection available in law.
4. **Albums:** The number of albums in the agreement: usually one or two with options for more. Sometimes it is possible to negotiate guaranteed releases on the first two or even three albums. It is in the artist's interest to have as few options in the agreement as possible.

5. **Advances:** The amount of money the phonogram producer will pay to the artist in advance of an album being made. This could be in addition to recording costs or it may include recording costs. Advances are usually fully recoupable from royalties. The phonogram producer will usually be obliged to pay additional, increasing advances at each option point if it is taken up. Sometimes the advance payable on option albums are linked to sales of the previous album. Also included here could be how the advances are to be paid, e.g. 50 percent on signature of the recording agreement and the remaining 50 percent on delivery of the album.
6. **Recording Costs:** A sum of money for making the first album, recoupable against royalties, which is usually increased for successive albums if the options are taken up. This is sometimes included in the album advance.
7. **Royalties:** The royalty rates payable by the phonogram producer for sales of full price albums, double albums, mid-price albums, budget price albums, singles, extended play singles, albums sold as part of a TV or radio advertising campaign, through a record club, by mail order, as sales to libraries or to the armed forces, for export, as sales in certain foreign countries included in the territory etc. There will also be royalty rates for sales of digital downloads, telephone ring tones and real tones and for sales as a result of streaming. Also the rates for master re-uses where a recording is synchronised with visual images in a film, TV programme or an advertisement.
8. **Artistic Control:** The uses of the recordings for which the phonogram producer needs approval from the artist and also whether or not a recording delivered by the artist can be rejected as technically or commercially unacceptable by the phonogram producer. Also as to whether or not the phonogram producer or the artist has the final approval over artwork, biographies, photographs and videos etc.
9. **Accounting:** How often the phonogram producer is obliged to send royalty statements to the artist and when royalties (if any) are payable.
10. **Audit:** How often, under what circumstances and in what parts of the territory the artist can send an auditor into the phonogram producer's business or that of the phonogram producer's licensees to check on whether royalties have been accounted and paid correctly.



Three of the most important issues from the above list are the type of agreement, the term and the audit arrangements. The artist should always try to obtain a licensing agreement rather than an assignment with as short a term as possible. In regard to the audit rights, the artist not only needs to be able to audit the phonogram producer in the country of residence but also to audit his/her foreign licensees or sister corporations in other countries if those countries are included in the territory. This is unfortunately very difficult, but if not achieved it leaves a large area of unaccountability in the agreement.

Another approach is to sign a different recording licensing agreement in each part of the world. This makes for a lot more work on behalf of the artist and manager but some artists have done it very successfully. A typical arrangement here might be one agreement for Europe, another for North American Free Trade Association (NAFTA) members (the US, Canada and Mexico), another in Japan and another in Australasia (Australia and New Zealand).

Advances and Recoupment

The very important concept of recoupment is one that needs to be clearly understood. If an advance is recoupable it means that as royalties come in they are first offset against the advance. For example, if the advance was US\$20,000 and after the first accounting period the royalties payable to the artist are US\$25,000, the phonogram producer will pay US\$5000 to the artist. In this example the advance has been fully recouped in the first accounting period. If, however, the royalties payable for the whole term of the agreement in this example were only US\$12,000, then US\$8000 of the advance would remain un-recouped. It is important to realise that unless the agreement states anything to the contrary, the sum of US\$8000 does **not have to be paid back** by the artist to the phonogram producer in this example. The advance is an amount of money paid out by the phonogram producer at his/her own risk, and is not re-payable by the artist except from royalties earned. The best kind of advance is one that is non-recoupable. In other words it is a straight payment and royalties are paid in addition to the advance. This type of advance is rare but greatly benefits the artist.



360 Degree Agreements and Venture Capital Involvement

As phonogram producers' turnover and profits have been declining, particularly due to the problems that exist on the Internet, many have been looking to participate in some of the other income streams available to artists. These are often referred to as 360 degree agreements. One of the landmark 360 degree agreements was that negotiated by EMI with the artist Robbie Williams. In this contract EMI not only acted as the conventional phonogram producer, but also as publisher, and participated in income from live work. The US band Korn also negotiated a similar agreement. The attraction for the artist is that phonogram producers are usually prepared to pay very high advances for this type of agreement. In geographical areas where piracy is a major problem such as Africa, Asia and Latin America, this type of agreement is becoming more and more common. Phonogram producers are also looking to buy large management companies. Artists and their managers should think very carefully before entering into this type of agreement as it may be much more advantageous to manage these other income streams themselves.

Another business model that is emerging is that of venture capitalists buying into a management company or into an artist via the manager. The money they make available is used to develop the artist by way of recording costs, costs associated with live work, salaries to the artist and marketing costs etc. In return the investment venture capital company usually wants a percentage of the profits from all income streams. In 2007 one of the largest venture capital companies, Terra Firma, purchased the EMI music group. Other venture capital companies in the music field which invest in artists are Ingenious and Icebreaker. Another company which will supply finance in certain circumstances using a different business model, which invites third parties to invest, is Sellaband. Sellaband invites fans of an artist or band to invest in them using a peer-to-peer (P2P) structure (www.sellaband.com).

Yet another highly successful method of financing an artist's development is that of building a large and enthusiastic fan base and asking the fans to purchase an album in advance of it being recorded. This method has been used to great effect by the UK band Marillion who invited their fans to send in US\$40 each. In return the band would send them a special edition of the finished album once it had been recorded and manufactured, but before it was available to the general public. Marillion were thus able to cover all recording and marketing costs for the album. Of course, this method

of financing only works if the artist already has a large and enthusiastic fan base, which is a further indication of how important it is for an artist and the artist's manager to work hard at establishing such a fan base.

CHAPTER 7

STUDIO PRODUCER AGREEMENTS AND RECORDING

As mentioned in the definitions section, the person whose job it is to supervise the studio recording is often referred to as a 'producer'. In order to distinguish this role clearly from the phonogram producer (record company) we will use the term 'studio producer'.

A typical arrangement for a studio producer agreement is for an advance to be paid to the studio producer for each track to be recorded, against a studio producer royalty of 2 to 6 percent of PPD, depending on the status of the studio producer. In most recording agreements the phonogram producer will pay the advances to the studio producer. Advances paid out to the studio producer, and any subsequent studio producer royalties paid out by the phonogram producer will be regarded as recording costs which will probably be recoupable against the artist's royalties. It is therefore important for an artist or manager to monitor these deals carefully.

In practice the royalty payable to a studio producer will usually be deducted from the artist's royalty. So if the artist is receiving a royalty of 20 percent of PPD and the studio producer's royalty is 4 percent of PPD the artist will actually end up with a royalty of 16 percent of PPD. Sometimes the studio producer will be paid a royalty from the first record sold and in other agreements the producer will only start to earn royalties after recoupment of recording costs associated with the tracks that the studio producer produced.

The choice of a studio producer is an important decision. How a track is recorded, mixed and edited can make a considerable difference to the level of success the track achieves. Some producers will be more focused on the creative recording process and will insist on a separate engineer to supervise the technical side of the recording. It is also quite common to engage a specialist mixing engineer to do the final mix of the



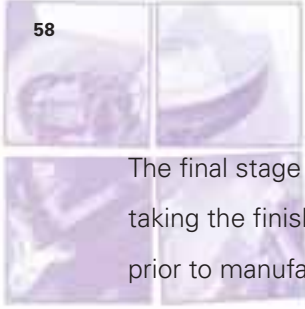
track. One of the most famous specialist mixing engineers is Bob Clearmountain who is based in Los Angeles and mixes many of the top recording artists such as Madonna, Bruce Springsteen, Rufus Wainwright and Crowded House. An experienced mixing engineer will also justify his/her own royalty, usually in the region of 1 percent of PPD or 'one point' as it is often called.

Studio producer agreements also often oblige the studio producer to complete the appropriate forms confirming who played what instruments and who sang on a particular recording. This is particularly important for the performers who participated on the recording as it will entitle them to public performance income when, and if, the recording is later played on the radio, television or anywhere in public. Another aspect of these agreements is that studio producers are obliged to declare to the phonogram producer if any 'samples' have been used in the recording. A 'sample' is when a section or part of an already existing recording is used as part of a new recording. In such a case permission has to be received from both the right holder in the original recording that has been sampled and the author/publisher of the original work contained in the sample.

A middle way of using a sample is to make a new recording which means that permission is then only required from the author/publisher of the work contained in it. Specialist companies exist such as Replay Heaven (www.replayheaven.com) who, for a fee, will recreate a recording with astonishing accuracy. The sample clearance process can be an expensive and time-consuming procedure. It is therefore advisable not to use samples of other recordings or works if at all possible.

As time goes on, recording equipment is becoming less and less costly and this has resulted in many artists buying and setting up their own studios rather than hiring a recording studio. There have been examples of phenomenal recordings being produced in artists' bedrooms using fairly inexpensive recording equipment. This also gives the artist or band the advantage that several albums can be recorded once the initial equipment has been purchased, thus providing a substantial saving on recording costs.

It may also be worthwhile for several artists or bands to get together to purchase recording equipment which they can then share to produce recordings which will provide a further cost saving.



The final stage in producing a recording is known as 'mastering' and is the process of taking the finished and mixed recording and enhancing the sound of the recording prior to manufacture. There are specialist mastering engineers who can provide this service or special mastering software that can be purchased which allows an artist or a studio producer to do the mastering themselves. Probably the world's most famous mastering engineer is Bob Ludwig of Gateway Mastering (www.gatewaymastering.com) who is based in Portland, Maine in the US. If an artist wants the very best he is the man to contact, but good mastering studios are to be found in almost every country in the world.



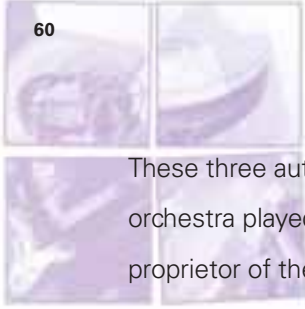
CHAPTER 8

COLLECTIVE MANAGEMENT AND COLLECTION SOCIETIES

As we go further into the technological revolution encompassing the whole of the music industry, there is no doubt that collective management is going to become more and more important to authors and performers. It is therefore crucial that authors, performers and managers understand the importance of correct registration and membership of the appropriate collection societies for a particular author or performer. Poor or incorrect registration of works and performances with collection societies, or no registration at all, have resulted in millions of dollars of income going to the wrong person or not being paid. The music industry is awash with money which ends up being returned to phonogram producers or publishers because, for some reason, it cannot be paid through to the correct author or performer. A good artist manager will focus particular attention on collective management and will do everything possible to ensure that the artist is receiving all the income due.

8.i Why is Collective Management Necessary and what is its History?

As we saw in the section on copyright, the legislation of rights for authors was the first to be established. The first attempt at collective management was the establishment of the *Bureau de législation dramatique* in France in 1777. This organisation later became the *Société des Auteurs et Compositeurs Dramatiques* (SACD) which still functions today. The first collection society as we now know it was established in the mid-nineteenth century, again in France. This was the *Société des Auteurs Compositeurs et Editeurs de Musique* (SACEM). SACEM was the first real collection society for authors and came about as a direct result of a court decision when two composers Paul Henrion and Victor Parizot, together with a lyricist, Ernest Bourget, sued a cafe called *Les Ambassadeurs* for playing their works without paying them.



These three author pioneers were having dinner in *Les Ambassadeurs* when the orchestra played one of their works. They refused to pay for the dinner unless the proprietor of the cafe also paid them for the use of their works. The authors won the court case that followed and this was to change authors' rights forever. Prior to this, authors had (in theory) to give individual permission for one of their works to be performed by somebody else. By the mid-nineteenth century this was becoming impractical as it was impossible for an author to know when and where one of their works was being performed. By the early twentieth century similar societies, often referred to as performing rights societies were formed in most European countries, and some other countries around the world. In 1926 the delegates from 18 such societies got together and formed an umbrella organisation under the name of the Confederation of Societies of Authors and Composers (CISAC) which today continues to play a major role in the collective management of authors' and publishers' rights (www.cisac.org).

The situation for performers before the introduction of the gramophone and radio was quite straightforward. The performer would perform if the conditions for a performance were agreeable. If the conditions were not acceptable then the performer simply refused to perform. The performer had complete control over the right to perform or not. When the first recordings or 'fixed performances' came along the whole landscape changed. It again became impractical for a performer to give permission every time someone wished to play a recording in public so a system had to be devised where an organisation would monitor and collect such payments on behalf of the performer and whoever owned the recording. Such collection societies are known as 'neighbouring rights collection societies' or more accurately 'related rights collection societies'.

Authors or performers can still retain the right to authorize or prohibit the use of their works or performances by not signing up to any collection societies and only authorising specific uses on a one-off basis as they come along. Most authors and performers, however, want their works and performances to be used as widely as possible to create the maximum income and so that the works and performances can become as well known as possible. In order to achieve this they will sign an agreement with the appropriate collection society so that it has the right to collect income on their behalf. The collection society will deduct an administration fee from such income and pass on the remainder to the author or performer.



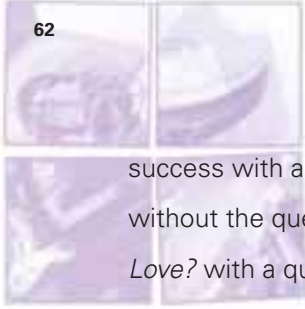
It is sometimes possible in such collective management agreements to retain a degree of exclusivity for certain uses. In advertisements, for example, the collection society would be obliged to seek specific permission from the author and/or the performer for such use. An author or performer may have strong moral views on certain topics. For example, an author or performer (or both) may not wish their creations to be used in conjunction with a political party with which they do not agree. An author who is a vegetarian will probably object to his/her work being used in a meat or fish advertisement. It is quite common for such approvals to be excluded altogether from these agreements, such approvals being in the hands of the publisher or phonogram producer. In some publishing and recording agreements the publisher and phonogram producer may be obliged to seek approval from the author or performer as well for specific uses. For this reason, it is in the author or performer's interest to have as much control as possible in regard to the use of their works and performances in publishing or recording agreements.

Collection societies can operate in different ways. Some collection societies insist on a complete assignment of the right of public performance for authors' rights or performers' rights. With this type of agreement the author or performer transfers his or her ownership of the right to the collection society. Other societies operate as agents for an author or performer with the author or performer retaining the right but agreeing that the agency collection society can administer the right. In the UK, for example, the Performing Right Society (PRS), the authors' society collecting public performance income, insists on a complete assignment whereas the Mechanical Copyright Protection Society (MCPS) which collects mechanical royalties on behalf of authors operates under an agency agreement.

8.ii The Importance of Correct Registration of Works and Performances

It is absolutely crucial that all works (for authors) and fixed performances (for performers) are correctly registered with the appropriate collection society. One thing is certain; if registration is not made or is incorrect, no income will flow through.

In some countries, such as Italy, even if only one of the words in the title is capitalised or misspelled the collection society will not pay through income on that song. For example one of the artists represented by the author of this publication has had great



success with a song entitled *What is Love?* If the song is registered as *What is Love* without the question mark some societies would refuse to pay through on *What is Love?* with a question mark. To help get over this problem some authors and performers register several titles of songs and guess at possible misspellings and punctuation mistakes. So in this example it would be a good idea to register *What is Love?* and *What is Love*.

Whichever collection society the author or performer joins, it is a good idea to regularly ask the collection society for a list of works or performances so that they can be checked for accuracy. Increasingly, collection societies are making this information available on the Internet.

Governance of Collective Management Societies

One of the most important issues with collection societies is their democratic governance. It is highly desirable, if not essential, for collection societies to have a board structure which correctly reflects the rights they administer. So if a collection society collects income for the public performance of works and distributes this income to authors and publishers, the governing board should be made up of 50 percent authors and 50 percent publishers. Similarly, if a collection society collects income for the public performance of sound recordings and this income is split 50 percent to performers and 50 percent to phonogram producers, the governing board should be made up of 50 percent performers and 50 percent phonogram producers. This democratic board structure is particularly important if the collection society is a monopoly in a particular country. A good example of a collection society that works well with this democratic board structure is the UK authors and publishers collection society the PRS. The PRS has a monopoly in the UK and the board consists of six authors and six publishers.

8.iii Collection Societies for Authors

If an artist is a songwriter, composer, arranger or lyricist, it is very important for him/her or his/her manager to research into which collection societies to join. Most authors quite logically and sensibly join the appropriate collection societies in their own country. In this way, they will be able to visit the collection society easily if a meeting is required and everyone will speak the same language which makes misunderstandings less



likely. Each country's author's collection societies will almost certainly have reciprocal agreements with similar societies in most other countries. So, for example, an Argentinean author will register his/her works with the Argentinean authors' public performance collection society SADAIC. If the same author's works are played on the radio in Germany, the German society, GEMA, will pay through the public performance royalty to SADAIC who will in turn pass it on to the Argentinean author.

There are generally two collection societies an author will need to join:


1. A public performance collection society
2. A mechanical copyright collection society

8.iv Authors' Public Performance Collection Societies

An author's public performance collection society will collect royalties whenever an author's work is played in public. This could be on the radio, on television, in a discothèque, in shops, in hairdressing salons, in doctors' surgeries, in restaurants, in bars and clubs, at live events or in any situation where music is heard in a public place. It used to be the case that most of the monies collected by such collection societies came from radio, but now that is shifting towards income from other public performances. Karaoke, for example, where members of the public are encouraged to sing the lead vocal to backing tracks of well-known songs in clubs and bars is becoming increasingly important as a source of revenue for such societies.

With radio play, authors' public performance collection societies monitor, as best they can, which works a radio station has broadcast. Large and national radio stations are often monitored comprehensively so that every work they broadcast is logged and this information is passed on to the appropriate collection society. The collection society may occasionally carry out a separate audit so as to ensure that the information they are getting from the radio station is correct. Smaller radio stations may also be required to log and report all the works they broadcast, but sometimes it will be the collection societies who have to do such monitoring and logging.

For economic reasons it is sometimes the case that a collection society will only be able to monitor a small radio station for perhaps one day per month. The results are



then expanded as if the works they played on that day were also played on all the other days of that month. If an author were lucky enough to have had his/her work played on the one day that was monitored by the collection society, he/she will then receive income as if the work were played on every day that month. If however, the work was played on twenty days of that month but not on the particular day the collection society monitored, the author would receive nothing. It is hoped with advances in technology that a system can be introduced in every country where every work broadcast can be logged using electronic identifiers and is then automatically sent through to the collection society.

As we have seen above, it is crucial for an author to ensure that all his/her works are correctly registered with collection societies. It is therefore essential that if there is more than one author for a particular work, an agreement be reached as soon as possible after the work is created about the writing splits. Traditionally it has been the case that the musical composition for a song will qualify for 50 percent of the author's rights and the lyrics will qualify for the remaining 50 percent. This is still generally the case although sometimes the musical elements are agreed to total more than 50 percent and the lyrics less than 50 percent. In modern song writing it can often be that many authors contributed to the final version of a particular work. In all cases where there is more than one author it is advisable to draw up a simple one-page agreement, signed by each participant, verifying the percentage of the work that is owned by them. Although such writing splits can sometimes be subjective and difficult to assess, it is always wise to be as accurate as possible. If not, and the work is very successful, one of the writers may decide to sue the others later and this could be very costly. For example, the famous British band Procol Harum released a recording in 1966 of a song called *A Whiter Shade of Pale* which was very successful worldwide and which still receives a considerable amount of radio play and other usage. One of the members of the band, Matthew Fisher, brought a legal action 40 years later, in 2006, against one of the other members of Procol Harum, Gary Brooker, claiming that he had co-written the song and had never received any income due to his not being included on the original registrations. After listening to all the evidence the court decided that he had indeed been one of the writers and awarded him appropriate compensation and costs. This is why accurate and honest writing splits need to be agreed as soon as possible after a work has been created. It is sometimes wise for the principal writer to be inclusive and a little generous with such splits to avoid any future legal action at a later date.

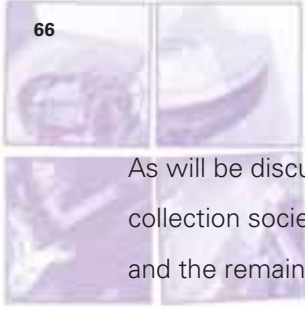


As mentioned above, it is a good idea for an author or the author's manager to request, perhaps annually, from the author's public performance collection society a list of all the works currently on their database which involve the author. This should show the percentages and publisher's details of all the author's works.

The author of this publication cites a case of a collection society attributing the wrong percentage to one of his artist's works. The mistake took over five years to correct. Since this particular work had been a hit all over the world, it was also incorrectly registered in all the other collection societies that had reciprocal agreements with the national collection society of which the artist was a member.

In many countries, live performances by an artist also give rise to a public performance payment by the promoter or the venue owner of the concert or event. In the UK for example, every promoter is obliged to pay 3 percent of the total box office revenues from ticket sales (after tax) to the author's public performance collection society, the PRS, for the works performed in public at that concert or event. The promoter or venue owner is also obliged to obtain a list of the works performed by the artist or artists together with publisher information (if known), the length of each work, and the authors' names on a special form. This income is then sent to the PRS and distributed to the authors and publishers listed on the form after the PRS has deducted its administration fee.

If the performer is also the author of some or all of the works performed it is very important for him/her or his/her manager to ensure the forms are completed correctly and returned to the venue on the night, or directly to the collection society or preferably to both. One easy way to do this is for the artist or manager to have all the works listed on a computer spread sheet together with information on the authors and publishers and the approximate length of each work performed. This can then be e-mailed to the venue and the collection society so that the correct authors get paid. If this is not done the artist (if he/she is also the author of some or all of the works) will lose out on a valuable income stream. The larger the audience, the greater is this income stream. So if, for example, an artist or band were lucky enough to perform in a supporting slot to a very popular artist or band at a large arena or stadium show, and they wrote most of the works performed, the income from just one show could be many thousands of dollars.



As will be discussed in the section on publishing, many authors' public performance collection societies insist on paying out 50 percent of the income direct to the author and the remaining 50 percent to the author's publisher. If the author has no publisher the collection society will pay the entire sum due to the author, after deduction of its administration fees. This payment structure is very beneficial to the author as he/she will continue to receive income from the collection society even if he/she is unrecouped with the publisher, i.e. the royalties payable from the publisher to the author have not exceeded the advance the author received from the publisher.

In many countries there is only one authors' public performance collection society (e.g. GEMA in Germany) but in some countries there are two or more. In the US, for example there are three such collection societies: The American Association of Composers, Authors and Publishers (ASCAP), Broadcast Music Incorporated (BMI) and The Society of European Stage Authors and Composers (SESAC). The latter's name may have been appropriate in 1930 when it was set up to represent European authors, but it is now a US-based authors' collection society similar to ASCAP and BMI.

If the country in which the author lives does not have an appropriate collection society it is possible for him/her to join a collection society in another territory.

8.v Author's Mechanical Income and Mechanical Copyright Collection Societies

In some countries there is just one collection society collecting both income from public performances and income from mechanical licences on behalf of authors. For example JASRAC in Japan or GEMA in Germany collect both. In other countries such as the UK and the US there are separate collection societies which collect 'mechanical income'. In these examples the UK has the Mechanical Copyright Protection Society (MCPS) and the US has The Harry Fox Agency. In the US many authors and publishers also collect mechanical income directly from phonogram producers without the involvement of a collection society.

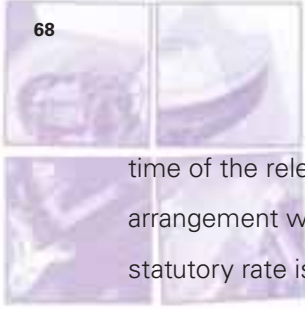
Most mechanical income is generated when a phonogram producer wishes to sell a recording to the public. Before he/she can legally sell or license a recording, permission must be obtained from the author or authors who wrote the underlying musical work contained in the recording.



The mechanical copyright collection society will issue a licence to the phonogram producer in which the phonogram producer is obliged to make a payment to the society for every copy it sells of the record containing the work. In many countries there is a fixed mechanical rate which has to be paid and is not negotiable. In the UK for example, the rate is 8.25 percent of the Published Price to Dealers (PPD). In the US and Canada on the other hand, the mechanical rate is fixed as a 'statutory rate' or 'minimum statutory rate' per track which in 2008 was US\$0.091 (9.1c) per track for works of up to five minutes (known as the 'minimum statutory rate'), and US\$0.0175 (1.75c) per minute for tracks with a duration of more than five minutes (known as the 'long song rate').

So if a track ran for four minutes 30 seconds, the mechanical statutory rate payable by the phonogram producer would be 9.1c per record sold. If, however, it ran for six minutes the mechanical rate would be 10.5c (6 x 1.75). Unfortunately for artists in the US this rate is negotiable and many phonogram producers negotiate a rate of 75 percent of statutory as a mechanical payment when they offer an artist a recording agreement. The author of this publication can cite one instance where he could only obtain 50 percent of statutory for one of his artist's tracks if it was to be included in a US compilation album. He was told that if he did not accept this rate the track would not be included in the album.

This US and Canadian negotiable approach leads to so called 'controlled composition' clauses in recording and publishing agreements. In such recording agreements the artist will often have to accept that only 75 percent of the statutory mechanical rate will be received in the US and Canada. In publishing agreements there will be a similar clause indemnifying the publisher if only a percentage lower than 100 percent of statutory is obtainable. The term 'controlled composition' means works that the performer has written, i.e. that he/she controls and on which (provided the publisher agrees) he/she can therefore agree to take a lower percentage. The author of this publication had one experience in the US where two phonogram producers were competing to sign one of his artists. One of the negotiating issues used was to ascertain if one of them would pay 100 percent of the statutory rate from the first US recording sold. In the end one did agree to this, which, because the artist wrote most of the songs, resulted in far higher publishing income over the years. Phonogram producers will also try to fix the mechanical rate in the US at the rate prevailing at the



time of the release. It is in the artist's interest to try to get a 'floating' rate, i.e. an arrangement where the mechanical rate goes up as and when the national minimum statutory rate is increased. Another negotiating tactic used by US phonogram producers is to try to limit the mechanicals payable on an album to no more than 10 or 11 tracks. If an artist has this clause in the agreement with the phonogram producer he/she should think carefully before putting more than 10 or 11 tracks on an album.

8.vi Related Rights Public Performance in Sound Recordings Collection Societies

As we have seen, performers' rights have a lot of ground to make up when compared to authors. This is particularly true concerning related rights and related rights' public performance collection societies. The WPPT provides that users should pay a single equitable remuneration to performers and phonogram producers when a phonogram is used for broadcasting or communication to the public. This means that performers and phonogram producers do not have an exclusive right but rather, have a 'right to remuneration' when a phonogram is broadcast or played in public. The term 'single' is included to indicate that users should only have to pay once for the right to use a sound recording rather than having to pay the performers on the record and the phonogram producer in two separate payments. Whilst most countries have interpreted 'equitable remuneration' to mean that 50 percent of the income should go to the phonogram producer and 50 percent to the performers who played on the recording, it is up to individual Member States to interpret 'equitable remuneration' as they see fit. In other words governments are free to provide that the single payment made by users can be shared in proportions other than 50/50 between the performers and the phonogram producer if they so wish. As we have already seen in the section on copyright and related rights, the WPPT also contains a provision for Member States to opt out of this right altogether by 'reserving their position'.


It is unfortunate for performers and phonogram producers that the governments of China, Iran, North Korea, Rwanda and the US have decided to make this reservation. This means that there are no related rights in the public performance of sound recordings for performers and phonogram producers in those countries, except that the US does have the right for digital broadcasts by satellite or by webcast. With the US accounting for some 35 percent of the entire world music market, this represents



an important loss of compensation for performers and phonogram producers worldwide. As the related right in the public performance of sound recordings is usually a reciprocal right between countries, US performers are unable to receive income when their recordings are broadcast in countries that do have the related right for the public performance of sound recordings. As is well known, US performers are exceptionally successful worldwide. For some radio stations in countries outside of the US, these performers account for up to 50 percent of all records broadcast. This means that US performers are severely disadvantaged compared to their foreign counterparts. Performers based abroad who have success within the US also suffer, but US performers are the biggest losers as they receive nothing when their recordings are broadcast in their own country, and they also receive nothing when their records are played outside of the US. As previously stated, the US did introduce a related right in the public performance of sound recordings for digital satellite broadcasts and webcasting over the internet when it passed the Digital Performance Right in Sound Recordings Act 1995, but this did not cover analogue or digital broadcasts on free-to-air radio.

The collection society that collects digital webcasting and satellite income on behalf of performers and phonogram producers in the US is Sound Exchange. They will also distribute this digital income to foreign performers and phonogram producers, so if a performer has any recordings released or played on a webcast or satellite radio based in the US it is important to join Sound Exchange (www.soundexchange.com). Moves are afoot to introduce a public performance right in sound recordings in the US for free-to-air radio (both analogue and digital) which would bring substantial benefit to performers and phonogram producers worldwide and which would create a level playing field in the US for competition between free-to-air radio broadcasters on the one hand, and satellite broadcasters and webcasters on the other. It is to be hoped that those countries that do not have a public performance right in sound recordings will establish such a right and that effective collection societies are set up worldwide, so that income can flow freely across international borders to the appropriate right holders.

Some countries have a joint related rights collection society which collects income for both phonogram producers and performers such as LSG in Austria, Gramex in Denmark, GVL in Germany, SOCINPRO in Brazil, PPL in the UK and SENA in the Netherlands, whilst other countries have related rights collection societies that collect



exclusively for phonogram producers such as some IFPI national organisations, and others that collect exclusively for performers such as ADAMI and SPEDIDAM in France, IMAIE in Italy and GEIDANKYO in Japan.

Although there should be reciprocal agreements between countries, there have been many difficulties in achieving this due to the different ways they have developed and the fact that, unlike authors who have CISAC as their international body, there is no one international umbrella organisation for related rights collection societies.

For example, some performer-only societies have refused to pay out to foreign performers where there are several different collection societies in the country concerned, resulting in income due to foreign performers reverting to domestic performers. In the UK, remuneration is allocated to all performers irrespective of whether they, or the recordings on which they appear, qualify for equitable remuneration.

This income allocated to non-qualifying performers (mostly US performers) is then paid to the phonogram producer copyright owner. US performers should try and get a provision in their recording agreements whereby their share of UK equitable remuneration is paid through to them in the US. The UK related rights collection society PPL is one of the most active supporters of the musicFIRST Coalition which is a US-based pressure group trying to persuade the US government to introduce a public performance right in sound recordings for terrestrial radio. If successful, US performers and recordings would qualify automatically for the allocated share of equitable remuneration in the UK and elsewhere, and non-US performers whose records are played on US radio would receive a share of income generated in the US – so performers everywhere should support this initiative. Should this goal be achieved it will automatically regularise PPL income collected for US performers in the UK. The PPL collects more related rights income than any other related rights collection society in the world and is making considerable progress with international reciprocal payments. Another exception is GVL in Germany which uses a different monitoring system entirely and bases its payments on record sales rather than the actual public performance of a recording.

There is clearly a long way to go in streamlining and harmonising neighbouring rights collection societies and providing performers and phonogram producers with an efficient reciprocal transfer of income across borders. It is hoped that in future this flow of income can be achieved in the same way as that enjoyed by authors.



The important issues concerning related rights in the public performance of sound recordings for performers start in the recording process. It is essential to record exactly who performed on a recording and accurately report this information to the appropriate related rights collection society. It is also very important to inform the collection society if the performer's address changes. All related rights societies have problems paying out money to performers they cannot trace.

There are essentially two types of related rights income for the public performance of sound recordings:


1. Income from a recording broadcast or communicated to the public by cable, satellite or the Internet.
2. Income from other public performances.

The first category is self explanatory. It is the income paid out by broadcasters, cablecasters, satellite broadcasters and webcasters when a recording is played on their station or network. The second category is all other uses such as when a recording is played in a hairdressing salon, shop, restaurant or at a sports event etc. Most countries in the developed world collect for both types of related rights performance income but some countries such as Japan have only legislated for broadcasting and communication to the public performance income for sound recordings and not for other public performance uses.

If an artist has his/her own record label or co-owns the label with his/her manager they can of course collect both the performer's public performance in sound recordings income and the phonogram producer's income. In this case it is very important for all the artist's recordings to be correctly registered with the related rights collection society both as a performer and as a phonogram producer.

8.vii Home Copying Levies

Another income stream for authors, performers, publishers and phonogram producers that exists in many countries is that from home copying levies, which are sometimes referred to as private copying levies or blank media levies. These are levies that are applied to blank recordable media such as blank cassettes, CDRs, audiovisual tapes,



recordable DVDs and hard-drives of computers, which are intended to compensate the right holders for consumers copying copy-protected material in their own homes. Some countries also apply a home copying levy on recording hardware such as cassette recorders, video recorders, computers and DVD recorders etc. The levies collected flow to a collection society which could be a stand-alone home copying levy collection society, or one of the existing authors or related rights collection societies, after which the income is distributed to the various right holders.

In the EU most of the Member States have a system of home-copying levies which generate approximately US\$1 billion per year for authors, performers, publishers and phonogram producers. The levies are usually set in the 1-4 percent dealer price range for media and/or recording equipment. In the EU, the UK, Ireland and Luxembourg are notable exceptions where no home copying levies exist, and this considerably disadvantages authors, performers, publishers and phonogram producers in those territories.

There is a school of thought which is critical of the concept of home copying levies. If for example someone purchased a blank CDR and used it to store personal holiday photographs why should he/she pay a levy, the proceeds of which go to music authors, performers, publishers and phonogram producers? Many in the music industry would answer this objection by saying that home copying levies are rough justice, but that it is far better to have rough justice than to have no justice. In some countries such as Germany, home copying levies provide a substantial income stream for authors and performers. The Dutch Private Copying Society *Stichting de Thuis kopie* publishes an excellent and comprehensive report each year on home copying in Europe and also includes some other countries such as Canada and Japan. The report can be viewed at: www.onbezorgdkopieren.nl/UserFiles/File/Survey%202007_Publication_web.pdf.



CHAPTER 9

MUSIC PUBLISHING

An artist who is an author will probably need to consider finding a publisher at some point. In the early stages of an artist's career, publishing income can be achieved by simply joining the appropriate mechanical and public performance author's collection societies and registering the works with them. Generally speaking these collection societies will not pay advances but will simply pay royalties to the author as they are collected. The collection societies will deduct their administration fees from the gross income and pay through the balance to the author. These societies tend to be passive in as much as they will try to collect all income due but they will not usually reach out to the market and try to create new uses for the author's works.

A publisher will often pay a lump sum advance to the author in return for an agreement where the author will be tied to him/her for a period of years or for a number of albums. Usually, everything the author writes within the term of the publishing agreement will be administered exclusively by the publisher, who will also usually agree to reach out to the market and try and create new uses and opportunities for the author's works such as covers, audiovisual uses, the publication of sheet music etc. They may also help the artist and the manager to obtain a recording contract. Hence, if the author signs to a publisher he/she can expect to receive mechanical and public performance royalties as well as a service whereby the publisher seeks new uses for the author's works in order to generate more income. In return for an advance and for these services, the publisher will want to take a larger share than is the case if the author receives income directly from the collection societies. In the early days of an artist's career there is usually very little money available so a publishing advance can really help the artist to get started.



The following are the main deal points of a publishing agreement:

Term: The time period wherein the agreement is effective. This could be a period of time or a number of albums or a combination of both. All works written by the author during the term and sometimes also written prior to the start of the term are controlled by the publisher for the rights period (see below).

Options: The points in the agreement wherein the publisher has to decide whether to continue with the agreement and pay a further advance or to terminate the term of the agreement.

The Rights Period: The period of time in which the publisher has the right to collect publishing income for works created during the term.

Royalties: The royalty rates for mechanical income, public performance income, covers, synchronisation licences, sheet music sales etc. payable to the author.

Royalty Basis: 'Receipts' or 'at source'. 'Receipts' means the amount received by the publisher after costs including the sub-publisher's commissions etc. 'At source' means the actual gross amount paid on behalf of the author from the collection society or record company to the publisher. From the author's point of view it is far better to be paid 'at source'.

Minimum Commitment: The minimum number of works required to be released or written by the author within each option period.

Advances: The lump sums payable to the author on signing the agreement and at the points any options are taken up. These sums are recoupable from royalties.

Territory: The geographical area in which the publisher is entitled to collect publishing income. This is usually anywhere in the world but it could be limited to certain countries or continents.

In regard to royalties, it used to be the case, and still is in some countries, that the publisher would take 50 percent of all income received on a 'receipts' basis and pass on the remaining 50 percent to the author. The publisher would also often demand that the term was for the life of the copyright which, as we saw in the section on copyright and related rights, could be as long as 150 years. Since the 1980s things have changed considerably in the author's favour. A typical deal might be 75/25 at source for mechanicals and performance with other rates for synchronisation and other income. In this typical percentage, 75 percent of the at source income goes to the author and 25 percent is retained by the publisher. A typical term might be for one album cycle (perhaps 18 months) and thereafter one, two or three options which will extend the term if they are taken up.

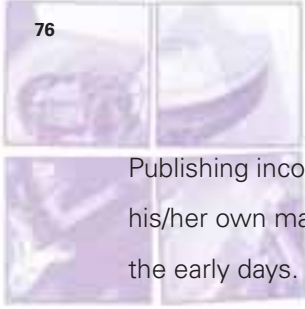


Each option period would cover another album or a minimum number of new works and would attract a further advance. The rights period could be anything from five to 25 years but should not extend beyond that.

Some of the top global music publishers at present are Universal Music Publishing, EMI Music Publishing, Warner/Chappell Music Publishing, Sony-ATV Music Publishing, and BMG Music Publishing although acquisitions and ownership are constantly changing. A newly-established publisher Kobalt Music Publishing arrived on the scene in 2000 with a slightly different business model. Kobalt rarely pays advances but offers a higher royalty of 85-90 percent of income received at source. They will also account to the author every three months instead of every six months as is normal with the major publishers. This arrangement is very attractive to more established artists looking for a new publishing deal but is more difficult for a new author who will probably need an advance to get started.

These are the main duties of a music publisher:

1. To organise the issue of licences and make sure the creator is paid as much remuneration as possible for a particular use.
2. To issue or authorise the issuing of mechanical licences to record companies who want to use the author's work on a recording.
3. To issue and try to acquire 'synchronisation licences' where the author's works are synchronised with visual images (i.e. films, television and advertisements).
4. To obtain 'covers' for the author (i.e. to persuade and suggest that other performers make recordings using the author's work).
5. To correctly register all the authors' works with the appropriate authors' public performance and mechanical collection societies.
6. To administer printed music sales of the author's work or to license this to third parties.
7. To collect the above income on behalf of the author throughout every part of the territory. If the territory is the world the publisher will have offices or sub-publishers in every part of the territory or may collect directly from the local collection society in a particular part of the territory.
8. To accurately account to the author at least once every six months.



Publishing income is very important for an all-round artist who writes and performs his/her own material. It can be the only income stream that allows an artist to live, in the early days. It is generally easier to recoup publishing advances than it is to recoup recording advances as there are normally no deductions other than the publisher's share of the income whereas in recording agreements there are many deductions such as video costs, recording costs and tour support in addition to advances.

Most authors' public performance collection societies will only pay 50 percent of the income received to the publisher with the other 50 percent going straight to the author's bank account. If the royalty rate for public performance in the publishing agreement was 75/25 at source, the publisher would actually take 50 percent of the publisher's share, i.e. 50 percent will be paid directly from the collection society to the author and 50 percent directly from the collection society to the publisher, the latter being defined as the 'publisher's share'. In order to arrive at the 25 percent at source payable to the publisher, the latter will take 50 percent of the 50 percent received from the collection society resulting in 75 percent being paid to the author overall. This system greatly helps the author as, in addition to the publisher's advance, the author knows that 50 percent of public performance income will be received even if his/her account with the publisher is not recouped. This greatly helps the author's cash-flow.

As mentioned previously in the section on Authors Public Performance Collection Societies, it is also important to be aware that in many countries income is collected from the promoter of live events by the authors' public performance collection society. This could be anything from 1- 5 percent of the gross income from box office ticket sales. Some of these authors' collection societies are sophisticated enough to ask the promoter for details of every work that was performed at a particular concert. If this form is correctly completed, the money collected will eventually be paid to the writers of the works performed. The artist or the artist's manager should make sure these forms are completed accurately as, if the artist is an author, this will provide a further publishing income stream for the artist.



CHAPTER 10


MUSIC IN FILM, TV AND ADVERTISING

Let us now look at the use of music in film, television and advertising. This audiovisual use of music is becoming increasingly important to performers, authors, phonogram producers and publishers as income from the sales of conventional recordings diminishes.

As an example, the author of this publication secured the use of one of his artists' songs in an advertisement for an automobile in Japan. He and the artist's publisher negotiated a synchronisation fee of US\$70,000 for the use of the music in this advertisement. The car company wanted to save money and/or put its own creative style to the song, so they decided to make their own recording of it. By doing this they did not have to pay the artist's phonogram producer or the artist for the recording rights. Suzuki paid local Japanese musicians a one-off session fee to make the new recording of the song. They did, however, have to pay the publisher and the author for the use of the musical composition and this is what the one-time synchronisation fee of US\$70,000 covered. But that is only a part of the income that this use generated. There was also the right of public performance in the work which was collected, based on the amount of public exposure this advertisement had, by the local authors' collection society which in this case was JASRAC.

The advertisement was shown on every major Japanese commercial television station several times a day for a year which generated a very substantial amount of public performance income. The result was a pay-through to the author of over US\$500,000. A further bonus was that the author's moral rights were upheld in a very high profile way, as the author's name appeared in a corner of the television screen while the advertisement was showing.

Many audiovisual uses of music generate a very small amount of income, but as can be seen by this somewhat exceptional example, it is very important for the publisher



and the manager to devote a considerable amount of time trying to get the artist's music used in audiovisual media.

In addition to the financial rewards, any audiovisual use of the artist's music whether the artist is a creator, a performer, or both can be very helpful in his/her career development. It provides mass exposure of the artist's music which can often lead to increased record sales and generally elevate, or, in the case of an unknown performer, can sometimes launch an entire career.

One aspect of the audiovisual use of music is that this is one of the only areas where the copyright in the work and the related rights in the sound recording are usually regarded as being equal in value. When a fee is agreed with the user for either the synchronisation fee for the work, or for the master re-use fee for the sound recording, the fee is usually agreed on a 'most favoured nations' basis. This means that if the other copyright/related rights fee is greater than that agreed, it is automatically increased to the same figure as the other copyright or related rights fee. For example if a publisher agrees a synchronisation fee of US\$10,000 and the phonogram producer agrees a master re-use fee of US\$8,000 on a most favoured nations basis, the master re-use fee would automatically increase to US\$10,000 to equal the amount of the synchronisation fee agreed by the publisher. The most favoured nations arrangement always equalises at the higher figure, not the lowest.

10.i Music in Films

Since the dawn of audiovisual films when sound was first successfully synchronised to moving images in the 1920s, music has been an essential ingredient in their production. It has the ability to enhance a mood or a piece of drama on the screen which heightens the desired effect to the viewer.

There are several ways a film producer will approach this in conjunction with the film director. It usually involves engaging an author to compose an entire score for the film, but increasingly this will be interspersed with existing recordings and/or works which are often recognisable by an audience, or which have enhancing lyrics or mood, again heightening the effect of a scene in the film. A moviegoer, staying in a cinema when a film is over, will see a long list of credits including all the songs that were used.



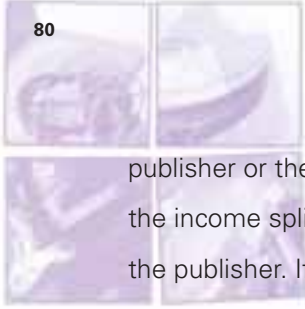
Typically such credits show who wrote the song, who performed it, who the publisher is and who owns the rights in the recording. These credits will also state who the music supervisor was and who the film score composer was for the film.

(The author of this book has often experienced pressure to leave from cinema cleaners, as he stayed right to the end of the credits for a film often taking notes).

If a publisher or manager can achieve such a use of one of the artist's existing recordings this opens up several income streams. In the case of a major movie these are:

1. A synchronisation fee payable from the film company to the author or the author's publisher who will in due course credit the author's royalty account according to the publishing agreement.
2. A master re-use fee payable from the film company to the related right owner of the sound recording, usually the performer's phonogram producer, which will in due course be credited to the performer's royalty account according to the performer's recording agreement.
3. Mechanical royalty income to the author, and the author's publisher if the song appears on a soundtrack album of the film.
4. Recording royalty income for the performer and for the phonogram producer if the song appears on a soundtrack album of the film.
5. Public performance income for the author and the author's publisher in countries where such rights exist, when the film is shown in public cinemas.

But how do artists get their music into a major film? The best method for a manager is to be on good terms with the artist's publisher's film and television music co-ordinator. This is the publisher's representative who will meet with all the film music supervisors and suggest suitable songs for inclusion in the film. The problem here is that if the artist is with one of the major international publishers, the publisher's music co-ordinator will approach the film's music supervisor often representing over a million works, so in that situation the chances of any real representation of the author are very low. It is therefore essential that the manager, as well as the publisher, takes a pro-active role in seeking to acquire audiovisual placements. This can also be to the financial advantage of the artist and manager as there are often different rates in publishing and recording agreements when a synchronisation or master re-use licence is obtained by the artist and manager, as opposed to when it is obtained by the



publisher or the phonogram producer, e.g. If the publisher obtains the synchronisation, the income split in the agreement might be 65 percent to the artist and 35 percent to the publisher. If the manager and artist obtain the synchronisation, the income split may be increased in the artist's favour to perhaps 75 percent to the artist and 25 percent to the publisher. The same increase is often negotiated in recording agreements where the split could be 50 percent to each party on master re-use fees which could increase to 60 percent to the artist if the artist/manager procures the master re-use.

The first step for the manager or artist is to find all the information on who the independent music supervisors and the major film company music departments representatives are. All the US, Canadian and some European information can be found in a yearly publication called *The Film and Television Music Guide* which is available from The Music Business Registry in Los Angeles (www.musicregistry.com). Another way to keep up-to-date with which films are in production and who are the music supervisors appointed for them, is to look at the *Hollywood Reporter International Edition* which is a weekly publication carrying all the latest information (www.hollywoodreporter.com).

One thing is certain, unless an artist or the artist's manager is standing at the bus stop they are never going to get on the bus. In other words unless the music supervisors have the artist's music nothing is ever going to happen.

The author of this publication has found that going to Los Angeles and meeting as many people involved with music in films as possible has always paid off and if an artist or the artist's manager can do this, it is strongly recommended. If that is not possible, the next best thing is to send an MP3 music file as an e-mail attachment, but do not do this too often as it can be annoying for the recipient. It might be that the music supervisor has an emergency and desperately needs a piece of music just as the artist's manager's e-mail arrives, and suddenly the music may get included in the film. It is best to only ever send one track at a time by this means, as it takes the recipient a while to download even with fast broadband.

Whilst the vast majority of global film releases come from Hollywood, there are of course very active film industries in other countries such as India (Bollywood), France, Germany, Australia, New Zealand and the UK all of which should be targeted for possible synchronisation and master re-use if it is felt that the artist's music might be suitable.



10.ii Music in Television

Music in television productions is another important income stream possibility for authors and performers, although the synchronisation fees payable are usually much lower than those for films.

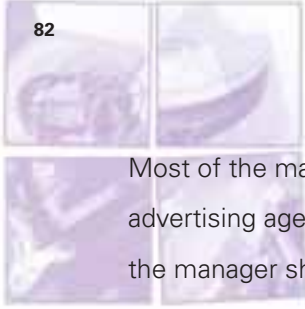
In many countries there are industry agreements whereby certain set fees, usually based on the time in minutes the music is used on screen, are agreed between the publishers and phonogram producers on the one hand and a particular TV station or channel on the other. These rates may vary according to the time of day the music was used and on which TV channel. Collection societies will also have agreements in place in regard to their rates for the public performance of the music.

In the US, the system used for music in television is much the same as that for films, i.e. a synchronisation fee is negotiated in each case. The major difference in the US is that, whereas there is no public performance right for films shown in movie theatres, there is a public performance right when music is used for television. So when the Rembrandts' song *I'll be There for You* was chosen by American TV network NBC for the signature tune of their highly successful series *Friends* the synchronisation fee would have been insignificant compared to all the public performance income that must have been generated over the years. Again the artist's publisher's film and TV representative will be the one with whom to stay in contact, but the manager should also be independently pro-active wherever possible.

10.iii Music in Advertising

Placing music in advertisements can also be very financially rewarding as was seen in the example at the beginning of this section. Japan is particularly strong in this regard and it is a very good way to break into the Japanese market. Unfortunately many Japanese corporations are only too aware of this and may ask a new up-and-coming artist to waive the public performance income if his/her song is to be used on national television for a particular product. As can be seen by the earlier example, it can be a difficult decision to make.

This is again a function of the artist's publisher's film and TV co-ordinator, but it may be that the artist's publisher has a member of staff who works on advertising uses only.



Most of the major advertising agencies have music departments, and again, unless advertising agencies are aware of an artist's music they are never going to place it, so the manager should make sure that as many agencies as possible are aware of the artist's material.

Artists such as Groove Armada, whose track *Shakin' that Ass* has been used extensively on the Renault Mégane television commercials internationally, have reaped enormous rewards from this use. It was also estimated that Sting's track *Desert Rose* which was used in a TV advertisement for Jaguar cars resulted in Sting selling over 2 million additional albums: so uses in advertising can be very beneficial.

10.iv Music In Video Computer Games

Music in computer games (or 'video games' as they are referred to in North America) is an area that is becoming increasingly significant, not so much for the amount of income that such uses generate, but more for the marketing and career opportunities that they can create.

The biggest computer games software companies in the world are Electronic Arts, Activision, THQ and Ubisoft. Electronic Arts based in Los Angeles, is one of the biggest video computer game corporation in the world and is responsible for such successes as *The Sims*, *FIFA World Cup*, *Need for Speed*, *Maddon NFL*, *NFL Live*, *NBA Live*, *NBA Street*, *SSX*, *Tiger Woods PGA Tour*, *Medal of Honour*, *Command and Conquer*, *NCAA* and *Harry Potter*. Sometimes the games are adapted for each country, at least in the packaging, but they can also be adapted so that the entire game is in the local language. Music included in such games has enabled unknown artists to obtain major recording and publishing contracts and to sell thousands if not hundreds of thousands of albums.

The fees payable are usually 'buy out' fixed synchronisation and master re-use fees in the US\$3000-US\$15,000 range 'per side' with no royalties payable. The term 'per side' means that there would be roughly US\$3000-US\$15,000 payable to the author(s) either directly or through their publisher, and the same fee payable again to whoever owns the copyright in the sound recording. A 'most favoured nations' arrangement usually operates where the fee payable for the work will be the same as that paid for



the use of the recording. Most of the large video computer games companies work on this buy out only basis but some smaller companies, and companies which produce music-based video games such as *Guitar Hero*, will pay an advance against royalties.

Many artists and managers overlook this hugely important use of music, but they do so at their peril. Some in the music industry are even regarding music in video games as the 'new radio', especially as it seems to be getting increasingly difficult to get new music broadcast on the radio in many countries, particularly in the US. Many young people are spending countless hours each week playing video games and hear more music on video games than they do in any other way.

10.v Library or Production Music


Library or production music is usually created by specialist library music companies who are often linked to one of the major publishers. An author is asked to write music for specific audiovisual moods or types of use such as 'high drama' or 'tranquillity' or 'travel music'. The library music company will pay for the recording of the work using session musicians and will own the copyright in the recording. A film company, a television company, or an advertising agency can then use this music in return for certain set rates. The music has already been cleared so it is easy for the audiovisual music co-ordinator to use.

Compensation to the author for production music is usually 50 percent of any fees received and 50 percent of any associated public performance payments.

The rates for library music are sometimes set and administered by a collection society that collects mechanical royalties on behalf of publishers and authors such as the MCPS in the UK. The licence that such a collection society will issue will cover both the clearance in the rights of the recording and clearance in the rights in the work. The rates will vary depending on the number of minutes of music used and the type of use.

10.vi Commissioned Music

When a film company, television company or advertising agency want a completely new piece of music for a particular use they will often commission an author to write



something specifically for a particular use or scene. In the case of a major film or television production an author might be asked to write the entire film score.

There are approximately ten major film score composers such as Hans Zimmer, Howard Shore and David Arnold who are regularly employed in this way and it is often difficult for a new composer to break in. Film companies tend to play safe and use tried and tested composers who they know will deliver. If this is an area an author wishes to explore, it is important to create a showreel and engage a specialist composer agent such as Gorfaine/Schwarz (www.gsamusic.com), Blue Focus (www.bluefocusmgmt.com) or Soundtrack Music Associates (www.soundtrk.com) all of which are based in Los Angeles, or Air-Edel (www.air-edel.co.uk) which is based in London. A full list of composer agents and many other categories of music in the film business is available in the above-mentioned Film and Television Music Guide (www.musicregistry.com).



CHAPTER 11

LIVE WORK, TOURING AND MERCHANDISING

As we have seen in the section on artist management, live work is becoming more and more important as an income stream for artists. Whilst the Internet is throwing up some serious challenges to the traditional income stream for sales of recordings, live performances will always be unique and hold a special value for consumers. It is impossible to experience the real effect of a live performance unless one is actually present at the time, and whilst there will always be DVDs and audio recordings of an artist's live performances, these will never compare with actually being there. If an artist becomes very popular with just one or two big hit recordings he/she can continue to earn a good living as a live performer from that public awareness for the rest of his/her life.

For example, The Searchers who were a very successful British band in the 1960s still continue to play over 100 shows per year worldwide to an audience now mostly in the 50-75 age group. In the early 1960s this audience was in the 10-25 year range but they have stayed loyal to the bands they loved when they were young. The artists and the audience have grown old together allowing the artists to continue making a good living from live work alone. The most extreme example of this is the Rolling Stones who still write and record new albums but now have little success in terms of record sales. Their touring career, however, is another matter. Their 2005/6 world tour was estimated to have grossed over US\$400,000,000 with tickets on sale at up to US\$400 each. Mick Jagger, Keith Richard and Charlie Watts, the three original members of the band are now all in their sixties and with every world tour the worldwide audience wonders: 'Will this be the last ever Rolling Stones tour?' The result is huge audiences no matter how much the tickets cost.

Many other artists who had hits years ago such as Crowded House (New Zealand), The Zombies (UK), Paul McCartney (UK), Van Halen (US), The Police (UK), Take That



(UK), The Eagles (US) and the Spice Girls (UK), are dusting off their guitars and going back out on tour with great success.

No matter what kind of music an artist chooses to play it is immensely important to work hard on live performances both in terms of improving musical skills and visual presentation. The live performance has to impress the audience whether by sheer spectacle, musical excitement, musical brilliance, by moving the audience emotionally or by making the audience dance. If an artist can impress an audience and make the live performance experience a good one, the audience will grow and this will enhance all the income streams mentioned.

11.i Getting Started as a Live Artist

The best way to establish oneself as an impressive live performer is to spend a lot of time rehearsing. A performer who plays a musical instrument should learn from other players, study footage of favourite players, take lessons, and play as much as possible every day. Even the most accomplished musicians need to practise extensively every day if they are to remain at their best. If the performer is a singer, no matter how good or successful, it is essential to take regular lessons.

The other facet of performing live is the stage presentation. One very good way to perfect this is to rehearse in a room that has a wall of mirrors so the artist can see what he/she looks like while performing. In this way it is possible to try out new things and develop moves that add to the overall live experience. If the artist is a band they can see how the members of the band interact with each other on stage for maximum effect. Clothes, hair and make-up can also be important in creating the right look. Never underestimate the importance of presentation. Whether it be outrageous, cool, sexy or ultra smart it can greatly effect how impressive an artist's performance is for an audience. No matter how successful an artist becomes, it is important to always be thinking about new ways to present the music to an audience so that the artist's style constantly evolves.

In the early stages an artist should try to get on as many live shows as possible no matter how small the potential audience. The artist should play live at parties, bars, malls and clubs, in fact anywhere where there is an audience. When UK band the

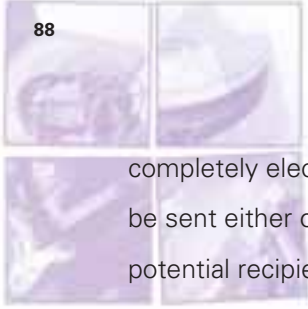


Police played their first ever show in the US it was at a small club called *The Last Chance* in Poughkeepsie in upstate New York. There were only three people in the audience but they still performed with complete conviction as if the venue had been full. As most people will know, The Police went on to become one of the most successful bands in the world in the 1980s, and after they split in 1984 their lead singer, Sting, went on to have a hugely successful career as a solo artist. Similarly the Irish band U2 played over 250 shows in their first year perfecting their songs and stagecraft. The important thing for artists is to play every show as if their lives depended on it, no matter how big the audience. With regular rehearsals and hard work an artist's live performance will hopefully become something that audiences will want to see, and then everything can build from there.

As mentioned in the section on artist management, it is essential to build an audience through the creation of a fan database. At every show there should be leaflets handed out encouraging people to fill in their names and addresses to be informed of future shows and record releases etc. With this database it is possible for the artist and the manager to either attract the interest of phonogram producers, or to create sales in their own record company which can be developed worldwide. If the plan is to sign a recording agreement with a third party phonogram producer it is advisable to pick a really good venue with a good PA and lighting system where the conditions for performing will be at their best. The fans on the database should then be informed that this is a special show and it would be very helpful to the artist if they attended. With any luck the place will be full which always impresses phonogram producers. If they can see that the artist has a large and enthusiastic fan base this will encourage them to offer a recording contract.

It is also important to write an interesting biography of no more than two pages, which should include a history of the artist's career to date, including achievements in the media, live performances and any other notable events. Good photographs are also important. Try and find one of the artist's fans or a local photographer who is enthusiastic about the project. Most amateur photographers are only too pleased to take photographs of an artist or band at very little cost.

With a good biography, photographs and possibly a CD of the artist's best recordings, the manager or artist will have created the first press kit. This press kit can now be



completely electronic and is referred to as an Electronic Press Kit (EPK). An EPK can be sent either on a CD or DVD or can be downloaded from a website by sending the potential recipient the appropriate link. An EPK could feature a video interview with the artist as well as downloadable high resolution photographs, a text biography, live footage of the artist performing and any other audio or audiovisual information. This press kit whether physical or electronic, should be sent to local radio and TV stations, as well as newspapers and magazines in the area of each live performance. The artist or manager should follow up by telephoning and trying to persuade them to do a phone interview or an in-studio interview or performance, in order to boost ticket sales for the show. As an artist becomes more successful a publicist could be engaged to handle this media interaction on behalf of the artist, but in the early stages either the manager or artist or both will have to do it themselves. It is also a good idea to have some T-shirts or other clothing manufactured for sale at live shows along with any recorded material. As we will see later in this section, sales of merchandise can prove to be a very important income stream for artists.

11.ii The Next Stage

Let us now consider the situation where an artist is attracting good-sized audiences at live shows and things are building.

As has been touched on in the section on artist management this is the time the artist should consider finding a manager if this has not already been done.

11.iii Booking Agents

The manager will then need to find a booking agent unless wishing to take on this role him/herself. A booking agent will be the interface between the manager/artist and promoters who are interested in presenting live shows. A good booking agent who is prepared to work hard to get an artist live work can be a very important part of the team. Interestingly, finding a booking agent is one of the most difficult things for a manager. Booking agents tend to be very particular about whom they represent and they will want to be convinced that it will be worth their while. A booking agent will typically take 10 percent of the gross fee negotiated for an artist to play a particular date. It is often the case that initially the booking agent may wish to take 15 percent



of the fee up to a certain level. When that level is reached, the commission will reduce to 10 percent. In return for the commission agreed, the booking agent will find live opportunities, negotiate fees and issue contracts on behalf of the artist. The fee for a performance could be a straight guaranteed fee or it could be a guaranteed fee against a percentage of box office ticket sales. For example the fee might be US\$1000 guaranteed or 70 percent of the gross ticket sales, (less any sales tax or VAT), whichever is the greater. If the after tax gross ticket sales were US\$1400, the artist would receive the US\$1000 guarantee only, as 70 percent of US\$1400 is US\$980 which is less than the US\$1000 guarantee. On the other hand if the gross ticket sales were US\$3000 the artist would receive a fee of US\$2100, as 70 percent of US\$3000 is US\$2100 which is higher than the US\$1000 guarantee. The difference between the guarantee and the percentage is often referred to as the 'overage'. In this example the overage was US\$1100.

It is often the case that there will be different booking agents in different territories, but some of the larger booking agencies can operate on a worldwide basis. It is often the case that an artist has one booking agent in Europe and another in the US. The rest of the world can be divided between these two agents. The US agent may also want Canada and Latin America, for example, whereas the European agent may want to include Australia and Japan.

11.iv Tour Managers

The manager will also need to engage a tour manager unless wishing to take this role on him/herself. A tour manager is responsible for all the day-to-day running of a tour including the coordination of travel and hotel arrangements, keeping good financial records of expenditure, looking after the artist, and interfacing with promoters at the shows. It is essential that good financial records be maintained on tours and a good tour manager will have a spreadsheet system in place which can be e-mailed back to the manager on a daily or weekly basis. This computer spreadsheet will show all income received on the road, together with all expenditure and the balance of cash in hand.

11.v Building a Touring Team

In addition to the tour manager, the manager may need to engage additional road crew as the artist becomes more popular and is able to do bigger shows. This could include:

1. A front of house sound engineer who is usually positioned at the back of the venue (the end opposite to that of the stage) and who mixes the sound that the audience will hear.
2. A monitor engineer who is usually positioned at the side of the stage and who will mix the sound on stage so that the performers can hear each other and play in time and in tune with each other.
3. A lighting engineer who will direct the stage lighting and visual special effects.
4. On stage roadies who supervise and set up the on-stage equipment.
5. Drivers for buses and/or trucks for the equipment.
6. A production manager who supervises all aspects of the on-stage equipment, the PA and lighting systems, especially if they are being transported from show to show.

11.vi Visas and Work Permits

For any live work outside of the artist's country of residence a visa or work permit is often required. The process involved in obtaining these can take up to four months in some cases, so it is essential for the manager or artist to deal with this issue as soon as foreign dates are confirmed. There have been numerous foreign tours that have been cancelled due to insufficient paperwork, which is a disaster for the artist and very embarrassing for the manager. Visas and work permits need to be a top priority for any good manager and the progress of these documents needs to be monitored on a daily basis.

If the artist or any member of a band has a criminal record for drug possession or anything else, this can be a major problem in securing visas and work permits, so before engaging a new band member it is worth checking these issues. Obtaining visas to perform in the US is becoming increasingly difficult. There are also substantial government fees attached to a successful US work visa. A scheme also exists that, for an extra fee, an artist's visa can be fast-tracked through the system, but even this process can take up to two months to complete.



If the manager feels uncomfortable about interfacing with consulates and embassies for such documentation there are several specialist visa agencies that can be used to obtain visas on behalf of artists. One such agency specialising in US work visas is Traffic Control based in New York (www.tcgworld.com). There is also a separately-owned Traffic Control agency in London specialising in European work visas. (www.trafficcontrolgroup.com). These are just two examples, but an Internet search will throw up several examples of other such agencies based all around the world. It should be noted that no visas or work permits are required if the artist is resident in the EU and wishes to perform in another EU member country.

11.vii Freight Agents, Shipping and Carnets

If equipment is being shipped from one country to another it is often the case that temporary import documentation is required and this is known as a 'carnet'. If an artist is based within the EU and wishes to perform in another EU member country carnets are not required. If, however, the artist is based in Italy and wishes to perform in Norway (which is not a member of the EU) then a carnet would be required. Similarly if the artist is based outside the US and wishes to perform in the US a 'manifest' is required listing every piece of equipment that is being temporarily imported, together with serial numbers and other details.

Specialist freight agents such as Rock-It Cargo (www.rock-itcargo.com) will, for a fee, do all the necessary paperwork including obtaining the correct carnets and customs clearances and ship the artist's equipment to specific destinations worldwide.

Rock-It Cargo have offices in the UK, the US, Japan and South Africa and are the biggest freight operators in the music sector. Other music freighting companies are Soundmoves (based in the UK and the US, www.soundmoves.com), Showfreight (based in Australia) and Dynamic International Freight Services (based in the UK, www.dontpanic-calldynamic.com).

If equipment is moved by road it should be noted that some countries have restrictions on vehicles over a certain weight travelling on Sundays and national holidays. A special permit can usually be obtained if it is essential to transport the artist's equipment in a large vehicle on these days, but this needs to be organised well in advance.



11.viii Travel and Hotel Arrangements

The manager will also need to coordinate travel and hotel arrangements, usually with a travel agent and the tour manager. Sometimes the manager will delegate everything to the tour manager but the manager should still monitor the costs and logistics of all the arrangements. It is always a good idea to start early when leaving for the next show in the next town or city, so as to allow for unexpected factors such as a vehicle breakdown, heavy traffic or bad weather. If there are two hours in hand this can make the difference between being able to perform or not, or maybe having to do the show without a sound check which is never a good idea. Similarly it is always better to take earlier flights so that if by chance one flight is cancelled there is still a chance to catch a later flight and reach the destination in time.

One form of transport in the early stages is what is known as a 'splitter bus'. This is a medium-sized bus that has seating for the artist's entourage at the front and a separate area at the back for the artist's stage equipment. Another way of doing this is to use a seated bus that tows a trailer containing the artist's stage equipment. When the artist becomes better known it may be that the use of a full-sized tour bus becomes feasible. These are custom made buses which have one or two lounges, on-board toilet facilities, kitchen facilities and on-board sleeping facilities. The artist's entourage can sleep through the night whilst the bus is travelling from one city to the next which is convenient and saves hotel costs. It is also possible in some cases for these luxury buses also to tow trailers containing the artist's stage equipment.

It may also be the case that the artist needs to do radio and television promotions on show days. Unless he/she is some kind of super-being it is best to pace this as carefully as possible. If an artist has not had enough sleep and does too much promotion, the show that night could be adversely affected. It is not a good idea either for an artist to have to sing early in the morning on radio or television. The human voice does not warm up until around midday. Singing live on radio or TV before that time can do some singers more harm than good.



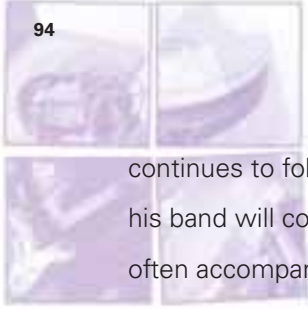
11.ix Insurance

The manager will need to make sure that adequate insurance has been taken out prior to the start of the tour. The artist's equipment will need to be insured against damage or loss during travel and whilst away from its normal home base. The artist should also be insured for 'public liability' which usually provides cover for up to US\$5,000,000 against damages if any member of the audience should be injured or even die at a concert. Public liability insurance doesn't actually cost very much even if the sum insured seems to be very high. Cancellation insurance is also possible on tours, where a small percentage of the total revenue of the tour is paid to the insurer. If any essential member of the artist's entourage falls ill and is unable to perform or if the show has to be cancelled for any reason outside the control of the artist and the manager, such as transport failure, the insurer will compensate the artist for the full fee even though the concert did not take place. This cancellation insurance can also cover the eventuality of a member of the artist's family falling seriously ill, resulting in the cancellation of a show or shows.

Some countries have special insurance and employment requirements which must be checked prior to a tour commencing, e.g. to work in the US a Workers Compensation certificate is necessary. There are several specialist music business insurance agents such as Robertson Taylor Insurance Brokers who have offices in Los Angeles, Las Vegas, New York and London (www.robertson-taylor.co.uk), and Apex Insurance Services Ltd. (email: martin@apex-ins.co.uk) who can provide the insurance required.

11.x Security

In cases where an artist has a fanatical following such as is the case with some young boy bands who attract large female audiences, security could be a major issue. It is the manager's job to ensure that the artist is secure at all times and special arrangements will need to be made, particularly in getting to and from the venue or to and from TV and radio stations. The venues themselves can often assist with this but it may be necessary to employ a special security person who accompanies the artist at all times. In extreme cases the artist will come off stage, jump straight into a car and be away from the venue before the audience has stopped applauding so as to avoid any problems. The Beatle, Ringo Starr, who still tours from time to time,



continues to follow this procedure which the Beatles perfected in the 1960s. He and his band will come off stage, get straight into a waiting limousine, drive to the airport, often accompanied by police outriders, and board a private jet bound for the next city. They then check into a hotel that same night. That's as expensive as it gets.

11.xi Accounting

One of the primary duties of a manager is to ensure that the artist gets paid properly and that expenditure is kept under control. This is largely the responsibility of the tour manager but for important tours, a specialist tour accountant may be engaged who will be on the road with the artist and who will make sure that the correct amounts are being paid by the promoter for each show and that all outgoings are kept within budget.

It is particularly important that the manager monitors shows where a percentage of the gross ticket sales are a factor in the fee payable. These deals can often be quite complex and will include the promoter's expenditure which may need to be verified.

As has been mentioned earlier the most important thing with all tours no matter how small or large they are, is to keep accurate financial records on a daily basis, preferably on a computer spreadsheet. This will make for efficient accounting at the end of the tour, which is in everyone's interest.

11.xii WOMAD, WOMEX and other Festivals

One opportunity for artists from developing countries to perform in other countries is to try to get a booking at one of the WOMAD festivals. The World of Music Arts and Dance (WOMAD) organisation was established by Peter Gabriel in 1980. Peter, who had a very successful career as lead singer of Genesis and later in his own right as a solo artist, had a particular interest in African music and wanted to set up an organisation which would promote music from all over the world. Together with Thomas Brooman and Bob Hooten, Peter presented the first WOMAD festival in England in 1982. Since then 160 WOMAD festivals have been organised in 27 countries. There are currently about 10 WOMAD festivals each year worldwide. The festivals feature live performances by artists from all over the world, workshops for musical instrument players and singers as well as dancers.




Artists wishing to be considered for a booking at one of the WOMAD festivals should send a recording of their music on CD or cassette to WOMAD DEMO, Mill Lane, Box, Corsham, Wiltshire SN13 8PN, UK. WOMAD also requests a one-page biography together with any information about how many band members there are, where the band or artist have played previously and of course the artist or manager's contact details (www.womad.org).

Another very useful organisation for artists from all over the world is WOMEX. Berlin based, WOMEX, organise showcase and networking events in international cities. The best time to contact them is in January and February which is when they decide on which artists they will present. Their events are frequented by many booking agents, record labels, music journalists and media and technology representatives. Their events are a mixture of a trade fair, a conference, a networking opportunity and a venue for artist showcases. Artists will have to pay their own expenses, but it may be possible to get help with these from the artist's government or arts organisation. Go to www.womex.com for more information and/or to subscribe to their free e-newsletter.

The United Nations Scientific and Cultural Organisation (UNESCO) can also provide a wealth of information on music festivals around the world and other music information (www.unesco.org/music). For information on booking agents, promoters, concert venues and festivals, Pollstar publishes several directories which have comprehensive information (www.pollstar.com/about_pollstar.pl?page=Directories).

11.xiii Merchandising

This can provide an immensely important income stream if handled correctly. An astute manager should spend a good deal of time researching into what the artist's fans want in terms of T-shirts, CDs, hats, mouse mats, jewellery, bumper stickers, posters, framed signed photographs etc. If the artist is playing smaller venues, with perhaps up to a 750 capacity, it is an excellent idea for the artist to sign some CDs or photographs in advance and these can be sold at a premium. Personally signed CDs are always in demand by fans and are highly valued. One of the artists represented by the author played a concert in Perth, Australia to 700 people in 2007. As two of the CDs available were signed and there was a good all-round level of stock available the sales of merchandise were just under A\$10,000 which is an excellent figure for the size of audience. It is also a good idea, if the artist is willing, to come out after the show and do a 'meet and greet' with fans. This will



usually involve shaking hands, personally signing tickets, CDs etc. and possibly having pictures taken with fans. A fan who leaves after a good experience will be a fan for life. Of course if the artist becomes very popular, it may be impractical but it works particularly well for developing artists and for 'heritage' artists who are still able to tour successfully but who had hits years ago. An extreme case of this is the US singer/songwriter and guitarist Richie Havens who was very popular in the late 1960s, particularly as a result of his appearances at the Woodstock and Isle of Wight festivals. He likes to sit down at a table and talk and sign items for as many members of the audience as possible after a show. He has been known to be doing this in some venues until 3.00am.

On a tour, it is important to control the stock merchandise carefully. If the right stock is not at the venue, income will obviously suffer. There is nothing worse than having an audience clamouring to buy merchandise and there being very little to sell. If an artist becomes more popular, selling perhaps over 1000 tickets per show, it is worth considering hiring specialist merchandisers. These are companies who will organise everything from design to manufacture to the actual selling of the merchandise at each venue. For this service they will take a percentage of sales. They may also pay an advance prior to the tour which can help the tour's cash-flow. At some venues, particularly larger ones, the venue itself will also require a percentage on sales. This may be negotiable but sometimes it will be a case of 'take it or leave it'. It is important that the manager works closely with the merchandiser, the promoter, the booking agent and the venue to ensure that the pricing structure of the merchandise is such that it is affordable for the consumer and allows a reasonable margin for the artist.

There are many specialist merchandising companies. These are examples of some of the world's largest: Backstreet International Merchandise (based in New York and London, www.bsimerch.com), Bravado (based in Stockholm, London, New York, Los Angeles and San Francisco, www.bravado.com), Signatures Network (based in San Francisco and Los Angeles, www.signaturesnetwork.com), Anthill (based in New York, www.anthilltrading.com), Bioworld (based in the Netherlands, www.bioworldmerch.nl), Cinderblock (based in Oakland California, www.cinderblock.com), TSP Merchandise (based in Australia, www.tsprint.com.au), Shinko Music (based in Japan, www.shinko-music.co.jp/main/Top.do) and SMC (based in Japan, www.smci.jp).

Some of these companies, such as Bravado, are more geared to touring merchandise whereas others such as Backstreet are more geared towards on-line merchandising.



An on-line merchandiser, such as CD Baby or Backstreet will also distribute CDs and DVDs for an artist via their own on-line web-store or via a web-store created specially for the artist. A typical arrangement for this service is for the on-line web-store provider to take 20-30 percent of all sales depending on the volume shipped. This assumes the artist provides the on-line merchandiser with a manufactured finished product. If the merchandiser manufactures the merchandise and/or CDs at its own cost, the percentage taken can increase to 60-70 percent leaving the artist with 30-40 percent of sales. The processing of merchandising and recorded product sales on-line including processing the credit card payments and shipping the product is sometimes referred to as 'fulfilment'.

Another issue in regard to merchandising is that of 'bootlegging', i.e. rogue sellers of illegal merchandise outside the venue. This is particularly common outside large venues for very popular artists. Many countries have laws which allow for the prosecution of such illegal sellers but it is essential for the artist to have registered trademarks for his/her name and artwork in that country. There was a case in the 1990s in the UK where the trading standards officers in the town of Aylesbury wanted to prosecute sellers of illegal merchandise outside a very large local venue. This was the Milton Keynes Bowl and the concert was given by a very successful US band. Since the band did not have a trademark registration in the UK they were unable to prosecute the bootleggers. There are specialist trademark lawyers and agents who can assist in securing national and international trademark registration for artists. (See the section on trademarks on page 25.)

CHAPTER 12

SPONSORSHIP AND BRANDING

Another possible income stream is that of sponsorship from established brands.

This is a situation where brands are usually more interested in high-profile established artists and bands rather than low-profile bands trying to establish themselves.

The more successful an artist or band becomes the more interested brands will be.

Many of them, such as Coca Cola, Pepsi, Starbucks and Diesel have long been connected with music because they see it as a marketing opportunity to reach their core customers.

Some brands also provide opportunities for unsigned bands (i.e. bands without a recording agreement with a phonogram producer) but these often take the form of competitions to take part in a brand-sponsored compilation album or a live event.

Even so, when an artist is starting out it is important to take any opportunities which will result in a higher profile, and sponsored unsigned band competitions are certainly one of the ways to do that.

There are also agencies called brand entertainment consultants who represent brands and provide ideas and connections which will help to sell the brand through music.

It is worth trying to contact these agencies, to make them aware of the artist's music, and to provide them with news of the progress being made. One of the largest is CAKE, representing brands such as travel agents Expedia. (www.cakegroup.com).

Another is Citizensound (www.citizensound.net) who specialise in music strategy for brands. One way many brands use sponsorship is by sponsoring tours. For example, the US band The Maroon Five's tour was sponsored by Honda Cars. Established artists have to think carefully before attaching themselves to a brand which may not fit in either with their style or their ethical views.

Another way for an artist to save money on equipment is to approach musical instrument and equipment manufacturers and suppliers to see if they would be interested in sponsorship. In the early stages this may only mean that the artist is able

to purchase instruments and equipment at wholesale prices rather than retail price. As the artist becomes better known this may be extended to the loan of equipment free of charge. It may also be that the manufacturers or suppliers want to publish photographs of the artist in their magazine or in advertisements. They may also expect the artist to provide feedback and reviews of their latest products. Some brands may want the artist to sign a sponsorship agreement for two or three years, whereas it could just be a one-off arrangement for a tour or some specific event.



CHAPTER 13

THE INTERNET: DIGITAL COMMUNICATION AND DISTRIBUTION - THE DOUBLE EDGED SWORD

13.i A Short History

The Internet has been referred to throughout this publication, but now let us look at the challenges and opportunities it presents in more detail.

Before the Internet came into popular use the rules of copyright were developing and working quite well for authors, performers, phonogram producers, publishers, retailers etc. There was still a lot of work to do to fill the gaps in international copyright law such as introducing a public performance right in sound recordings for performers and phonogram producers worldwide and the introduction of a treaty that would provide international rights for audiovisual performers. In 1996, in a visionary way, WIPO Member States introduced the so-called WIPO Internet treaties, the WIPO Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT). At the time they were introduced, however, it was impossible to predict just how fast the new technology was moving, where it was going and how it would develop.

When the Internet first started it was accessible via slow dial-up connections which were fine for e-mails and other text-based communication and information, but not really fast enough for the transfer of music or film. It was possible, but uploading and downloading music took a long time and did not present traditional sound carrier sales such as CDs with too much competition. Compressed digital MP3 files were of a lower quality than that which could be enjoyed on a physical CD. When high speed broad-band came along everything changed. Suddenly it was possible to upload music and film in a fraction of the time that it would have taken with a dial-up connection. Consumers, instead of being obliged to play by the rules of the music industry and the

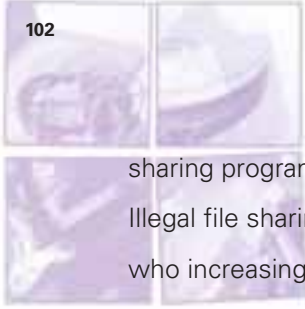


national copyright legislation of the country in which they lived, quickly realised that this new technology gave them the power to take the initiative.

Consumers all over the world, particularly students, raced ahead with the new technology, keen to explore all its possibilities. One such US student was Shawn Fanning who developed a software program called Napster which allowed simple on-line peer-to-peer file-sharing of MP3 music files. The Napster software program itself was not illegal in that it could be argued that if the copyrights in the music were owned by the uploader and they wished to share their music with others there was no copyright infringement. Napster was the first system of its kind which allowed one consumer to remotely access another consumer's hard drive and share files without having to access a central server. The Napster program and those that followed such as Limewire, iMesh, Grokster, Kazaa and Morpheous were enthusiastically embraced by consumers. Many consumers either ignored the rules of copyright or were unaware of them and exchanged copyright-protected music files in their millions which resulted in no royalties flowing through to performers, authors, phonogram producers or publishers. The quality of MP3 files, although not as good as that found on a CD, was still good enough for most people and was certainly better than that from cassettes or vinyl.

It is perhaps fair to say that phonogram producers in particular were caught napping, and were very slow to embrace the new business opportunities that the Internet offered. In the same way that the US railroad owners tried to stop the building of airports when commercial air travel first became viable, the phonogram producers defended themselves by prosecuting consumers for copyright infringement. As, in some countries, phonogram producers were unable to identify the infringers in law until they sued them, they found themselves suing children and grandmothers: this was not well received in the popular press and may have done more harm than good.

The Record Industry Association of America (RIAA) which is the US umbrella trade body for US phonogram producers not only sued individuals using Napster-type programs but also successfully sued Napster itself which resulted in it filing for bankruptcy in 2002. The Napster name was later re-introduced as a legal download service. These legal challenges and the enormous publicity they generated fed even more interest in file-sharing amongst consumers. Other more sophisticated file-



sharing programs such as Kazaa evolved and attracted consumers in their millions. Illegal file sharing became almost a part of the culture, particularly amongst the young who increasingly regarded music as 'free' in the same way as music via the radio is, or at least feels, 'free'.

It was not until 2003 that a substantial legitimate digital download market started to emerge. Steve Jobs, the CEO of Apple Computers, convinced all of the major phonogram producers to license their recordings to his new iTunes download service. This proved to be very popular, particularly amongst law-abiding consumers, who felt uncomfortable about illegally downloading copyright-protected music even if the chances of being caught were extremely remote. Most people are honest and would prefer not to break the law. iTunes offered the first legitimate service with an extensive catalogue of recordings. It also offered marketing possibilities and would e-mail its customers with news of new releases that were of a similar genre to a previous purchase. Since 2003, sales of downloads on iTunes has increased exponentially and other legal download, streaming and mobile music services such as eTunes, Rhapsody, Napster, 3 and eMusic are also flourishing. Although this is encouraging there is still a huge problem with illegal downloading. It was estimated in 2007 that, worldwide, for every legal download there were 40 illegal downloads.

13.ii DRM

DRM stands for Digital Rights Management. TPM, which is a particular type of DRM, stands for Technical Protection Measures. DRM can include copy protection TPM systems and also digital information such as identifying numbers and other information which can be helpful for accumulating data and for marketing purposes. The copy protection TPM systems can be applied to physical sound carriers such as CDs and downloads so that access to and copying of these products is restricted or prohibited without authorisation. Such systems were the cornerstone of the 1996 WIPO Internet treaties which included enforcement language to protect these systems. The WIPO Internet treaties obliged Member States to introduce national legislation which would make it a criminal offence for individuals to circumvent such copy protection measures, if they were applied by the right owners to recordings made available for sale to the public. It was thought, quite reasonably, that this would effectively protect copyright and related rights through the digital revolution.




These DRM copy-protection applications, however, were not popular with consumers who had been used to buying a CD and then doing whatever they liked with it. They might want to copy it on to a cassette for use in their car or make a copy for a friend. When such TPMs were first applied to CDs one of the restrictions was that the CD could not be played on a computer's CD drive. With CD drives becoming more and more common, consumers became even more annoyed. Things came to a head in 2005 when Sony-BMG introduced their 'rootkit' DRM software.

It was discovered that this rootkit software had infected eight million CDs comprising 51 titles with copy-restriction technologies that covertly installed themselves, hid themselves from users and made users vulnerable to hackers and viruses. An estimated 500,000 networks were infected, including many government and military networks. Following this, Sony-BMG destroyed millions of their CDs and removed all copy protection DRM from their future physical sound carriers.

In the world of legal digital downloads the application of TPM has restricted its development. On the one hand a consumer could access a recording illegally via one of the file sharing networks with no copy protection, and on the other, the consumer could pay for a legal download which had copy protection applied to it. Given this choice even some of the most law-abiding consumers elected to take their chances with the free illegal download. In 2007 EMI came to a landmark agreement with iTunes to provide EMI downloads to consumers using Apple's AAC format with no copy protection, but at a slightly higher price than for a download with copy protection. This was a major breakthrough for consumers and the music industry and is certain to narrow the gap between legal and illegal downloads. It is expected that DRM copy protection applications will become a thing of the past in regard to the sale of music, and this should increase legal downloads and please the consumer at the same time. It should also lead to interoperability between MP3 and Apple's AAC hardware players, which is something the music industry has long campaigned for. At present, iTunes downloads can only be played on iPod AAC players, thus guaranteeing Apple huge sales of their iPod which has dominated the portable digital music player market.

Prior to digital downloads, music was purchased either as a single disc, an extended play single (EP) or as an album. In the days of vinyl it was only possible to record around 45 minutes of music on a long-play vinyl disc so albums were restricted to that



time duration, unless the album was sold as a double album containing two 12 inch discs. A vinyl album would typically contain 10 tracks averaging 4-5 minutes each. When the CD came along this extended the amount of music that could be recorded on an album from 45 minutes to a maximum of approximately 74 minutes. Phonogram producers made most of their profits by selling albums rather than singles or EPs. The Internet is changing that too. Rather than having to buy a whole album which may include tracks that the consumer doesn't particularly want, the consumer would rather just download one track heard on the radio, TV, on a computer game or in an advertisement. It is unlikely that the album will become extinct but there is a definite shift back to singles.

13.iii The Future

So how will copyright-protected music be sold in the future? We have seen that the consumer increasingly expects downloads to be 'free' and that this is permeating the 'cool culture' so much valued by the young generation. The concept of copyright, whilst under attack, will survive, but new mechanisms will have to be devised for consumers to pay for the music they wish to enjoy. One area where all countries can contribute is education about copyright and the concept that music has a value. If recordings are free it is not so much the rich successful artists who will suffer as they can always earn a very good living from live work. Rather, it is the struggling, up-and-coming musicians who will be most adversely affected. It may mean the difference between being able to give up a routine day job and focus full time on their art, or having to continue to struggle part-time.

One vision of the future that is gathering support is that music will be purchased by consumers in the same way that most households pay for gas, water or electricity. In other words the consumer's Internet service provider (ISP) or mobile phone service provider will charge a monthly sum which will allow the consumer to have access to any and all the music they want with no copy protection DRM. The ISP or telecom service provider will monitor what music the consumer is downloading, using digital identifiers and report this to a digital music collection society. The ISPs and telecom service providers will also pass on all, more than all, or most of the monthly fees they have collected from the consumer to the collection society. The collection society will then pay out to the authors, performers, phonogram producers and publishers *pro rata*




based on how often their music is downloaded or streamed. The ISPs and the telecoms have been greatly benefiting from the illegal file sharing of music at the expense of authors, performers, publishers and phonogram producers: it is essential to bring them into the value chain.

13.iv Building a Website

One of the most essential tools for any author, performer or business is to build a good website and to update it regularly. The most empowering element of the Internet is that it provides rapid access to information. With the evolution of fast search engines such as Google and Yahoo information on almost anything is just a click away. If neighbours move in and you want to find out who they are, the chances are that if their name is typed into one of the Internet search engines, something will come up. The other sensational thing about the Internet is that it is geographically neutral. It doesn't matter if an artist is based in the Sudan, Mongolia, Vietnam or Jamaica, once the website exists, the whole world can access it instantly. The other great thing about the Internet is that once an artist has purchased a computer and has paid the ISP, most processes cost very little or nothing at all. Sending an e-mail to an artist's fan base for example costs next to nothing, and is instant. Compare this with the cost of mailing information via the post office and the length of time such information would take to reach the recipient, and it can easily be seen that the savings in terms of time and cost are substantial. It is, however, important to find out how many recipients can be reached by the artist's Internet service provider from one e-mail. For example the largest Internet service provider in the world, AOL, only permits a maximum of 30 e-mail recipients at a time and may close an account if the subscriber attempts to send more.

If an author or performer wants maximum consumer access they will need a website which contains as much relevant information as possible. It should also provide on-line shop facilities so that the artist's audience can purchase music straight from the site. An artist or manager will probably need help to build the first website. One way is to find a fan who is also interested in computer technology, and offer him/her the job of webmaster. Most fans are usually only too pleased to become involved and may well be prepared to do this for nothing, at least to start with. There are also organisations which will help an artist build a website on-line such as *musicbizwebsitepro.com* based in the US.



The first page on a website is the home page which introduces the artist and the artist's music. It has been fashionable to include what is known as 'flash' applications to the homepage but this is not necessarily a good idea. Flash applications usually provide some kind of moving audiovisual effect which, whilst very clever and impressive, can take time to download, especially if the recipient has a dial-up connection or slow broadband. Just waiting for this to happen can mean that some consumers will simply move on to another site that they can access more easily and quickly. It is also debateable as to whether or not it is a good idea to feature automatic music when the home page is opened. Fans who return regularly to the site may get tired of this: it may be better for music to be accessed further into the site. The home page needs to be designed so as to lead the viewer easily and quickly to other parts of the site. It also needs to tell the viewer what kind of music the author or performer writes or plays, and the artwork should also reflect the style of music on offer.

The most important goal for an artist is to build up a large database of long-term fans who regularly visit the site. As has been stated earlier, this is the key to success. If an artist has a large number of genuine fans and supporters, success is pretty much ensured. If a potential manager, phonogram producer or publishing company come to see a show and the venue is full of genuine supporters they will be impressed. So one of the main things to try and achieve on the website is to create new long-term relationships with genuine supporters. The most important asset of such a website is therefore to encourage consumers to give their contact details, particularly their e-mail addresses. One of the best ways to do this is to offer a free download of a recording in return for these contact details. This recording could be a track from the artist's album, a live recording or a rare unreleased track. Even the most successful artists give away one or two tracks from a new album as a taster for the album that is soon to be released. Free music, interviews with the artist, audiovisual footage of the artist in the recording studio or elsewhere, or downloadable podcasts, should be a feature of any artist's website. By doing this, the fan who feels that he/she is getting something back from the artist feels part of the artist's community. It is also important to respond to e-mails as promptly and personally as possible. In the modern era with the MySpace and YouTube sites being a major feature of an artist's public profile, it is essential that the artist personally answers as many e-mails as possible. Whilst fans appreciate contact with the webmaster and the manager's office, there is nothing that means more to a fan than receiving an e-mail directly from the artist. This is particularly important with MySpace as will be seen in the next section.




Another important part of the website is making the artist's music available for purchase. There are three basic ways of doing this:

1. Open a merchant account with a bank which can process credit card transactions via a secure encryption service such as Protx or Verisign.
2. Build a web store and use a transaction company such as Paypal. Using this structure, customers can sign up to Paypal before they purchase anything from the store, paying through Paypal or by credit card. Organisations such as Paypal take a higher commission from the seller than is the case with a merchant account.
3. Outsource all the web sales to a merchandising company such as CD Baby (www.cdbaby.com) or Backstreet (www.bsimerch.com). With this method all that is required is a link from the artist's website to the third party merchandiser.

In developing countries it may be difficult to access the above due to a lack of financial infrastructure and difficulties in being able to open a bank account. One answer may be to form a co-operative artists' group which can collectively open a bank account from which several artists can access income. Such a group may also be able to offer broadband or dial-up Internet connections in a central location if they are not easily available to a single artist. It may be that national or local governments can help set up or provide such a facility in various locations as part of their arts, music and culture programme.

The important element of these transactions is that the consumer must feel secure about parting with credit card information, which is the case with any good e-retail payment processing system. The credit card information is encrypted so that it cannot be read by anyone except the purchaser and the financial organisation that receives the money. Credit card details cannot be seen by the artist, the webmaster, the ISP or anyone else in the chain.

For digital downloads and streaming it may be possible to either open a direct account with services such as iTunes, Rhapsody, Napster, eMusic and the important telecom music services in the country of residence, or to open an account with an aggregator who will feed the artist's music in to many of these services. Examples of aggregators



are Finetunes (www.finetunes.net), The Orchard (www.theorchard.com), Absolute Marketing (via Universal, www.absolutemarketing.co.uk), IODA (www.iodalliance.com), CD Baby (www.cdbaby.com), AWAL (www.awal.com), IRIS (www.irisdistribution.com) or www.indiestore.com.

There are also download and streaming services which specialise in certain musical genres. For example, if the artist is in the dance music field it is essential to sign up to such services as Beatport (www.beatport.com) which will distribute directly to DJs all over the world. These specialist digital music services can arrange downloads of CD quality which is the format most DJs need if they are to play the music in clubs and on the radio etc. There are also organisations such as www.emusu.com which can provide a bespoke digital store for an artist's website.

Whichever purchasing structure is chosen when designing the website, it is important to provide a clear means of purchasing physical product and downloads with one click on the home page. Some artists feel uncomfortable about 'pushing' the sale of their work but it is essential to do this if they are to succeed. It should not be done too blatantly but can be done by having a 'purchase music' or 'shopping cart' tab on the home page. Clicking this tab should take the viewer straight to the shop page of the website or provide a link to a third-party shop site.

By building a database it is possible to keep fans and supporters informed of upcoming shows, events and record releases. It is also a good idea to ask fans for feedback, for instance by putting up three tracks from a new album and asking the fans to rate them and to invite comments. Another idea is for the first 200 or 500 physical albums to be personally signed by the artist, only available through the artist's website. Do not send out e-mails too often: one every two weeks is probably acceptable to most fans but any more than that, and they may click the spam button which means that all future e-mails will be regarded as junk and will not be opened.

Another good idea is to have a 'guest book' where anyone visiting the site can leave comments about the artist's performance at a recent show or their opinion of the artist's latest release etc. Similarly many sites have chat rooms, forums and mailing lists. Chat rooms are areas where fans can chat with each other live in real time. Forums are like chat rooms but the text stays permanently in the forum area so that



fans can add comments as and when they feel like it and look back at previous comments. A mailing list is a list of fans' e-mail addresses identified by a single name. When an e-mail message is sent to the mailing list name it is automatically forwarded to all the e-mail addresses on the list. With these tools, it is possible for fans to share opinions and perhaps arrange to meet up prior to one of the artist's live performances. The webmaster should monitor these chat rooms, forums and mailing lists to some extent, making sure that they do not get abusive or do not drift too far 'off topic'.

Whatever style of website is developed it is essential that someone is managing it on a daily basis in a way that is compatible with the artist: there is nothing worse than a dormant website. That is why webmasters are becoming more and more important as key members of a successful team.


Podcasts

Another increasingly important element is to provide podcasts which can be downloaded from the website. A podcast by definition is an audio or video file that is attached to an RSS feed as an enclosure so that any user who wants to receive it can 'subscribe' via a piece of software known as a podcatcher. RSS stands for Really Simple Syndication. Whilst there are many different podcatchers available, perhaps the most famous one is a part of iTunes introduced in June 2005 with version 4.9. Anyone can create a show using freely-available software (e.g. Audacity – <http://audacity.sourceforge.net/download/>) and create an RSS feed to submit to any number of hundreds of podcast directories. A free online RSS feed creator can be found at <http://www.podcastblaster.com/podcast-feed/>. A podcast is a file that can only be downloaded to a computer, an iPod or an MP3 player at the request of the recipient. In other words it is not possible to send out podcasts as spam to people who did not ask for them. The podcast can contain an interview with the artist with or without music and any other content of interest to fans. It can be audio only or audiovisual. There are also many so called 'Podsafe' sites which only carry copyright-cleared material with approval from the author, performer and/or the right holders in the work and the recording. Here are some examples of some podsafe sites:

<http://music.podshow.com> – Podsafe Music Network.

<http://podsafeaudio.com>.

<http://podsafemusicnetwork.com>.



<http://garageband.com>.

<http://indie911.com>.

<http://promonet.iodalliance.com> – Promonet is great for bands that already have contracts, but who don't get much regular airplay.

<http://jamendo.com> – Jamendo is great for European music and really "weird and wonderful" music.

<http://www.purevolume.com>.

<http://www.madbouncydogs.com>.

<http://versionist.com/> – Versionist is a resource for reggae.

<http://breakbeat-terrorism.co.uk/> – Excellent resource for drum and bass and other dance beats.

Most of these services report to an organisation at www.podmusiccountdown.com which compiles a weekly chart of music included in safe podcasts. Although it is unlikely that any direct income will be received when an artist agrees to have his/her music included in one of these podcasts, it does create exposure which may well lead to the podcast listener checking out the artist's website and possibly purchasing a CD or a download. The concept of giving away some music for free is a hard one to accept for some artists but it is essential if the artist is serious about being successful. In a way it is like taking a car for a test drive before deciding whether or not to purchase it. Very few people will buy a car without a test drive and it is becoming the same with music.

13.v Third Party Web-based Exposure on Social Networking Sites

The digital marketing landscape is constantly changing. In addition to an artist having a website it is also becoming increasingly important to have a presence on the main social networking sites. At the time of writing this publication, the most important social networking sites are MySpace (www.myspace.com), YouTube (www.youtube.com), Blogger (www.blogger.com), Facebook (www.facebook.com) and Ning (www.ning.com) but new sites are constantly emerging. These sites can be used free-of-charge by anybody. The hosts make their profits by advertising revenue from their services. MySpace is hugely successful and is the world's main social networking community site. YouTube deals only with audiovisual material and is a treasure chest of fascinating footage. www.blogger.com is owned by Google and offers very flexible and easily set-up web pages which artists are finding to be




increasingly useful. The word 'blog' comes from a contraction of the word 'weblog' and is effectively an Internet diary. Ning provides the facility for artists to create their own social networking site. Facebook was originally restricted to university students but can now be used by anyone over the age of 13.

To set up an artist site on MySpace go to www.myspace.com; click the 'music section' link and then the 'artist sign-up' link. The artist will then be able to use the four sections 'Upcoming Shows', 'Band Details', 'Basic Info' and 'Manage Songs'. It's important to make the biography short and interesting in the Band Details section. Each artist can put up four tracks which can either be downloaded or streamed. There is also space for up to twelve photographs, links to the artist's own website, the ability to access videos and a blog as well as listing sales, links and upcoming shows. The ethos of MySpace is to create 'friends' of the artist. Once someone has been accepted as a friend they can post comments on the artist's MySpace page and recommend the artist to others. It only takes a few people to post genuinely enthusiastic comments on several MySpace pages and a large number of its members will check out the artist's music and, hopefully, the artist's own website. MySpace is a very useful free tool in creating and expanding an artist's fan base. For more information on MySpace look at *MySpace Music Marketing* by Bob Baker (ISBN: 0-9714838-4-1) at www.bob-baker.com. Several successful artists such as My Chemical Romance and Arctic Monkeys regard MySpace as one of the platforms which played a major part in their success.

Similarly YouTube is becoming a very useful tool to expand an artist's profile. Although YouTube is experiencing major difficulties with copyright-protected audiovisual footage being placed on its site without the copyright holders' permission, it is proving to be a valuable shop window for new artists. It is advisable to spend time recording some impressive live or interview footage before placing it on the YouTube site.

By having web pages on several of these third party social networking sites and cross-linking them with each other and the artist's website, an artist can create a really effective worldwide presence.

The Internet is constantly evolving and whilst the information given above is useful, it is inevitable that new sites and platforms will soon arrive which will add further useful



possibilities for artists. Whilst the Internet presents copyright and related rights' holders with some serious problems, it gives new music artists from anywhere in the world the ability to access a worldwide audience in a way that was never possible before. If a new author, performer or manager is serious about becoming successful they should focus much of their attention on developing a good website, responding promptly to e-mails and monitoring and updating the website on a daily basis.



ANNEX A

DEFINITIONS AND INDEX

AAC file: An Advanced Audio Coding file used by Apple for its iTunes and iPod technologies. AAC is an audio compression technology that is part of the MPEG-2 and MPEG-4 standards. AAC, especially MPEG-4 AAC, provides greater compression and better sound quality than MP3, which also came out of the MPEG standard.

Advance: An amount of money paid to an author or a performer before royalties are earned and which can be recoupable or non-recoupable against royalties.

Advertising agency: A business which provides ideas and which manages an advertisement or an advertising campaign on behalf of a product, brand or service.

Aggregator: A Digital Music Aggregator (DMA) is a person or business licensing and receiving income from a number of digital music retailers on behalf of an artist.

Album: A collection of recorded tracks together on one recording medium such as a CD. An album typically comprises 10-14 tracks.

A&R: Artist and Repertoire. An A&R person in a phonogram producer's business is the one with responsibility for finding new artists and offering them recording agreements and who supervises the recordings of artists on behalf of the phonogram producer.

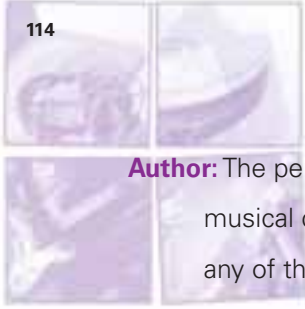
Arbitration: The hearing and determination of a dispute by an impartial referee selected or agreed upon by the parties concerned.

Artist: A performer who may or may not also be an author.

ASCAP: The American Society of Composers, Authors and Publishers. One of three US public performance right collecting societies collecting licence fees on behalf of its author and publisher members. ASCAP distributes them as royalties to those of its members whose works have been performed in public.

At source basis: Payments made as a percentage of the gross (rather than the net) income received less any sales or value added taxes (VAT).

Audit rights: The right to examine a contracting party's finances and records to ensure that correct accounting has been carried out.



Author: The person or persons who create a work. This can be the creator of the musical composition, the musical arrangement or the lyrics, or a combination of any of them.

Back end income: Income based on results rather than from an initial advance. The opposite of front-loaded.

Blog: An open Internet based diary: a contraction of the word 'weblog'.

BMI: Broadcast Music Incorporated. One of three US public performance right collection societies, collecting licence fees on behalf of its author and publisher members. BMI distributes them as royalties to those of its members whose works have been performed in public.

Boiler plate: The legal detail and standard provisions to be found in a long-form agreement.

Booking agent: Someone who interfaces with promoters and venues on behalf of an artist in order to secure live performance bookings.

Bootlegger: Someone who illegally manufactures and/or sells copyright and related right-protected recordings and works, or copyright-protected merchandise without a licence and who makes no payment to the legitimate copyright or related rights holders

Broadband: A high-speed Internet connection capable of supporting a wide range of electromagnetic frequencies, typically from audio up to video frequencies. It can carry multiple signals by dividing the total capacity of the medium into multiple, independent bandwidth channels, where each channel operates only on a specific range of frequencies.

Carnet: A temporary customs document allowing the holder to import equipment and/or merchandising to a foreign country for the purposes of a live performance or tour without having to pay duties or posting bonds.

CD: An optical digital audio compact disc capable of storing up to 700 Mb of information or 74 minutes of high fidelity stereo music. A CD is 120mm in diameter, recorded on one side, with individual tracks playable in any sequence.

Choreographer: The person responsible for creating and arranging the movements of a dance routine.

CISAC: International Confederation of Societies of Authors and Composers. The umbrella trade organisation representing 214 authors and publishers public performance collection societies from 114 countries.

Cleared: When the rights in a work or a performance have been authorized by the legitimate rights holders.

Compilation album: An album comprising a collection of recorded tracks by different artists.

Contract period: Each option period in an agreement.

Copyright: The right to authorize or prohibit the making of copies of a work.

Cover: A performance by a performer who is not the author of the musical work.

Cover record: A recording by a performer who is not the author of the musical work contained in the recording.

Dial up: A low speed Internet connection accessed by a telephone connection via a modem operating on Internet connection speeds below 100 Kbps. A 56 Kbps modem and basic rate ISDN are examples.

Distributor: A business that distributes sound recordings and/or audiovisual recordings on behalf of owners or licensees of sound recordings and audiovisual recordings.

DRM: Digital Rights Management. Any digital technology used to protect the interests of copyright owners and service providers. DRM includes TPM and identification technologies that can be used for marketing and operating purposes.

Encryption: The conversion of data into cipher text that cannot be understood by unauthorized people. Decryption is the process of converting encrypted data back into its original form, so that it can be understood.

Encryption service: A business that provides encryption, usually in the context of financial transactions in order to avoid fraud.

EPK: An electronic press kit. This usually includes a biography, still photographs and a video interview with the artist.


Equitable remuneration: Fair, (usually equal), remuneration between two rights holders who are entitled to share a single payment.

Exclusive: Not divided or shared with others.

Exclusive right: The holder of an exclusive right has the power to authorize or prohibit certain actions or use.

Extended play single: A single with extra tracks so that it falls between a single and an album in length. It is sometimes called an EP.

FIA: The International Federation of Actors.



FIM: The International Federation of Musicians (*Fédération internationale des Musiciens*) representing 72 musicians unions worldwide.

Fixation: When a performance is recorded or fixed on to a magnetic tape or digital disc or any recording medium. (The definition in the WPPT is 'the embodiment of sounds or of the representations thereof, from which they can be perceived, reproduced or communicated through a device'.)

Fixed performance: The same thing as Fixation.

Front-loaded agreement: An agreement where there is a substantial initial advance rather than one where most of the income is based on results (back ended).

Front-of-house engineer: The engineer responsible for mixing the sound that the audience will hear through the PA system.

Harry Fox Agency: A US collection society responsible for mechanical licensing, collection and distribution for music publishers.

Heads of agreement: A brief summary of the main points of an agreement without the legal detail (boiler plate).

IFPI: The International Federation of the Phonographic Industry. The international umbrella trade body representing 1400 phonogram producers in 75 countries and affiliated industry organisations in 49 countries.


IMMF: The International Music Managers Forum. The international umbrella trade body for the 15 national Music Managers' Forums (MMFs) worldwide representing managers of featured artists, and, through them, the rights of the featured artists themselves.

IMPALA: The Independent Music Companies Association. The international umbrella trade body representing over 3500 independent phonogram producers worldwide.

Intellectual Property (IP): A non-tangible product of the intellect that has commercial value, including copyrighted property such as literary or artistic works, and ideational property, such as patents, business methods, and industrial processes.

Internet: An interconnected system of networks that connects computers worldwide via the TCP/IP protocol.

ISP: Internet Service Provider. An ISP is a business that provides individuals and businesses with access to the Internet and other related services such as website building. An ISP has the equipment and the telecommunication line



access required to have a point-of-presence on the Internet for the geographic area served. The larger ISPs have their own high-speed leased lines so that they are less dependent on the telecommunication providers and can provide better service to their customers.

JASRAC: Japanese Society for Rights of Authors, Composers and Publishers. The sole collection society in Japan responsible for authors and publishers' public performance right income and mechanical income.

Karaoke: A musical sound system providing pre-recorded accompaniment to popular songs that a performer (usually a member of the public in a bar or club) sings live by following the words on a video screen.

Licence/licensing: When rights owners authorize the use of their rights to third parties under certain conditions, whilst retaining ownership of the right.

Licensee: A person or business that licenses a right from a right owner (the licensor) under certain conditions.

Licensor: A right owner who licenses the use of the right under certain conditions to another person or business (a licensee).

Lyrics: The words of a work.

Manufacturer: A business that creates the physical copies of recordings for sale and/or distribution to the public.

Master recording: The finished mixed and mastered version of a recording.

Master re-use licence: A licence issued by a phonogram producer or a performer or by whoever holds the related rights in a particular sound recording for the right to use the sound recording in conjunction with visual images in a film, a TV production, a video game or an advertisement.

Mastering: The final stage of the recording process prior to manufacture in which a mixed recording is processed by a mastering engineer so that it sounds as good as possible, particularly when played on the radio.

MCPS: The Mechanical Copyright Protection Society. The sole UK collection society that issues mechanical licenses and collects mechanical royalties and other income on behalf of authors and publishers.

Mechanical licence: The licence between the copyright owner of a musical work and a phonogram producer, which enables the phonogram producer to exploit recordings containing the work.



Mechanical rate: The rate set in a country as a percentage of PPD, or as a rate per track, payable by phonogram producers to copyright holders of works for each record sold.

Mechanical royalties: Royalties paid by owners or licensees of sound recordings to the copyright owners of musical works for the right to record, copy and distribute works included in such recordings.

Merchandise: A person or business selling an artist's merchandising products to the public.

Merchandising: The sale of T-shirts, books, CDs and other artefacts relating to an artist at the artist's live performances or through a website or retail outlet.

Minimum commitment: The minimum number of works or recordings required to be submitted or released during each contract period.

Mixing engineer: The engineer responsible for mixing the separate tracks of a recording in a studio, resulting in a master recording.


Modem: Abbreviation of modulator/demodulator. A communications device that converts digital signals to analogue and then from analogue to digital for transmission of data via telephone or cable lines.

Monitor engineer: An engineer who ensures that performing artists can adequately hear their stage performance while they are performing, by way of on-stage monitor speakers or in-ear monitor systems.

Most favoured nations: In a situation where there is more than one licensor (such as with an audiovisual synchronisation licence where there are usually two separate copyright holders) the licensee agrees to give all parties the most favourable terms negotiated by any one of the licensors.

MP3 file: A computer file created with compression technology commonly used to make digital audio computer files relatively small while maintaining high audio quality. MP3 means MPEG-1, Audio Layer 3 and is an audio-specific format. The compression takes off certain sounds that cannot be heard by the listener, i.e. outside the normal human hearing range. It provides a representation of pulse-code modulation-encoded audio in much less space, by using psychoacoustic models to discard components less audible to human hearing, and recording the remaining information in an efficient manner.

MPEG: Moving Picture Experts Group. An ISO/ITU standard for compressing digital video. Pronounced 'em-peg,' it is the universal standard for digital terrestrial, cable and satellite TV, DVDs and digital video recorders (DVRs).



musicFIRST Coalition: A pressure group which includes Sound Exchange, the US Music Managers Forum the Grammy Foundation and the RIAA etc. who campaign for the introduction of a public performance right in sound recordings for free-to-air radio in the US.

Music supervisor: A person who has the responsibility to find and clear suitable music and manage the music for a film, a television production, a video game or an advertisement.

Net income: Gross income less any sales or value added taxes and less all, or certain specified expenses and costs.

Option: The right of a phonogram producer or of a publisher to future recordings or works at their discretion (usually accompanied by a further advance to the performer or author).

Overage: Any additional sums payable over and above the guaranteed sum in an agreement.

PA system: A public address sound system, consisting of amplifiers and speakers used to amplify an artists performance so that an audience can hear it clearly.

Peer-to-peer (P2P): A network computing system in which all computers are treated as equals on the network and have the capability to share files with each other. Napster was the first mainstream P2P software that enabled large scale file sharing.

Performer: An entertainer who plays musical instruments and/or sings and/or dances or performs a dramatic work.

Phonogram: An audio-only fixation of a performance or other sounds.

Phonogram producer: An entity that holds the rights in a recording and exploits that recording by way of advertising, promotion and distribution for sale to the public, sometimes referred to a record company or record label.

Piracy: When related right protected recordings, possibly containing copyright protected works, are manufactured and sold or made available for download and sold illegally with no licence and no payment being made to the legitimate copyright or related right holders. The term 'piracy' is also sometimes used when illegal copyright protected merchandise is sold.

Pluggger: Someone who is paid to try and persuade a radio or TV station to play a record.

Podcast: An audio or video file that is attached to an RSS feed as an enclosure so that any user that wants to receive it can 'subscribe' via a piece of software known as a podcatcher.

Point: A percentage point. 3 percent of PPD is sometimes referred to as '3 points'.

PPL: Public Performance Limited. The sole UK collection society that collects public performance income on behalf of performers and phonogram producers.

Production company: A business that offers a recording agreement to an artist, makes and pays for recordings, and then licenses them to other phonogram producers.

Production manager: A person who supervises the provision of all the stage equipment, sound equipment and lighting and special effects equipment associated with a concert or tour.

Promoter: Someone who engages an artist to appear live at a venue and is responsible for organising, advertising and selling tickets for the event as well as paying the artist for such a performance.

Promotion: Anything that assists an artist to become better known to the public including press and website interviews, radio and television appearances etc.

PRS: Performing Right Society. The sole UK collection society that collects public performance income on behalf of authors and publishers.

Public domain: The period of time after copyright or related rights protection in a work or a recording has expired. For a work or a recording to be 'in the public domain' it is no longer protected by copyright or related rights and any member of the public can use it or sell it without needing permission or authorisation.

Publisher: A person or business that commercially exploits the works created by authors.

Publishing agreement: An agreement whereby a publisher licenses or assigns the works created by an author for commercial exploitation of those works.

Real tones: Actual sound clips of recorded music and sounds which can be downloaded to a mobile phone and which will play when the mobile phone receives an incoming call.

Receipts basis: Payments made on the net rather than the gross income.

Reciprocal agreements: When one country has an agreement with another to pay through royalties to artists resident in either country, from one to the other.

Recoupable cost: A cost that can be offset against royalties earned by a performer or author, by a phonogram producer or publisher.

Recoupment: The point at which the royalties earned under an agreement equal the advances and other recoupable costs.

Related rights: Intellectual property rights granted to performers, broadcasters and phonogram producers.

Remuneration right: The right to receive a payment every time a work or a phonogram is used without the ability to authorize or prohibit such use.

Retention period: The period after the term of a publishing agreement whereby the works covered by the agreement continue to be exercised by the publisher.

RIAA: The Recording Industry Association of America. The trade association that represents most US phonogram producers.

Ring tones: The sound (usually polyphonic) made by a mobile phone to indicate an incoming call.

Roadie: Someone who sets up and takes down an artist or band's equipment on stage and supervises the stage equipment during the performance.

Royalties: Payments made for each use or sale of a work or recording by a publisher, phonogram producer, computer game manufacturer etc.

Royalty rate: The percentage at which royalties are paid.

Sample: The use of a portion or part of an existing recording or work (or both) and integrating this in to a new recording or work (or both).

Score: A musical composition in printed or written form, also used to describe the soundtrack to a film.

Serial number: A number in a series that is marked on a piece of equipment by the manufacturer to give that piece of equipment a unique identifying number.

SESAC: One of three US public performance right collection societies, collecting licence fees on behalf of its author and publisher members. SESAC distributes them as royalties to those SESAC members whose works have been performed.

Sheet music: Musical notation of a work printed or written down which usually shows the notes, chords, lyrics and other musical information for the performance of the work using voice, piano, guitar and/or other musical instruments.

Sound carrier: Any physical medium including CDs, tapes and vinyl discs which contain recorded music or sounds.

Sound Exchange: The sole US related rights collection society responsible for licensing and collecting digital income (where such rights exist) from the public performance of sound recordings in the US.

Studio producer: The person who is responsible for supervising the creation of a sound recording in a studio, also sometimes referred to as a record producer.

Soundtrack album: A collection of songs put together to comprise an album which are taken from or associated with a film.

Spam: Indiscriminate and unsolicited, bulk e-mail (UBE). Spam is usually associated with unsolicited commercial advertising and is sometimes referred to as 'junk mail'.

Splitter bus: A vehicle that provides seating in the front of the vehicle and a separate compartment at the back for equipment.

Sponsorship: Financial payment or payment in kind by a third party to the artist in return for promotion of the third party's products or brand.

Sub-publisher: A publisher in a foreign territory which represents the interests and collects income on behalf of the domestic publisher and pays through that income to the domestic publisher after taking an agreed commission.

Synchronisation licence: The licence issued by a publisher or an author when the author's work is synchronised with visual images, usually moving images.

Telecoms: Businesses in the field of telecommunications such as mobile phone companies.

Term: The period of time for which an agreement is effective.

Tour manager: Someone who manages an artist's live performance work on behalf of the artist's manager and/or the artist.

Tour support: A payment made to an artist, usually by the artist's phonogram producer to cover the financial shortfall of a tour. This payment is usually recoupable from artist's royalties.

TPM: Technical Protection Measures. A sub-set of DRM, TPM are digital technology applications designed to prevent unauthorized copying.

Track: A recording of one performance of one song or one piece of music. There are typically 10 to 14 tracks on an album. Each track often comprises many sub-tracks which are recorded individually and which are then mixed to create the finished track.


Trademark: The registered name or symbol identifiable with goods or services to ensure exclusivity and protection from others using the same name or symbol for commercial benefit.

Underscore: Background music in a film.

UNESCO: The United Nations Educational Scientific and Cultural Organisation which encourages international peace and universal respect by promoting collaboration among nations.

Venue: The place or building where a live performance takes place.

Webmaster: Someone who builds and supervises an artist's website.



Website: An artist's presence on the Internet. A website is a collection of web pages, which are documents coded in HTML that are linked to each other and very often to pages on other websites.

Widget: Short for 'window gadget', a widget is a standardized on-screen representation of a control that may be manipulated by the user. Scroll bars, buttons and text boxes are all examples of widgets.

WIPO: The World Intellectual Property Organization, an agency of the United Nations, based in Geneva, dedicated to developing a balanced and accessible international intellectual property (IP) system which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

WOMAD: The World of Music Arts and Dance. An international organisation that promotes festivals featuring artists from all over the world.

WOMEX: World Music Expo. An organisation promoting artist showcases and networking opportunity events for artists from all over the world.

Work: Any author's musical creation including the musical composition and/or the lyrics associated with that composition.

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ANNEX B

EXAMPLE OF A SHORT-TERM LETTER OF ENGAGEMENT

To: (Artist(s) Name(s) and Address(es))

Date.....

Dear

Further to our recent meetings and discussions, please accept this letter as confirmation that(Manager) will act as your exclusive manager throughout the world for a trial period of (.....) months from the above date, after which either you or(Manager) must give 30 days notice to the other to effect termination.

During this trial period you agree to pay us commission of (.....) % on any income received by you in the entertainment industry, except for any income specifically intended as recording costs, video production costs or as tour support. You further agree to reimburse reasonable expenses incurred by(Manager) on your behalf as per the attached schedule. In regard to live performances the commission payable to us will be reduced to (.....) % of the gross income received.

At the end of the trial period you or(Manager) may decide to terminate the management relationship or move forward with negotiations for a long-form artist management agreement. In either case payment of commission and expenses must be paid to(Manager) within 60 days of receipt of the invoice which we will submit.

In signing this letter you are entering into a legally-binding agreement.

If the above is a correct reflection of the agreement we have reached, please confirm this by your signature(s) below.

Yours sincerely

.....(Manager)

Confirmation of agreement by (name and address of Artist(s))

Signature.....

Date.....

Expenses as per the example that follows should be attached to this temporary letter of engagement. The manager's expenses are paid by the manager from his/her own resources whereas the artist's expenses are repayable to the manager from the artist's gross income in addition to any commission payable.

Example of an Expenses Schedule

1. *Manager's Expenses – Manager's general office and business costs including:*

Office rent

Local property tax on office

Management staff salaries and wages

Management staff social security payments.

Manager's office equipment including:

Computers

Fax machines

Photocopiers

Pagers

Mobile phones

Office telephone systems

Audio and audiovisual equipment

Manager's car and associated costs

Manager's legal fees

Local telephone, fax and e-mail costs

Miscellaneous office expenses

2. *Artist's Expenses – Any expenses reasonably incurred in connection with the Artist's career whether incurred by the Manager or the Artist, other than the Manager's Expenses, including but not limited to the following:*

Commission payable to a booking agent or other agents

Costs/wages payable to a tour manager

Mail shots on behalf of the Artist.

Advertising on behalf of the Artist

Artwork on behalf of the Artist

Management long distance phone and fax charges if specifically on behalf of the Artist

Accommodation costs

Air, rail and sea fares

Courier charges on behalf of the Artist

Manager's reasonable subsistence (food etc) when on tour or away on business on the Artist's behalf

() per mile for the Manager's car journeys. (to be reviewed annually)

Car hire, taxis and other travel costs when business being carried out on behalf of the Artist by the Manager or the Manager's personal assistant.

Legal costs incurred when the Artist contracts with third parties

Expenses incurred by the Manager prior to the commencement of this agreement in the sum of ()

The above to be pro rated if work for other artists is also being carried out.

The mileage rate charged for the manager's car journeys will vary according to the car's engine capacity. The local tax authority or automobile association should be able to supply the acceptable current mileage rates. This mileage rate not only covers fuel but also road tax, maintenance and servicing as well as depreciation etc.

ANNEX C

EXAMPLE OF A LONG-FORM ARTIST
MANAGEMENT AGREEMENT

(with explanatory notes)

Every situation is different and will present its own unique set of circumstances. Some countries follow different industry practices which may not be the same as the following example. It is therefore intended to be a guide to understanding long-form artist management contracts, hopefully assisting in arriving at a fair agreement for both parties.

This example is in two parts: the contract and the schedule. Example clauses are shown in italics with notes on the clauses in normal type.

THE CONTRACT

1. *The Artist hereby appoints the Manager who agrees to carry out the Manager's duties in relation to the Artist's career throughout the Territory during the Term.*
2. *The Artist shall pay commission to the Manager at the Commission Rate during the Commission Term on all commissionable income earned by the Artist from the Artist's career.*
3. *The Manager shall pay the Manager's Expenses as defined in the Schedule.*
4. *The Artist shall pay the Artist's Expenses as defined in the Schedule.*
5. *The Artist and the Manager shall each have the right to audit the other's accounts, although not more than once in any (____) month period. Such audit shall require 30 days written notice and must take place within normal office hours. If no objection is raised to an accounting statement rendered by either party within (____) years of its date, such statement will be deemed correct and binding.*

With audit rights, it is common to agree that if the party being audited is shown to have underpaid by more than 10 percent, then in addition to reimbursing the shortfall (plus interest) that party is also obliged to pay the cost of the audit. The right to audit is usually limited to no more than once in any 6 or 12 month period. The period when an objection may be raised is typically 2-3 years.

Then either:

6. *The Manager shall, during the Term, collect all income on behalf of the Artist and shall pay it into a bank account exclusively dedicated to the Artist. The Manager shall only use funds deposited in such account for purposes directly connected to the Artist's career.*

or:

6. *The Artist shall be responsible for all accounting concerning the Artist's career including all book-keeping, tax returns, invoicing, receipts and payments etc. From time to time the Manager will invoice the Artist for Commission which shall be paid within (___) days of receipt.*

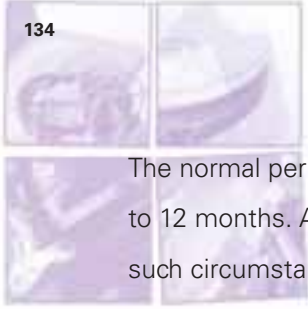
If adopting the second approach, ignore sections 8, 9.4 and 9.5 of the Schedule.

It is important that the manager keeps a separate bank account for each artist. The period by which the invoice should be paid could be anything from 10-30 days.

7. *After the expiry of the Term the Artist shall every (____) months produce statements to the Manager showing all income and Commission due, and shall on receipt of an invoice from the Manager pay the Commission due within (____) days of receipt of the invoice.*

It is normal for the artist to be obliged to produce statements every three months. The period by which the invoice should be paid could be anything from 10-30 days.

- 8.1 *The Artist and the Manager shall each have the right to terminate the Term by written notice if the other:*
 - 8.1.1 *is declared bankrupt, or enters into a composition or agreement with his or her creditors; or*
 - 8.1.2 *is convicted of an offence involving dishonesty; or*
 - 8.1.3 *is in material breach of this agreement and shall not have remedied that breach within 30 days of written notice requiring him/her to do so; or*
 - 8.1.4 *is incapacitated due to illness or accident for a period exceeding (____) days.*



The normal period of incapacity is 3-4 months but it could be anything from six weeks to 12 months. A contract might also provide for a temporary replacement manager in such circumstances. Anyone can have an accident or fall ill and it seems unreasonable that managers, having suffered one misfortune, then have to suffer another by losing their artists. A period of at least three months would therefore seem reasonable.

- 8.2. *If either party terminates the Term this shall not affect either party's rights or obligations that are intended to continue in force beyond the Term.*
9. *No variation of this agreement shall be binding unless made in writing and signed by both parties.*
10. *Any notice or consent to be given under this agreement shall be effective if sent by registered post or recorded delivery to the other party at the address given in the Schedule. Service shall be deemed to take place on the day after the postmark.*
11. *Nothing herein shall constitute a partnership between the Artist and the Manager.*
12. *The Artist and the Manager hereby acknowledge that they are advised to seek independent specialist legal advice from a qualified music business lawyer before signing this agreement.*
13. *The Manager has the right and authority to negotiate with third parties on the Artist's behalf.*
14. *This agreement shall be governed by (_____) law and both parties agree to submit to the jurisdiction of the courts in (_____).*

A manager dealing with an artist who is based in another country and who insists on dealing according to the law of that country must be very careful to research the laws concerning contracts. For example, in California contracts for personal services are restricted to seven years.

15. *Terms used in this Agreement shall have the meanings described in the Schedule which is incorporated into this Agreement.*



THE SCHEDULE

1. *The Artist:* (_____)

The artist could be an individual, a partnership or a corporation/limited company. The artist's real name should appear here together with his/her stage name (if any) and current address. If the artist is a band each member's real name together with their stage name (if any) and their current addresses and the current name of the band should be shown. If the artist is a band there could be provision here for changes in the band's personnel with an obligation for new members to be party to this agreement, or this provision could be included in a separate band agreement.

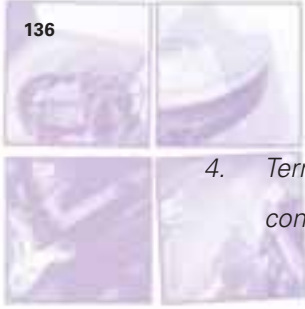
If the artist is contracted as a limited company it will be necessary to prepare an inducement letter in which the artist is held personally responsible for the provisions of the agreement.

2. *The Manager:* (_____)

The manager could be an individual, a partnership or a corporation/limited company. If contracted as the latter, the artist may wish to have a 'key man' clause inserted in the agreement obliging the manager's personal services to be available, failure of which would be a breach.

3. *Territory:* (_____)

If a manager is not managing the artist worldwide he/she would need to ensure that it is clear who the other managers in other territories are and their roles in the international context. If the manager is the principal manager then he/she should have the right to appoint third-party managers in foreign territories. In this case it is important for the manager to ensure that the commission arrangements are clear and that the artists are not paying double commission. Sometimes the principal manager will take half the commission rate in those territories where there is a separate manager, e.g. if the commission rate were 20 percent, the principal manager would take 10 percent and the foreign manager would take 10 percent.



4. Term (_____) years/months commencing (______). Thereafter the Term continues until either party gives (_____) months' notice of termination.

The term could be anything from six months to seven years. Some managers prefer to opt for a comparatively short term, perhaps 12 months, and to have a three-month notice of termination from either side after that period so that, for example, the term continues indefinitely after 12 months until one party gives notice to the other that it will end in three months. The advantage of this is that the manager is in a stronger negotiating position in regard to the other terms of the contract. Artists are also reassured that, if things don't work out, they are not tied to the manager for a long period of time.

On the other hand, some managers feel they will need to invest a great deal of hard work in an artist's career in the early stages, probably with very little commission and that they therefore need a longer term in order to feel secure about making an investment of time and effort.

Another common arrangement is to have a term of perhaps two or three years with options for a further one or two years. The options can only be taken up by the manager if certain income levels for the artist have been achieved.

Yet another approach is to define the term in albums rather than in years. In the 1970s an artist would typically release one or more albums per year. For example, David Bowie released three of his best albums, *Man Who Sold The World*, *Hunky Dory* and *The Rise and Fall of Ziggy Stardust* within a 12-month period from July 1971 to June 1972. These days, however, an artist may be lucky to get two albums released in the first four years. For example, Peter Gabriel releases only one album every eight years or so. It may therefore be a much better approach to define the term as two or three albums in the same way that it is defined in recording and publishing contracts. If this approach is adopted it is essential that a long-stop term be included as a contract cannot be open-ended. For example, two years from a certain date or until six months after the release of the third album, whichever is the longer, provided that in no circumstances will the basic term exceed five years.

In some cases the manager may reach an arrangement with the artist whereby, if the manager is unsuccessful in obtaining a recording or publishing agreement within, say, 12-18 months, then the agreement has an earlier termination date.

5. *Commission Rate:* (_____) %

Notwithstanding anything to the contrary in this Agreement, the Commission payable to the Manager by the Artist in respect of touring and live performance income shall be (____) % of the gross fees in respect of touring and live performances or (____) % of the net profit from touring and live performances whichever is the greater.

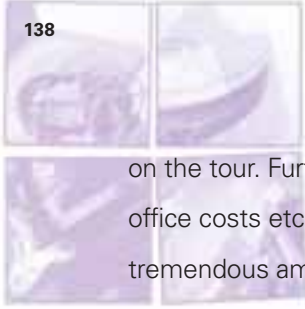
The generally accepted commission rate for managers in the music industry is 15-20 percent. In practice, however, this can range from 10 percent to 50 percent. Let us take the example of a manager investing a lot of money in a new band and expending a tremendous amount of time and energy. In such a situation it might be reasonable for the manager to take 25 percent or more. It may also be appropriate for a manager to take 25 percent if he or she agrees to manage the artist exclusively. In such a situation it is common to agree that the commission rate reduces to 20 percent if the manager manages more than one or two other artists.

When a very well-established artist seeks a new manager, the latter will know that there is very little or no risk involved and that the artist already enjoys a high level of income. In such a case the manager might be willing to agree a commission of 10-15 percent or even operate on a flat fee basis.

At the other extreme there has been a new phenomenon in recent years whereby a high-level manager has created a band by holding auditions or by taking a band on via a TV talent competition such as *Pop Idol* or *The X Factor*. With the manager virtually guaranteeing massive TV exposure, or in the case of the manager creating the band and investing very large sums of money, commissions as high as 50 percent have been agreed. Whether a court would find this level of commission acceptable in such circumstances remains to be tested but in such a case it may be better to enter into some kind of joint venture with the band or artist as will be briefly discussed later in this section.

TOURING INCOME

In practice there are many different arrangements in place for touring income varying from a straight 20 percent of the gross to 20 percent of the net profits only. Many tours lose money or break even, often with record company tour support. If the manager only receives 20 percent of the net profits this means he or she cannot take any commission




on the tour. Furthermore, the manager has had to pay all of the management staff and office costs etc. connected with the tour. In such a case the manager has done a tremendous amount of work (usually much more than the booking agent) and ends up with a considerable financial loss. Also if there is tour support from a record company, this represents a further loss to the manager as it is usually fully recoupable from royalties which would otherwise have been commissionable. It is therefore clear that 20 percent of the net profits only is unreasonable from the manager's perspective unless the tour is making a substantial profit. A good compromise would be for the manager to take 10-15 percent of the gross touring income (less VAT/other taxes) or 20-30 percent of the net profits, whichever is the greater.

Another approach is for the manager to take a fixed fee for managing the tour or for an arrangement to be worked out on a tour by tour basis by reference to the budgeted costs and income. Yet another basis is that the manager is paid at least the same as the highest-paid person on the tour. The level of an appropriate touring commission rate can be influenced by several other factors: is the manager also the tour manager or the booking agent or both? Is the artist a solo performer or a band? Who is in charge of touring costs? For example, if the manager also provides and pays for the services of a tour manager it would be quite reasonable to fix an all-in touring commission rate of 17.5 percent of the gross.

If an agreement is reached for a percentage of the gross and the artist is unable to pay the manager due to cash flow difficulties, then the amount should be put aside, with interest, and paid when the artist is in a position to do so. This process also applies to commission generally.

Merchandising and sponsorship income associated with a tour or a retail merchandising agreement should be treated separately and should be commissioned at the normal rate rather than included in the calculation of touring losses and profits. However, some phonogram producers may insist that merchandising income forms a part of the overall tour budget and will only pay tour support after such income is included.

When negotiating tour support with a phonogram producer, the manager should insist that management commission is an acceptable tour cost. It is also important to clarify that merchandising income is not included as tour income in the tour accounts. Some



phonogram producers accept booking agency commission as a *bona fide* expense but refuse to accept management commission. Apart from being illogical this is also unfair to managers and artists. It is important to raise these issues with the phonogram producer as early as possible and preferably when the recording agreement is first negotiated. That is the only point at which the manager may have leverage over the phonogram producer. It may also be possible to negotiate with the phonogram producer for the record company to pay the manager a fixed weekly fee when on tour, and international airfares in the early stages of the artist's career when touring will need support.

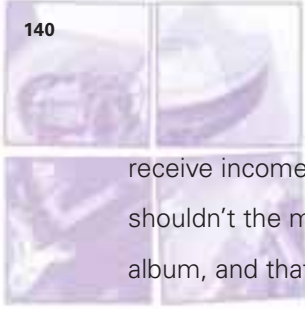
A 'tour' might be defined as a series of more than six dates in any three-week period. If several 'one-off' dates occur in a month then these can be grouped and the commission calculated on a monthly basis.

As physical record sales are decreasing due to such factors as illegal CD burning and file-sharing, an artist's income is in many cases shifting from recording and publishing income towards touring income. For artists who have ceased to produce hit albums and hit singles, touring income represents their main income stream so it is very important to consider the above carefully and arrive at fair and workable percentages for both parties.

6. Commission Term: (_____)

An accepted principle of artist management agreements is that the manager should continue to receive commission after the term has expired for achievements during the term. In many countries this is known as 'post term commission'. In the US it is known as the 'sunset clause'.

Many managers believe strongly that commission should be payable in perpetuity on income resulting from work carried out during the term. If an album is successful it is generally so because of the combined efforts of the artist, the manager and the phonogram producer. Many recording contracts are for the life of the related rights protection which for sound recordings is currently 50 years from first release in most countries although in some countries it is longer. In the US it is 95 years, Mexico 100 years, and Japan 70 years. Therefore the artist and the phonogram producer will



receive income in perpetuity (or the life of the related rights protection) so why shouldn't the manager? The manager is usually a key component in the success of an album, and that expertise and hard work deserve to be rewarded if quality managers are to be attracted to the industry. Similarly, the life of copyright for authors currently often lasts for 70 years after the death of the last person who participated in the work, which in practice could be 150 years if the song was written when the author was 15 and he/she died at the age of 95. Post-term commission in perpetuity is something that is likely to be challenged by artists' lawyers but if it applies to the phonogram producer why should it not apply to managers?

It may be the case that a compromise is reached by which the manager's commission is payable at full rate for a period after the term, which is then followed by one or two periods in which the commission reduces, the last of these being in perpetuity. For example, full rate for the first two or three years following the end of the term of the management agreement and half rate in perpetuity (or until copyright or the related right expires by law) thereafter.

If commission does reduce, a second manager may be able to negotiate with the artist for the difference between the commission being paid to the first manager and the commission rate. If the previous works and/or recordings were commissionable at the full rate in perpetuity by the first manager, it may be a good idea to approach the original manager (with the approval of the artist) to negotiate a commission split on previous works and/or recordings. If a new manager invests a tremendous amount of effort on current and future works, and the work is successful, this could well stimulate back catalogue sales, which would benefit the original manager. It may therefore be in the original manager's interest to encourage the new manager to try very hard in this respect by agreeing to a split commission which would provide a further incentive.

In any case, except in unusual circumstances, the aggregate of the commissions of the old manager and the new would not normally exceed the commission rate. It is also important to define which works will be commissionable on a post-term basis. It could be any of the following:

- (a) Anything created during the term (writing or recording)
- (b) Anything recorded during the term (either demos or masters)
- (c) Anything released during the term.

7. *Artist's Career: All activities in the (_____) industry including without limitation the creation of Works or Recordings as defined in 11 below.*

Either 'music' or 'entertainment' should be inserted here. 'Entertainment' has broader scope and would include such things as literary and dramatic works if appropriate.


8. *Artist's Account: Bank Address: (_____)*
Bank Account No: (_____)
Signatories: (_____) (_____)
Interest if either party owes money to the other: (____) % over the (____) base rate.

This clause allows either the manager or the artist to charge interest if the other party owes them money beyond the normal trading term arrangements. An invoice is usually payable within 30 days. If a payment of income or corporation tax is late the tax authority will normally automatically charge interest and the situation should be exactly the same in the music industry.

9. *Manager's Duties:*
- 9.1 *To use the Manager's reasonable endeavours to advance and promote the Artist's career.*
- 9.2 *To advise and consult with the Artist regarding collection of income and the incurring of expenditure and to use the Manager's reasonable endeavours to ensure that the Artist receives payment.*

It is important that the manager and the artist regularly consult and discuss the development of the artist's career both in terms of assessing its past and present success and its future direction.

- 9.3 *To consult regularly with the Artist and keep the Artist informed of all substantial activity undertaken by the Manager on the Artist's behalf, and to discuss the Artist's career development generally and to periodically offer constructive criticism.*
- 9.4 *To maintain records of all transactions affecting the Artist's career and to send the Artist a statement within (____) days of the end of each calendar quarter disclosing all income, the source of income, expenses, commission and other debts and liabilities arising during the preceding three months.*



The period between the end of the quarter and the statement can be anything from 30 to 120 days. It can often take a considerable time to document and account the financial activity of a particular quarter, especially if the artist is on a world tour. If the accounts are late for any reason, an artist may feel he/she has a reasonable claim for breach of contract. Supplying the accounts 120 days after the quarter end is not unreasonable, and for those cases where a tour straddles two accounting periods it may be necessary to have a one-off agreement signed to the effect that the accounting will be deferred to the end of the period following the end of the tour. In such a case it is important to have a clear written agreement signed to this effect before the start of the tour.

9.5 To obtain the Artist's approval for any expenditure over (_____) for a single cheque or (_____) over a period of one calendar month.


This is sometimes seen in artist management agreements, and provides the artist with some protection against the manager misusing his or her money. In practice it is vital that there is trust between the artist and the manager. This limitation can also be a practical problem if, for example, the manager is in South Africa and the artist is in Australia and funds are needed quickly.

9.6 To advise the Artist on appointing booking agents, accountants, lawyers, sponsors, merchandisers and other agents with due consideration to the Artist's moral views.

It is important that both the artist and the manager feel comfortable and are able to work with third-party professionals. It is also important that the manager is aware of the artist's political and moral views and does not commit the artist to anything inappropriate.

10. Artist's Duties:


- 10.1 To carry out to the best of his/her ability and in punctual and sober fashion all reasonable agreements, engagements, performances and promotional activities obtained or approved by the Manager.*
- 10.2 To attend punctually all appointments and to keep the Manager reasonably informed of the Artist's whereabouts and availability at all times.*

- 
- 10.3 *To reveal to the Manager all income including but not limited to public performance income, touring overages and radio and television appearance monies paid directly to the Artist.*
 - 10.4 *To refer promptly all approaches and offers from third parties concerning the Artist's career to the Manager.*
 - 10.5 *Not to engage any other person to act as the Artist's manager or representative in connection with any aspect of the Artist's career during the Term.*
 - 10.6 *To consult regularly with the Manager concerning the development of the Artist's career and to accept that it is part of the Manager's job to offer constructive criticism from time to time.*
 - 10.7 *To keep the Manager fully informed and to consult regularly concerning all anticipated expenditure to be incurred by the Artist, and to obtain the Manager's approval in regard to recording costs, video costs, equipment costs and touring costs.*
 11. *Works and Recordings shall include:*
 - 11.1 *Sound recordings (including demos)*
 - 11.2 *Visual recordings including film and video*
 - 11.3 *Literary, dramatic and musical works*
 - 11.4 *Merchandising, sponsorship of any name, logo, artwork or trademark owned by or associated with the Artist.*
 - 11.5 *Performances and appearances by the Artist in concert, on radio, television or film.*
 - 11.6 *Recordings of other artists produced, engineered, programmed or arranged by the Artist.*

In each case (11.1 – 11.6) created or substantially created during the Term.

12. *Income shall mean both 12.1 and 12.2:*
 - 12.1 *Commissionable Income:*

All gross fees and sums of money payable and accruing to the Artist in respect of exploitation of the works and recordings or otherwise arising from activities in the artist's career excluding non-commissionable income.
 - 12.2 *Non-Commissionable Income:*
 - 12.2.1 *Sums paid by or on behalf of the Artist as budgeted, recoupable recording costs or budgeted recoupable video costs.*



12.2.2 *Royalties, advances or fees paid or credited by or on behalf of the Artist to any third party producers, mixers, programmers or engineers to an agreed budget.*

12.2.3 *Monies paid or credited to the Artist as tour support to an agreed budget.*

12.2.4 *In the event that the Artist enters into a separate production and/or publishing agreement with the Manager, income from such agreements shall be non-commissionable income.*

The word 'budgeted' has been included in the above to allow for the commissionable income to be calculated in a fair and reasonable way. The responsibility for budgeting should rest jointly between the artist and the manager, but if, for example, the recording costs for an album go heavily over budget, it may be necessary for them to come to an agreement as to how much commission should be taken.

The modern tendency is for recording contract advances (sometimes called 'recording funds') to be inclusive of recording costs and if this is the case, the manager and the artist are faced with the problem of deciding how much of the advance should be set aside for recording (which is non-commissionable income) and how much should be regarded as commissionable income. It is a good idea to come to a separate written agreement with the artist every time a new album recording advance is received so that an agreed level of the advance is deemed to be commissionable income. For instance, it could be the case that the entire advance is spent on recording costs, in which case the manager would earn absolutely nothing.

It may also be possible to insert a re-assessment clause whereby both parties agree on an adjusted level of commissionable income when the recording of the album has been finished. Also, if the artist buys recording or other equipment with the advance this should be regarded as commissionable income as the artist is acquiring an asset. Alternatively, an agreement could be reached for the cost of this equipment to be regarded as non-commissionable income at the time of purchase but that if and when it is sold the manager is entitled to the commission rate applied on the sale price. If the management term expires and the artist wishes to retain the equipment, the artist should pay the manager the commission rate on the value of the equipment on the date of expiry of the management term.

13. *Manager's Expenses:*

See the previous example in Annexe B of a typical list of manager's expenses.

14. *Artist's Expenses:*

See the previous example in Annexe B of a typical list of artist's expenses.

End of Schedule and example of a long-form contract.

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FURTHER READING

1. Collective Management of Copyright and Related Rights
(Mihaly Ficsor ISBN 92-805-1103-6).
2. International Protection of Performers Rights
(Owen Morgan ISBN 10: 1-84113-285-3 or ISBN 13: 978-184113285).
3. MySpace Music Marketing
(Bob Baker ISBN 10: 0971483841 or ISBN 13: 978-0971483842).
4. Guerrilla Music Marketing Handbook
(Bob Baker ISBN 10: 0971483859 or ISBN 13: 978-0971483859).
5. Music, Money and Success
(Jeffrey Brabec & Todd Brabec ISBN 10: 082567326-7 or
ISBN 13: 978082567326).
6. Music Business Infrastructure Practice and Law
(Nigel Parker ISBN 10: 0421-899-301 or ISBN 13: 978-0421899308).
7. All You Need to Know About the Music Business
(Donald S Passman ISBN 10: 0141031158 or ISBN 13: 978-0141031156).
8. Music Copyright – The Use of Music in Film and Television
(Gillian Baxter ISBN 1-905394-02-0).
9. Media Contracts and Industry Agreements
(Gillian Baxter ISBN 1 905394 039).



10. Wikinomics – How Mass Collaboration Changes Everything
(Don Tapscott & Anthony D Williams ISBN 10: 1591841380 or
ISBN 13: 978-1591841388).

11. The Longtail
(Chris Anderson ISBN 10: 1401302378 or ISBN 13: 978-1401302375).

12. The Future of Music
(David Kusek and Gerd Leonard ISBN 10: 0876390599 or
ISBN 13: 978-0876390597).

ABOUT THE AUTHOR

David Stopps began his career as a manager and then became a promoter establishing the famous Friars Club in Aylesbury in the UK which he ran from 1969 until 1984. When it closed Friars Aylesbury had 87,000 members. As a promoter he presented Genesis, David Bowie, The Jam, Dennis Brown, Gregory Isaacs, The Ramones, U2, Captain Beefheart, The Police and The Clash, amongst many others. In 1982 he returned to management, first managing Marillion for a short period and then Howard Jones who has sold in excess of eight million albums. He has managed Howard Jones throughout his entire career starting with small pub gigs in England to headlining at Wembley Arena in London, Madison Square Garden in New York, The Forum in Los Angeles and the Budokan in Tokyo. He also manages classical crossover artist Miriam Stockley who as the featured singer with Adiemus enjoyed global album sales of over three million. With his business partner Joseph Stopps, he co-manages a dance-pop-mash-up project The Young Punx and Italian multi-genre artist Phonat. Stopps is a member of the British Copyright Council and is also a member of the Performer Board and the Main Board of UK related rights collection society PPL. He is the Director of Copyright and Related Rights for the UK Music Manager's Forum (MMF) and also for the International Music Managers Forum (IMMF). Stopps represents the IMMF as an NGO at WIPO processes in Geneva where he represents all featured artists worldwide.

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