What Lawyers and Music Professionals Need To Know

Presented by:
The Entertainment Law Section

February 19th, 2015
3 p.m. – 6:15 p.m.

Thomas & Mack Moot Court
UNLV
Las Vegas, NV

3 CLE Hours

600 E. Charleston Blvd. Las Vegas, NV 89104 702-382-2200
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Music Law and Business - What Lawyers and Music Professional Need to Know
February 19, 2015 | 3 p.m. - 6:15 p.m.
Thomas and Mack Moot Court, Las Vegas, NV

Agenda

3 p.m. – 4 p.m.  *Structuring co-writing agreements and band partnership agreements*

Presented by: Russell Christian
and Matthew Pruitt

4 p.m. – 4:30 p.m.  *Where does the money go? (An analysis of music revenue streams)*

Presented by: Matthew Pruitt

4:45 p.m. – 5:15 p.m.  *Music Licensing for Film, Television and Online Platforms*

Presented by: Anat Levy

5:15 p.m. – 6:15 p.m.  *Sweetening Your 360 Deal - Making sure 360 deals are actually in the best interest of your client*

Presented by: Howard Siegel
and Tracy Gallegos
BIOGRAPHIES

Russell D. Christian is an attorney at Perry and Westbrook. His primary area of practice is civil litigation, including insurance defense and business litigation. He previously worked for a busy Plaintiff's firm in Las Vegas and Pahrump handling personal injury, workers compensation, employment, and business litigation cases. He has successfully represented clients at arbitration, short trials, and at trial.

Mr. Christian received his J.D. from Ave Maria School of Law in 2009 and was admitted to practice before all federal and state courts in Nevada in 2010. Russell has been playing guitar and composing music since 1997 and played in several bands during college. His personal experiences playing music and copyrighting his own material led to his interest in music law, and he is passionate about his hobby and enjoys any opportunity he has to combine it with his legal profession.

Russell is originally from Georgia and a die-hard Braves and Falcons fan.

Tracy Gallegos has a multifaceted practice that touches upon corporate, real estate, sports, and entertainment law for clients ranging from start-up companies to established businesses. Tracy’s clients include, but are not limited to, community association management companies, homeowners’ associations, medical marijuana dispensaries, and individuals and companies involved in the promotions and management aspects of the nightlife industry.

Her corporate services include assistance with entity formation and restructuring; preparation of business plans; procurement of business licenses, building permits, and special use permits; drafting of documentation necessary to obtain licensing for medical marijuana dispensaries; and preparation of forms required by the California Department of Alcoholic Beverage Control. Furthermore, Tracy routinely reviews, revises, and drafts various corporate documents; including bylaws, operating agreements, and articles of dissolution; and negotiates and drafts business agreements such as escrow instructions, foreign exchange trading, joint venture, consulting, stock purchase, unit transfer, and subscription agreements.

In the realm of real estate law, Tracy represents both commercial and residential developers. She drafts and reviews purchase and sale agreements, promissory notes, public offering statements, disclosure statements, commercial leases, easement and maintenance agreements, deeds of trust and assignment of rents agreements. She provides representation to ensure her clients’ compliance with the Subdivided Lands and Subdivision Map Act. In addition, she manages all aspects of land use applications for mixed-use and commercial projects, including preparation of documents necessary to obtain building permits, special use permits, and zoning changes. Tracy handles transactions involving the acquisition and disposition of multimillion-dollar commercial properties, residential properties, and vacant parcels of real property. She also handles landlord-tenant disputes for commercial properties.

Tracy's real estate practice also includes serving as general counsel for community association management companies and homeowners' associations, advising clients on real estate issues pertaining to common-interest communities. She provides guidance and counseling pertaining to governing documents, foreclosure issues arising from non-payment of assessments, easements, restrictive covenants, delinquent assessment liens, and compliance with the California Davis-Stirling and Nevada Uniform
Common-Interest Ownership Acts. Tracy drafts all the necessary documents required by homeowners' associations, including amendments to governing documents, bid processes, and materials required for board and annual meetings. Tracy also drafts and reviews management agreements, conflict waivers, indemnifications, and nondisclosure and non-compete agreements. In addition, Tracy has represented many clients with disputes pending before the Nevada Real Estate Division.

In the entertainment law arena, Tracy has counseled clients on various issues including merchandising, licensing, nondisclosure and non-compete agreements, music service agreements, artist performance agreements, and various other types of contracts relevant to the entertainment industry.

Before Fox Rothschild
Tracy served as Corporate Counsel and Director of Operations for a community association management company with offices in Nevada and California. She has also practiced real estate, sports, entertainment, and corporate law at firms in California and Nevada.

During law school, Tracy was a student attorney for the school’s legal clinic, where she provided legal services to indigent clients involved in civil matters. She also served as president of the school’s Asian Pacific American Law Student Association and vice-president of the Sports and Entertainment Law Society.

Tracy is a member of the Board of Directors of Life Long Dreams, a non-profit organization that provides visual and performing arts classes to children with disabilities.

**Anat Levy** is the Chair of the Entertainment Law Section of the State Bar of Nevada. She is a UCLA Law graduate with twenty-eight years entertainment and intellectual property experience. She worked at Paramount Pictures for 10 years supervising copyright litigation worldwide and representing Paramount on numerous industry committees. Before that, she worked at an entertainment boutique firm in Los Angeles. In 2000, she started her own practice representing motion picture distributors (including MGM and Miramax), producers, post-production houses, on-line companies, and other businesses in all aspects of transactional and litigation work. At her firm, Anat also handled four multi-million dollar business and consumer class action litigation cases. She co-founded a production company that has optioned two television series to networks and acquired and developed a slate of projects including short films. She also serves as an industry expert Arbitrator for the Independent Film and Television Alliance since 2001. Anat is admitted to practice law in California and Nevada.

**Matthew Pruitt** practices entertainment, intellectual property, contract and business law at Alverson, Taylor, Mortensen & Sanders. He is the vice-chair of the Entertainment Law Section of the State Bar of Nevada.

Matthew has extensive experience in the field of entertainment where he has worked both as an agent and a manager in the music business. Matthew spent two years on the management team of multi-platinum rock band The Killers. He subsequently founded the Hungry Tiger Agency, a booking and management agency for musicians, which helped launch platinum rock band Imagine Dragons to success.

Matthew attended law school at the Oklahoma City University School of Law. During law school, he studied international law for a semester at Nankai University in Tianjin,
China. Prior to law school Matthew attended Brigham Young University where he obtained a Bachelor of Fine Arts and Communications degree. He served as a reporter for the BYU student newspaper writing articles for the Arts & Entertainment desk.

Dedicated to community service, Matthew currently volunteers for Nevada Legal Services. He spent two years as a service missionary in Cebu, Philippines prior to attending college and speaks fluent Cebuano and conversational Tagalog.

Matthew is an avid hiker and musician.

**Howard Siegel** is a senior partner in Pryor Cashman LLP's Entertainment Group. He has more than 40 years' experience in representing clients in all aspects of the entertainment business, with a particular emphasis on the music industry, during which time he has served as counsel to many of the industry's most prominent recording artists, songwriters, producers, managers, and executives.

Mr. Siegel is a frequent speaker as well as the author of dozens of articles dealing with the entertainment, music and copyright practice. He served as judicial clerk for the New York State Court of Appeals from 1970 to 1972 and was an adjunct Professor of Law at Fordham Law School for 24 years. Mr. Siegel is a member of the Editorial Board of Entertainment Law and Finance and of Multimedia Web Strategist, as well as the Editor-in-Chief of the nationally distributed book "Entertainment Law," currently in its fourth edition. Every year since 2007, Mr. Siegel has been designated as one of New York's "Super Lawyers" - a ranking of the top 5% of all attorneys in the New York Metropolitan area. He also has been recognized by The Hollywood Reporter as among the top 100 "Power Lawyers" in the entertainment industry, as well as being named one of the "Top Media and Entertainment Lawyers" by Chambers USA for several years.

Mr. Siegel is a member of the Nevada, New York and California Bars and a summa cum laude graduate of Syracuse University College of Law where he was Order of the Coif, Editor-in-Chief of the Syracuse Law Review (1970) and a member of the Moot Court Board (1969-70).
The Entertainment Law Section of the State Bar of Nevada Presents:

MUSIC LAW AND BUSINESS: WHAT LAWYERS AND MUSIC PROFESSIONALS NEED TO KNOW

STRUCTURING CO-WRITING AND BAND PARTNERSHIP AGREEMENTS

• By Russell Christian, Esq. and Matt Pruitt, Esq.
PART I: COPYRIGHT BASICS

• "Copyright" literally means the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work.

Source:
www.copyright.gov/help/faq/definitions.html

PART I: COPYRIGHT BASICS

• A. Historical Basis of Copyright
  – Copyright is relatively modern concept but incorporates ancient legal traditions of property rights with mankind’s desire to create art.
PART I: COPYRIGHT BASICS

– 1710: Parliament passes Statute of Anne
  • “An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned.”
  • Fine of one penny per page for copyright infringement

PART I: COPYRIGHT BASICS

• For more information on English and Colonial copyright law see Patterson, L. Ray; Joyce, Craig (2003) Copyright in 1791: An Essay Concerning the Founders' View of Copyright Power Granted to Congress in Article 1, Section 8, Clause 8 of the U.S. Constitution, Emory Law Journal (Emory University School of Law)
PART I: COPYRIGHT BASICS

• **B. United States Copyright Law**
  • US Const. Art. I, sec 8, contains the “Copyright Clause”, which empowers Congress:

  *To promote the Progress of Science and useful Arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.*

PART I: COPYRIGHT BASICS

• Congress has a constitutional basis of power to legislate on Copyright issues:
  – 1976 is controlling, established a federal copyright system.
  – Title 17 of United States Code deals with copyrights.
PART I: COPYRIGHT BASICS

• Purpose of the Copyright Act is to benefit the public good by encouraging the production of original literary, artistic, and musical expression. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994).

• The Copyright Act achieves this objective "by establishing a **marketable right to the use of one's expression**", thus creating an "**economic incentive to create and disseminate ideas**". *Harper & Row Publishers Inc. v. Nation Enterprises*, 471 U.S. 539, 558 (1985).

PART I: COPYRIGHT BASICS

• Without this "limited monopoly" provided via the Copyright Act, then copyright holders would have "little economic incentive" to "create and publish" original works. *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1262(11th Cir., 2001)
PART I: COPYRIGHT BASICS

Who is entitled to copyright protection?

PART I: COPYRIGHT BASICS

– The courts have recognized that even "corporate behemoths" are entitled to the same protections as "starving artists". Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994)
What is entitled to copyright protection?

- Copyright protection exists for “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”

17 U.S.C. § 102
PART I: COPYRIGHT BASICS

(1) literary works;
(2) musical works, including any accompanying words;
(3) dramatic works, including any accompanying music;
(4) pantomimes and choreographic works;
(5) pictorial, graphic, and sculptural works;
(6) motion pictures and other audiovisual works;
(7) sound recordings; and
(8) architectural works.

17 U.S.C. § 102

PART I: COPYRIGHT BASICS

—Cannot copyright ideas or facts you narrate. Must be in a tangible medium

• See; 17 USC § 102; Baker v. Selden, 101 US 99 (1879); CDN Inc. v. Kapes, 197 F.3d 1256 (9th Cir. 1999);
PART I: COPYRIGHT BASICS

• To qualify for copyright protection, a work must be original to the author. *Id.* Original, as the term is used in copyright, means only that the work was independently created by the author and that is possesses at least some minimal degree of creativity. *Id*

PART I: COPYRIGHT BASICS

—The requisite level of creativity is extremely low; even a slight amount will suffice. *Id.* The vast majority of works make the grade quite easily, as they possess some creative spark, “no matter how crude, humble or obvious” it might be. *Id.*
PART I: COPYRIGHT BASICS

– Originality does not signify novelty; a work may be original even though it closely resembles so long as the similarity is fortuitous, not the result of copying. *Id.*

– Parody is the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works. *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 580 (1994)

PART I: COPYRIGHT BASICS

• B. United States Copyright Law

What rights does a copyright holder have?
PART I: COPYRIGHT BASICS

• Owner of copyright has the exclusive rights to do and to authorize any of the following per 17 U.S.C. § 106:
  • (1) to reproduce the work;
  • (2) to prepare derivative works;
  • (3) to distribute copies of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
  • (4) to perform the work publicly;
  • (5) to display the work publicly; and
  • (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

PART I: COPYRIGHT BASICS

• If I co-write a song with a person or persons, who owns the copyright in the absence of a contractual agreement?
PART I: COPYRIGHT BASICS

• Copyright in a work vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work. 17 USC § 201 (a)
• A “joint work” is defined as “a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. “17 USC § 101

PART I: COPYRIGHT BASICS

• Key under 17 USC § 101 is the intention that the ideas be merged.
• An intent to be the joint owners of a copyright should be enough to constitute them joint authors within the meaning of 17 U.S.C. § 201(a). Gaiman v. McFarlane, 360 F.3d 644 (7th Cir., 2004)
PART I: COPYRIGHT BASICS

• With a joint work, either of the authors can deal non-exclusively with the entire composition, subject to the obligation to pay the other person their share of the proceeds. Can be tricky if you don’t have agreement.
• Joint authors do not need to have equal contributions.

PART I: COPYRIGHT BASICS

• With a joint work, essentially the law divides ownership rights equally amongst all authors/co-authors.
• This includes the rights mentioned in 17 U.S.C. § 106.
PART I: COPYRIGHT BASICS

• Important Cases on Joint Works:
  – When co-ownership is conceded and the only issue therefore is the contractual, or in the absence of contract the equitable, division of the profits from the copyrighted work, there is no issue of copyright law and the suit for an accounting of profits therefore arises under state rather than federal law. *Goodman v. Lee*, 78 F.3d 1007, 1013 (5th Cir.1996); *Oddo v. Ries*, 743 F.2d 630, 633 and n. 2 (9th Cir.1984)

PART I: COPYRIGHT BASICS

• Important Cases on Joint Works:
  – Shapiro, Bernstein & Co. v. Jerry Vogel Music Co., 161 F.2d 406 (2nd Cir., 1947)
  – *Edward B. Marks Music Corp. v. Jerry Vogel Music Co.*, 140 F.2d 266 (2nd Cir., 1944)
  – *Gaiman v. McFarlane*, 360 F.3d 644 (7th Cir., 2004)
  – *Thomson v. Larson*, 147 F.3d 195 (2d Cir. 1998)
  – *Childress v. Taylor*, 945 F.2d 500 (2d Cir. 1991)
PART I: COPYRIGHT BASICS

• Important Cases on Joint Works:
  – *Janky v. Lake County Convention and Visitors Bureau*, 576 F.3d 356 (7th Cir. 2009)
  – *Davis v. Blige*, 505 F.3d 90 (2d Cir. 2007)

PART I: COPYRIGHT BASICS

• Conclusion:
  • In the absence of any written agreement regarding songwriting, song is subject to default rules of Copyright Acts. All writers are joint owners of work, 100% ownership/control. Both can license songs without having to ask the other. All writers share in the profits.

    Much easier if you have a songwriter agreement that contains:

    1. Payment information
    2. Songwriting credit
    3. Rights
This Partnership Agreement ("Agreement") is intended to memorialize and incorporate in written form all of the understandings reached between and among ***[MEMBER NAMES] collectively p/k/a "***[GROUP NAME]" (individually referred to as "Partner" and collectively referred to as "Partners"), as of ***[DATE], the effective date of this Agreement.

THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Partners wish to associate themselves in a General Partnership under the laws of the State of Nevada, effective as of the date hereof. The professional name of the Partnership will be "***[GROUP NAME]" (the "Partnership"). The principal place of business of the Partnership shall be c/o ***[ADDRESS] or such other place as the Partners hereinafter designate. The Partnership shall remain in existence until dissolved by the Partners or as otherwise provided in this Agreement. The Partners may agree at some later date to change the nature of their association to a corporation, or other form of business organization. In such event, the terms hereof shall be used in the formation of such new association to whatever extent possible (e.g., in a shareholder's agreement if the Partners decided to incorporate).

2. (a) The sole and limited business of the Partnership shall be to provide the respective services, skills, and talents of the Partners in connection with (i) the performance of live concert and personal appearance engagements of the Group (as defined below) (ii) the merchandising of products bearing the names and/or likenesses of the Partners as part of the Group, (iii) the making of master recordings embodying the performances of the Group (hereinafter "Group Masters"), (iv) the making of videos embodying the performances of the Group (hereinafter, "Group Videos"), and (v) all other activities customarily rendered by musical groups in the music industry.

(b) (i) The Partners intend to enter into a recording agreement with a label ("Label") (hereinafter the "Recording Agreement"). For convenience, the Recording Agreement and any other agreements entered into by the Group during the term shall sometimes be hereinafter collectively referred as the "Agreements". As the musical group professionally known as "***[BAND NAME]" (hereinafter the "Group"), the Partners have and shall write songs and make master recordings embodying their featured performances ("Group Masters"; and the songs written by the Partners embodied thereon shall be collectively referred to as the “Group Songs”) exclusively for the Partnership which are suitable for the manufacture and sale of phonograph records to be distributed throughout the world by Label, its licensees and assigns, under the provisions of the Agreements. Each Partner shall be entitled to receive an equal share of any and all fees, advances, royalties or other payments which Label pays or causes to be paid to the Partners pursuant to the terms of the Recording Agreement, except for the writer's share of royalties for Group Songs written by individual Partners, which shall be paid to such individual Partners.

(ii) ***[PRIMARY SONGWRITER NAMES] write the Group Songs and have agreed to split writer’s credit equally. ***[PRIMARY SONGWRITER }
NAMES] have agreed to assign 50% of the publisher’s share of the Group Songs to the other two members in the following percentages 36% to ***[MEMBER NAME] and 14% to ***[MEMBER NAME]. For clarification, the remaining 50% of the publisher’s share shall be split equally between ***[PRIMARY SONGWRITER NAMES], and ***[PRIMARY SONGWRITER NAMES] shall split 100% of the writer’s share of the Group Songs. For further clarification, if a dollar is earned from a Group Song, it would be split 37.5 cents to each of ***[PRIMARY SONGWRITER NAMES], 18 cents to ***[MEMBER NAME] and 7 cents to ***[MEMBER NAME].

(c) During the term hereof, the Partnership shall have the sole and exclusive right to furnish to third parties the services of the Partners in connection with presenting the worldwide live concert and personal appearance engagements of the Group, and shall be entitled to receive all fees, advances, royalties, or other payments to be derived therefrom.

(d) The Partnership shall have the sole and exclusive right to use or permit others to use the Group’s name, trademark, and/or logo, and the Partnership shall have the sole and exclusive right to use or permit others to use the individual names (including professional names), signatures, likenesses, and voices of the Partners hereto in connection with the worldwide commercial exploitation of products and/or services concerning the Group, such as, but not limited to, souvenir programs, posters, buttons, heat transfers, and clothing (hereinafter “Merchandising Products”), and the Partnership shall be entitled to receive all fees, advances, royalties, or other payments to be derived therefrom. Such rights shall be perpetual with respect to all Merchandising Products authorized for manufacture during the term hereof.

(e) Notwithstanding anything herein to the contrary, the individual Partners shall have the right to render services as individuals outside of the Partnership, including but not limited to as songwriters, producers, actors, and solo artists, provided always that any such individual activities do not materially interfere with such individual's obligations to the Partnership, which shall be the first priority of each of the Partners for as long as they are members of the Partnership, and provided further that such individual activities do not violate the rights of any third parties with whom the Partnership has entered into agreements, including, but not limited to Label.

3. Except as set forth herein to the contrary, the Partners' interest in the Partnership shall be equal.

4. Capital shall be contributed to the Partnership by the Partners equally. A separate capital account shall be established and maintained for each Partner. Each such capital account shall consist of said Partner's contributions to the capital of the partnership, decreased by any reductions in said capital. No Partner shall be required to contribute more than said Partner's equal share to the capital of the Partnership, provided that if any Partner does so, said additional contribution shall be deemed to be a loan to the Partnership which shall be re-paid out of the first Net Profits received thereafter, or as otherwise agreed upon by the Partners.

5. The term "Net Profits" and "Net Losses," as used in this Agreement, shall mean the Net Profits and Net Losses of the Partnership determined on the cash receipts and disbursements method of federal income tax accounting. Net Profits and Net Losses shall be divided and allocated
among the Partners equally. Net Profits shall consist of all compensation derived from the activities of the Group, including, but not limited to fees, advances, royalties, or other payments derived from the live concert and personal appearance engagements of the Group, Merchandising Products of the Group, Group Masters, Group Songs and Group Videos, less expenses incurred by the Partnership in connection with the foregoing.

6. If the Partners agree, one or more professionals may be engaged to represent the Partners. The Partnership is currently represented by ***[PERSONAL MANAGER, ACCOUNTANT, BOOKING AGENT, ATTORNEY, ETC.].

7. It is expressly understood and agreed that each Partner will provide his talent and experience, and devote such time and attention to the promotion and other exploitation of the Group and other aspects of the business of the Partnership, as is necessary to maximize the profits from the activities and business of the Partnership. The Partners agree that the participation in profits and losses of the Partnership is based upon rendition of such services by or on behalf of each of the Partners, and shall be deemed in compensation therefor. It is expressly understood and agreed that each Partner is required to render his services as a featured recording artist, songwriter and performer exclusively in the conduct of the business of the Partnership during such Partner's term of membership in the Group. The Partners shall not be required to devote their entire time and attention to the affairs of the Partnership, but shall spend so much time as shall be necessary to the conduct of the Partnership's business. The Partners shall control, manage, and direct the business of the Partnership as follows: subject to the provisions of paragraph 8 below, all decisions with respect to the management and operation of the business of the Partnership and all matters referred to herein which require the majority consent of the Partners.

8. No Partner shall have the authority, right, power or privilege to undertake any of the following without prior written consent of the other Partners:

   (a) Borrow on behalf of, or obtain loans for, the Partnership, or otherwise encumber the assets of the Partnership or any portion thereof, or sell, assign, transfer or otherwise dispose of any asset of the Partnership or any portion thereof;

   (b) Lend Partnership assets or property;

   (c) Cause or permit the Partnership to become a surety, guarantor, or otherwise assume liability for any person, firm or corporation;

   (d) Incur any obligation, contract any debt, incur any liability, or otherwise cause the Partnership to be subject to any debt, liability or obligation in excess of Five Hundred Dollars ($500);

   (e) Use the Partnership name, credit or assets, other than for Partnership purposes;

   (f) Make an assignment of Partnership's assets for the benefit of creditors;
(g) Stipulate to a judgment against the Partnership;

(h) Possess Partnership assets or assign the rights of the partnership or any of the assets of the partnership;

(i) Permit any person, firm or corporation to become an additional partner hereunder;

(j) Transact any business outside the ordinary course of the business of the Partnership, take any action which would make it impossible or impracticable to carry on the business of the Partnership, or do any act in contravention of this Agreement or its purposes and intent.

To the maximum extent permitted by law, none of the Partners shall be responsible for violations of the foregoing by any individual Partner, and shall be indemnified against any liability resulting from same.

9. No Partner shall be entitled to any separate salary unless agreed upon by the Partners.

10. Partnership expenses may include, but shall not be limited to: All ordinary and reasonable expenses incurred by the Partnership which are directly related to (i) the Group's performing personal appearance and live concert engagements; (ii) the merchandising of products bearing the name and/or likenesses of the Partners for the Group; and (iii) the making and promotion of the Group's records and videos, including, but not limited to, agency commissions, travel and accommodations expenses, equipment cartage fees, salaries of road manager and road crew, trademark costs, personal management commissions, attorney fees and accountant fees.

11. Each Partner, or his authorized representative, shall have the right, at all reasonable times, and at his sole personal expense, to inspect Partnership books and records, and to copy excerpts therefrom. All costs and expenses of keeping and maintaining the books and records of the partnership shall be deemed Partnership expenses. Any fees attributable to the performance of the certified public accountant which are engaged to provide services on the Partnership's behalf shall be deemed expenses of the Partnership.

12. No Partner shall sell, assign, transfer, mortgage, or charge his interest in the Partnership or any part or portion thereof, without offering that interest to the other Partners first. Any attempted sale, assignment, transfer, mortgage or charge in violation hereof shall be null and void and of no force and effect and shall not operate to transfer any interest in or title to such interest in the Partnership to the purported transferee.

13. (a) A Partner shall be deemed to have withdrawn from the Partnership upon the occurrence of any of the following events: (i) the death of the Partner; (ii) the insanity of the Partner; (iii) the filing of a petition in bankruptcy, reorganization or arrangement with creditors, voluntarily or involuntarily, against said Partner, or the making of an assignment for the benefit of the creditors of the Partner or the application for the giving of or consent to the appointment of a
receiver or trustee of said Partner's assets or a substantial part thereof which petition, assignment or consent shall not be withdrawn within ninety (90) days from the filing or making thereof or the entry of a court order adjudicating said Partner bankrupt or solvent or appointing a receiver or trustee for said Partner or his assets and such order shall have remained unstayed for a period of ninety (90) days; (iv) the issuance of a charging order against a Partner's interest in the Partnership which charging order shall remain unstayed for a period of ninety (90) days; (v) the levy of a writ of attachment of execution against a Partner's interest in the Partnership, which levy is not released within a period of ninety (90) days thereof; (vi) the resignation of a Partner, or (vii) a decision by a majority of the Partners to remove a Partner from the Group (with or without cause) upon 30 days written notice to such Partner.

(b) The withdrawal of a Partner shall not automatically dissolve or terminate the Partnership, and the Partnership and its business shall continue without interruption and without break in continuity.

(c) Subject to the provisions of subparagraphs (d), (e), (f), (g), (h) and (i) below, following the withdrawal of a Partner, the Partnership shall pay the withdrawn Partner, as full compensation for and in complete liquidation of the Partner's interest in the Partnership, an amount determined as hereinafter provided. The Net Profits or Net Losses of the Partnership shall be determined for the fiscal period of the Partnership through the close of the month in which the withdrawal occurs, which determination of Net Profits and Net Losses for the relevant period shall reflect all expenses of the Partnership, including any items of accrued expense (which shall specifically include a reasonable provision for a pro rata share of the ordinary expenses of the Partnership for an entire fiscal year) and prepaid expenses. The withdrawn Partner's percentage interest in said Net Profits or Net Losses as so determined shall be closed into the withdrawn Partner's drawing account as though it were the end of the Partnership's fiscal year, if said year has not otherwise closed. The payments to the withdrawn Partner shall consist of and shall be computed as follows:

(i) The sum of the following:

(A) the balance of such Partner's capital account as of the closed of the month in which the withdrawal occurs; and

(B) the credit balance, if any, in such Partner's drawing account as of the closed of the month in which the withdrawal occurs and otherwise determined as prescribed above;

(ii) Less the following:

(A) the debit balance, if any, in such Partner's drawing account as of the closed of the month in which withdrawal occurs and otherwise determined as prescribed above.

The amount determined as aforesaid shall be paid to the withdrawn Partner in twelve (12) equal monthly installment commencing thirty (30) days after the determination thereof. The foregoing amount shall also be deemed to be in consideration of and in complete liquidation of the Partner's
interest in and to the goodwill of the Partnership, if any should exist, and each of the Partners waives his right to claim and receive, in the event of his withdrawal as a Partner, any amount, other than as prescribed above, for goodwill of the Partnership.

(d) As used herein, the term "prorated share" shall mean that percentage equal to the Partner's percentage interest in the Partnership prior to his withdrawal. As used herein, the term "Prior Masters" shall mean each and every master recording made by the Group embodying the performance of the withdrawing Partner and which were recorded by the Group prior to the Partner's withdrawal. The term "Prior Songs" shall mean the Group publisher’s share of each musical composition, and/or recorded by the Group, written in whole or in part by the withdrawing Partner prior to the Partner's withdrawal. As used herein, the term "net royalties" shall mean the gross royalties earned by the Partnership with respect to the Prior Masters and Prior Songs, less all ordinary and reasonable expenses of the Partnership directly related thereto, including but not limited to, royalties and/or other compensation payable to any and all third parties having a participation interest in the proceeds derived therefrom, such as, but not limited to, any producer, co-writer, manager, etc. In addition to the compensation payable pursuant to paragraph (c) above, the Partnership shall, subject to the provisions of (e) below, continue to pay the withdrawn Partner his prorated share of any net royalties earned following his withdrawal in respect of the continued sales, uses and other exploitation of the Prior Masters and Prior Songs and the phonograph records derived therefrom. The Partnership shall account to the withdrawn Partner not less frequently than semi-annually and within ninety (90) days following the Partnership's receipt of accounting statements from (or any other company distributing records manufactured from Prior Masters or other company exploiting Prior Songs). The Partnership shall be entitled to rely on the accuracy of the accounting statements rendered to it by or by such other company.

(e) If Label or any other party subject to an Agreement, shall have made recoupable advances to the Group which have not been fully recouped as of the date of a Partner's withdrawal, then, notwithstanding anything to the contrary contained in paragraph (d) above, no royalties or other compensation shall be payable to the withdrawn Partner until its prorated share of the aggregate unrecouped balance of such advances, calculated as of the close of the month during which such withdrawal occurs, has been fully recouped from such Partner's prorated share of royalties and/or other compensation accruing to the Group or the Partnership. From the time the withdrawn Partner's account is in a positive balance position, the withdrawn partner shall be paid and accounted to for its prorated share of any net royalties which thereafter accrue with respect to the Prior Masters and Prior Songs in accordance with the provisions of paragraph (d) above. It is expressly understood and agreed that a withdrawn Partner shall not have any interest whatsoever in and to the proceeds (advances, royalties, or other compensation) which accrue with respect to the Future Masters/Songs) but neither shall the withdrawn Partner be charged with the recoupment of any advances or other charges made with respect to the Future Masters/Songs.

(f) If, after the close of the month during which a Partner's withdrawal occurs, the Partnership receives any net proceeds derived from the live concerts or personal appearance engagements of the Group performed prior to such Partner's withdrawal and which the withdrawn Partner took part, then, it is expressly understood and agreed that the Partnership shall, promptly after its receipt of any such net proceeds pay the withdrawn Partner his prorated share thereof.
However, a Partner shall have no interest in proceeds derived from any live concerts or personal appearance engagements of the group performed after its withdrawal but neither shall the withdrawn Partner be charged with any expenses incurred in connection therewith.

(g) It is expressly understood and agreed that a withdrawn Partner shall not be paid his prorated share and shall have no interest whatsoever in and to any proceeds received by Partnership following the close of the month during which such the withdrawal occurs which are derived from the exploitation of any Merchandising Products, irrespective of whether such products utilize the Group's name or likeness, or such Partner's name or likeness, and irrespective of the date such products were manufactured and/or sold.

(h) Unless otherwise agreed in writing by the remaining Partners, the interest of the Partnership being liquidated due to the withdrawal of a Partner shall be divided among the remaining Partners who shall be the equal successors thereto.

(i) If a Partner withdraws from the Partnership as a result of notice from the Partnership which specifies that said withdrawal is for cause, then notwithstanding any of the foregoing, said Partner shall not be entitled to any compensation after the effective date of said Partner's withdrawal. For purposes of this subparagraph, "for cause" shall mean any of the following:

(A) the failure of such Partner to comply with his material obligations hereunder, other than as a result of illness, incapacity, or other bona fide reason beyond such Partner's control;

(B) the habitual abuse of drugs or alcohol during the Group's activities; or

(C) the commission of a felony, or the physical abuse of anyone associated with the Group.

14. (a) The Partnership shall be dissolved upon the first to occur of the following events: (i) the voluntary election of the majority of the Partners to dissolve the Partnership; or (ii) the dissolution of the Partnership by operation of law.

(b) Upon dissolution of the Partnership, the Partnership shall wind up and the Partners shall take full account of the Partnership's assets and liabilities, and the receivables of the Partnership shall be collected and the assets liquidated as promptly as is consistent with obtaining the fair value thereof or, if the Partners determine that it would be in the best interest of the Partners to do so, all or a portion of the assets shall be distributed in kind. Upon dissolution, the Partners shall engage in no further business thereafter, other than that necessary to collect its receivables and liquidate its assets.

(c) The proceeds from the liquidation of the assets of the Partnership and the collection of the receivables of the Partnership, together with assets distributed in kind, to the extent sufficient therefor, shall be applied and distributed in the following order:
(i) to the payment and discharge of all debts and liabilities of the Partnership due and owing to creditors other than Partners;

(ii) to the payment and discharge of all debts due and owing to the Partners other than for capital and for profits;

(iii) to the Partners with respect to their capital in accordance with their respective capital accounts; and

(iv) to the Partners with respect to their profits in accordance with their respective percentage interest.

(d) Each Partner understands, acknowledges and agrees that in the event the Partnership should dissolve and terminate when the Agreements are still in force and effect, then, irrespective of the Partnership's dissolution and termination, each of the Partners may still be independently and collectively bound to the Agreements in accordance with the terms and provisions thereof.

15. The Partnership shall be the sole owner of all right, title and interest in the professional name "**[BAND NAME]**", and shall have the right and power to permit others, including the Group, to use said name, and marks and logos derived therefrom, as is necessary to accomplish the purposes of the Partnership. For clarification, a leaving Partner, shall have no rights to the name after leaving the Group.

16. This agreement may be amended or modified by written agreement executed by all the Partners at any time during the existence of the Partnership. This agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements between them with respect thereto. Except as fully set forth herein, there are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter of the Agreement. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. Where the context is require, the use of the neuter gender shall include the masculine and feminine genders and the singular shall include the plural and vice versa. This Agreement shall inure to the benefit of and shall be binding upon the heirs and representatives of the parties. The laws of the State of Nevada shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

17. This Agreement has been prepared by **[ATTORNEY NAME]**, on the basis of the agreement among the Partners communicated to him. Since **[ATTORNEY NAME]** currently represents the interests of the Group, **[MR. ATTORNEY]** hereby advises each Partner to seek independent representation in connection with this Agreement and requests each of the Partners to acknowledge that he has read and understands the Agreement, and has had the opportunity to seek the advice of independent counsel. It is further understood that should a dispute arise hereunder between any of the Partners, **[ATTORNEY NAME]** will not be able to represent any of the Partners in the resolution thereof.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this ***[DATE] day of ***[MONTH], ***[YEAR], to be effective as of the date set forth in paragraph 1, hereof.

***[MEMBER NAME]

***[MEMBER NAME]

***[MEMBER NAME]

***[MEMBER NAME]

***[MEMBER NAME]
CO-SONGWRITER AGREEMENT

This Agreement made this ___________ day of ____________________ between
__________________________________ ("Artist") and __________________________________ ("Writer").

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth with regard to the Masters, this is to confirm and acknowledge their agreement as follows:

1. COPYRIGHT OF THE COMPOSITIONS: Parties hereby acknowledge and agree that the persons named below ("Co-Writers") have collaborated to create the Compositions described below ("Compositions") and that each shall be deemed to be a writer of the Compositions in accordance with the applicable percentage set forth below ("Applicable Percentage"). Accordingly, parties hereby agree to list each Co-Writer hereto as a writer of the Applicable Percentage of the Compositions on any and all documents relating to the Compositions, including, without limitation, copyright registration forms, and information provided to music publishers and performing rights societies.

Compositions: ________________________

Artist: ______________________________

Company: ___________________________

Co-Writer Applicable Percentages:

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<tr>
<th>Composition</th>
<th>Artist Percentage</th>
<th>Writer Percentage</th>
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2. SAMPLES: Parties acknowledge and agree that if one or more samples, lyrical interpolations, or musical interpolations of a musical Compositions by a person (each a "Sample") who is not named as a Co-Writer are incorporated into the Compositions, then each of the Co-Writers named herein hereby agree to a pro-rata reduction of their respective Applicable Percentage of the Compositions that embodies such Sample, as a result of said Sample owner's copyright percentage of the Compositions.

3. MECHANICAL RIGHTS: Writer hereby issues and hereby causes its publishing designee, if any, to issue to Artist or Artist's designee a first use mechanical license at the same rate (on a pro-rata basis) and upon the same terms and conditions as are contained in any agreement between Artist and his/her designee with respect to the recording which embodies the Compositions ("Master"). If Artist has no current designee then Writer hereby agrees to issue a first use mechanical license at the same rate (on a pro-rata basis) and upon the same terms and conditions as are contained in any future agreement between Artist and his/her designee with respect to the recording which embodies the Compositions ("Master"), at that time and upon the request of Artist.

4. COPYRIGHT OF THE MASTER: Writer hereby acknowledges and agrees that if he/she rendered or has rendered services on the Master as a performing artist, the Master, from the inception of the recording thereof, and all phonograph records (refers to CDs, cassettes, and any other media, including those not currently known) and other reproductions made therefrom, together with the performances embodied therein and all copyrights therein and thereto, and all renewals and extensions thereof, shall be entirely the Artist's property, free of any and all claims whatsoever by Writer or any other person, firm, or corporation. Artist shall, accordingly, have the sole and exclusive right to copyright the Master, phonograph records, or other reproductions, in Artist's name, as the owner and author thereof, and to secure any and all renewals and extensions of such copyrights (it being
understood that for such purposes Writer and all other persons rendering services in connection with the Master shall be deemed to be Artist’s employees for hire and the Master shall be considered a work made for hire). If Writer’s performance on the Master is determined not to be a work made for hire, whether by a court of competent jurisdiction or otherwise, Writer hereby transfers, conveys and assigns to Artist on the same terms as described above any and all rights, interests and title, including without limitation, the copyright and any renewal rights, in and to the Master and all of the results and proceeds of Writer’s services on the Master. Writer shall, upon Artist's request and at Artist's expense, execute and deliver to the Artist any further documentation that Artist may request in connection with such transfer, conveyance and assignment of copyright (including renewals and extensions thereof) in and to the foregoing as Artist may deem necessary, and Writer hereby irrevocably appoints the Artist as his/her attorney-in-fact for the purpose of executing such assignments in his/her name. Without limitation of any of the foregoing, the Artist and his/her designees shall have the exclusive worldwide right in perpetuity to manufacture, sell, distribute, and advertise phonograph records or other reproductions (visual and non-visual) embodying the Master, to lease, license, convey or otherwise use or dispose of the Master by any method now or hereafter known, in any field of use, to release phonograph records or other reproductions embodying the Master under any trademarks, trade names, or labels, to perform such phonograph records or other reproductions publicly, and to permit the public performance thereof by radio or television broadcast, or any other method now or hereafter known, all upon such terms and conditions as the Artist may approve, and to permit any other person, firm, or corporation to do any or all of the foregoing or the Artist may refrain from doing any and all of the foregoing.

5. ADMINISTRATION: Writer hereby assigns any and all rights of Administration of the copyrights of the Compositions herein to Artist. Parties agree that Artist shall have the sole and exclusive right to administer the Compositions listed herein and may register such for copyright protection, and with the appropriate PROs, and may enter into any and all agreements which Artist sees fit to execute in the Administration of such Compositions. Artist may at any time transfer or assign the right of Administration of the Compositions to a third party, including but not limited to a Publisher or Licensing Company. Writer hereby agrees that Artist may enter into a Publishing or Licensing Agreement, including exclusive agreements, with regards to these Compositions without Writer’s consent. As Administrator of the Compositions, Artist may assign some or all of the copyright to a Publisher, provided that all royalties and gross revenue actually received from the Publisher’s exploitation of the Compositions shall be split between Artist and Writer as specified herein in Section 1.

6. NAME AND LIKENESS: Writer hereby grants to Artist the right to use his/her name and approved likeness on any and all packaging, labels, credits and advertising on phonograph records or other reproductions embodying the Master.

7. MISCELLANEOUS: This Agreement contains the entire agreement and understanding regarding the Compositions and the Master and supersedes and replaces all prior negotiations or proposed agreements, written or oral. The undersigned acknowledges that no other party, nor agent or attorney of any other party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein to induce the undersigned to execute this Agreement, and acknowledges that the undersigned has not executed this Agreement in reliance upon such promise, representation or warranty not contained herein. Every provision herein is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

AGREED AND ACCEPTED:

___________________________________    Date: _____________________
Writer

___________________________________    Date: _____________________
Artist
Artist Revenue Streams

- Record Sales: 20%
- Publishing: 20%
- Merchandise: 20%
- Touring: 20%
- Miscellaneous: 20%
RECORD SALES CASH FLOW

WITHOUT A LABEL

Record Sales

- Artist 67%
- Producer 33%

- Artist 75%
- Manager 20%
- Attorney 5%
- Artist 66.67%
- Producer 33.33%
RECORD SALES CASH FLOW
WITH INDIE DEAL

Artist 75%
Manager 20%
Attorney 5%

Indie Label 50%
Producer 5%
Artist 45%
RECORD SALES CASH FLOW

WITH MAJOR LABEL DEAL

Record Sales

- Artist: 7%
- Major Label: 88%
- Producer: 5%

Pie chart showing the distribution of record sales.
PUBLISHING CASH FLOW
WITH PUBLISHING DEAL

Publishing

Compositions

Sync License

Masters

Master License

Sound Exchange

Mechanical

Public Performance

Publishing

Artists 45%

Label 50%

Producer 5%

Compositions

Artists 50%

Publisher 50%

Sync License

Publisher 50%

Artists 45%

Producer 5%

Mechanical

Publisher 50%

Artists 50%

Public Performance

Publisher 50%

Artists 50%
MERCHANDISE CASH FLOW
WITH OR WITHOUT MERCH DEAL

Self-Distributed
- Merchandise
  - Artist 100%

Merchandise Deal
  - Before Cost Recoupment
    - Artist 25%
    - Distributor 75%
  - After Cost Recoupment
    - Distributor 25%
TOURING CASH FLOW
WITH OR WITHOUT AN AGENT

Show Revenue

Without an Agent

With an Agent

Agent 10%

Artist 90%

Artist 100%
MISCELLANEOUS CASH FLOW

- Publicity
  - Artist 100%
- Ancillary Sales
- Non-Musical Appearances
  - Artist 90%
  - Agent 10%
- Music Video Sales
- Live Recordings
- Independent Recordings and Compositions
ARTIST TEAM CASH FLOW

CASH DISTRIBUTIONS FROM ARTIST'S PORTION OF ALL ENTERTAINMENT-RELATED REVENUE STREAMS

Artist 75%
Manager 20%
Attorney 5%

Artist Team Distribution

Artist
Manager
Attorney
MUSIC FOR FILM, TV & ONLINE
US Copyright Act

106. Exclusive rights in copyrighted works

…the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.
MUSIC HAS 3 COMPONENTS

Someone writes it

Someone performs it

Someone hears/sees it
3 CORRESPONDING RIGHTS

Synchronization Rights – “synch” not “sink!”

Master Use Rights – use of the “master recording” not use of a “Master”

Public Performance Rights
“SYNCHRONIZATION”

• The right to synchronize the musical composition with the picture
• Paying whoever wrote it or their publisher
• Don’t pay for public domain songs!
“MASTER USE”

- The right to use the master recording of the song in the movie
- Paying the performer/record company
- Don’t pay if not using the recording
- Public domain issues
PUBLIC PERFORMANCE RIGHT

To perform or display a work “publicly” means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.
Now let’s turn to movies (tv shows, whatever)

**TYPES OF MUSIC IN FILM/SHOWS**

1. Background score & specially created music

2. Existing song as recorded by the recording artist

3. Existing song performed by someone hired by the production co. to perform it.
TYPE 1 -- Background/Score
& specially created music

FILM COMPOSER

Work Made for Hire –

defined by the Copyright Act as:

1. A work prepared by an employee within the scope of his/her employment

Or

2. A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work...if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.
Other key composer clauses:

1. Types of services to be rendered
2. Exclusivity?
3. Time for completion
4. Fee and when it will be paid (usually paid in segments)
5. Who will be paying those who work with him/her (musicians, sound engineer, etc.) (“package deal?”)
6. Credit to be accorded on screen, ads
7. C/R ownership – work made for hire
8. Split of royalties – public performance, soundtracks, third party licensing
9. Reps and Warranties that the music will be original
10. Registration with a Performing Rights Collection society to get the royalties (ASCAP, BMI, SESAC, foreign)
11. Create/Help with the Cue Sheet!
TYPE 2 -- Existing Song
as recorded by the song’s recording artist

1) Synch license to pay whoever wrote the song.

AND

2) Master Use License to pay the performer
MAIN ELEMENTS OF A SYNCH AND MASTER USE LICENSE

1. Name of song
2. Name of writer (synch) or performer (master)
3. Name of film/show
4. Describe the rights you want.
   a. Synch: the right to use, record, copy, perform, distribute, sell, transfer and exploit the composition in synchronization or timed relation to the motion picture;
   b. Master Use: the right to use, record, copy, perform, distribute, sell, transfer and exploit the master recording in connection with the motion picture.
   c. Try to get public performance rights (sometimes will give it)
   d. What percentage of the rights are you licensing?
5. Type of use (theme, over credits, inside the film?)
6. Duration of use (be careful)
7. Term (seek perpetuity)
8. Territory (have only partial distribution rights in the film/show?)
9. **THE MEDIA – “all media now known or later devised…”
10. Price
11. Credit to be accorded – no breach for inadvertant failure to credit
12. Reps and warranties
13. Waive injunctive relief!
14. Ability to edit
15. No obligation to use it in the film/show
16. Beware of MFN provisions!
FACTORS DETERMINING PRICE
For Synch or Master Licenses

1. Budget of film and budget for music
2. Type of film (studio, indie, foreign, student, web)
3. Stature of the song/performer (current hit, famous standard, rock classic)
4. Duration of Use and where in the film will it be used? (Main theme, opening & end credits?)
5. Term
6. Territory
7. Watch out for MFNs! (with other rights, with other songs)

8. Other: guarantee that will be used in film? For compositions, will it be re-recorded? How many other songs will you license from that publisher -- may be able to negotiate “bulk license.”
TYPE 3 – Existing Song, performed by someone hired for the film, reality tv shows, etc.

1. Synch license to pay the person who wrote the music

AND

2. Work for hire contract or all rights license for the show from whoever performs
   a. Actor in the film?
   b. Studio singer/performer?
   c. Contestant on “The Voice” or “American Idol”?
PROBLEMS THAT ARISE

1. Can’t find the composer or performer

2. No cue sheet so don’t know what’s in the film

3. The music is too expensive to clear

4. Language is ambiguous – can’t tell if already have the rights.

5. The contracts are missing.

6. The contracts are unsigned
Anat Levy
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230
Las Vegas, NV 89142
Cell: (310) 621-1199
Efax: (310) 734-1538
What is a 360° Deal?

- Also known as a “multiple rights” deal
- Contract between an artist and a record company that allows a record company to share the revenues generated by the artist in other areas of that artist’s career
- The record company essentially pays the artist an upfront fee that entitles it to share a specified percentage of the revenue derived from another source
  (Example: The 360° deal signed by Paramore entitled Atlantic Records to 30% of Paramore’s net revenue derived from touring, merchandise, endorsements, and fan club fees. In exchange, Atlantic paid Paramore an upfront fee of $200,000.00)
What is a 360° Deal? (con’t.)

Differs from traditional recording contracts because traditional contracts only allowed a record company to derive revenues from royalties or the exploitation of an artist’s master recordings.

Not limited to record companies. Promotion companies, such as Live Nation, are also using 360° deals so they are able to derive revenues from sources other than concert ticket sales.

When and Why Did 360° Deals Emerge?

Difficult to pinpoint exact date but the earliest form of 360° deals existed in the 1950’s and 1960’s.

Literature indicates that the modern 360° deal was signed between British recording artist Robbie Williams and EMI in 2002.

More widespread use of 360° deals commencing in 2005.

Record company industry response to decline in record sales, which decreased by almost half between 2001 through 2011.
Other Areas in an Artist’s Career

- Music publishing
- Live touring
- Merchandising
- Sponsorships
- Endorsements
- Websites
- Fan clubs
- Literary rights
- Ringtones
- Acting
- Video games
- Public appearances
- Cartoons

Example of clause in a 360° contract

“Artist hereby irrevocably grants and assigns to Company and Company is hereby entitled to receive, collect, and keep for Company’s own account throughout the Term of this Agreement an amount equal to ______ percent (______%) of Artist’s Net Revenues (as defined Article _____, Section ______ of this Agreement) to be paid to Company in accordance with the terms and conditions specifically set forth in Article _____, Section ______ of this Agreement. The monies received, collected, and kept by Company pursuant to this Article _____, Section ______ shall apply to Artist’s Net Revenues derived from the following sources:
**Licensing & Fan Clubs**

- The use, licensing, exploitation, reproduction, publication, and/or exhibition of Artist’s names, portraits, pictures, and likeness (including, but not limited to, all past, present, or future legal, professional, group, and other assumed or fictitious business names or trademarks utilized by Artist);

- The related personality rights, separately or in conjunction with any other elements, for purposes of any endorsements; sponsorships (including tour sponsorships); fan clubs, including but not limited to any fees received, collected, or kept by Artist for membership in fan clubs and the creation, hosting, and maintenance of websites for fan clubs; and any other product, service, or brand tie-in relating to Artist;

**Books, Ticket Sales & Merchandise**

- The use of any and all intellectual property relating to Artist in connection with non-fiction books, magazines, other non-fiction publishing materials, games (including, but not limited to, video games), and any and all dramatizations (including, but not limited to, cartoons);

- Ticket sales revenue;

- Tour merchandise (including, but not limited to, t-shirts, sweatshirts, hats, photographs, posters, books, calendars, comics, stickers, other novelties, and virtual items including, but not limited to, avatars and screen savers);

- General merchandise (including, but not limited to, t-shirts, sweatshirts, hats, photographs, posters, books, calendars, comics, stickers, other novelties, and virtual items including, but not limited to, avatars and screen savers, not specifically connected to point-of-purchase sales in connection with any of Artist’s tours);
Nightclub Appearances & Performances

♫ Fees for any and all performances rendered by Artist at any venue (including, but not limited to, nightclubs, shopping centers, restaurants, and fairgrounds);
♫ Fees for any and all appearances made by Artist at any venue (including, but not limited to, nightclubs, shopping centers, restaurants, and fairgrounds);

Music Artists on the Big Screen

♫ Fees for any and all other engagements, television broadcasts, webcasts, commercials, one-nighters, tours, live or public stage performances of all kinds, cable casts, radio appearances or interviews of Artist, or any other stage production of Artist for exhibition in any and all media now existing or hereafter devised;
♫ Services where Artist is engaged as an actor/actress or as himself/herself to appear in any dramatic or non-dramatic televisions series (or one or more episodes thereof), motion pictures, or similar productions; and
♫ Services where Artist serves in a creative capacity, including but not limited to, services as a director, writer, or producer.
Quick Points Regarding Terms in 360° Deals

♫ It is common for the percentages of revenue derived from the additional sources to differ (example: the same 360° deal might grant a company 30% of an artist’s net revenues from tour merchandise and 10% from sponsorships)
♫ Specify whether the company’s rights to any additional revenues of the artist are passive or active
♫ “Passive” means that the artist is granting the company a percentage of revenues derived from additional sources, and not granting the company anything else
♫ “Active” means that the artist is granting the company a percentage of revenues derived from additional sources AND has some control over issues relating to the additional source

Issues That Can Affect an Artist’s Additional Sources of Revenue

♫ What promotion company to use
♫ What performances or appearances to do
♫ Production aspects of a concert or tour
♫ What type of marketing and promotion methods or mediums to use
♫ ** The major difference between an active and passive interest is that an active interest provides the company with control **
♫ ** In the example 360° clause, the company had a passive interest to all of the additional revenue sources identified in that clause **
Examples of Artists with 360° Deals

- **Madonna**, 2007 with Live Nation
- **Jay-Z**, 2008 with Live Nation
- **Lady Gaga**, 2007 with Interscope Records
- **KoRn**, 2005 with EMI
- **Robbie Williams**, 2002 with EMI
- **Paramore**, 2005 with Atlantic Records

How Does The 360° Deal Change Relationships Between Record or Promotion Companies and Artists?

Record companies have more of an incentive to enter into a longer relationship with the artist

This is because the company’s investment in an artist has the potential to produce significant revenues for the long-term

In a traditional recording contract, the relationship was generally short and the record company’s interest was in increasing album sales

The record companies are more involved in developing the artist as a brand
How Does The 360° Deal Change Relationships Between Record or Promotion Companies and Artists? (con’t.)

The record or promotion companies are making larger upfront payments to the artist

The artist has the ability to cultivate his or her career and develop a fan base due to the monetary support from the record company

Record and promotion companies participate in other areas beyond their previous focus (and according to some critics, beyond their area of expertise)

General Benefits of a 360° Deal for a Record Company

How can you make money? … let me count the ways:

❖ Ability to derive revenue from sources other than royalties and the exploitation of master recordings
❖ Control over creative aspects of an artist’s career if company has an active interest
❖ Better relationship with artist because providing more tour support, and more patience in time, which allows artist to develop skills and grow fan base which, in turn, increases long-term dividends for the record company
❖ Company generally has exclusivity for all rights under the contract
General Benefits of a 360° Deal for an Artist

- Increase in the amount of upfront payment from the record or promotion company to the artist and the upfront payment is not recoupable by the company (proponents of the 360° deal believe that some artists would not have been able to achieve certain levels of success without the larger upfront payments that the record company has paid pursuant to a 360° deal)
- Lady Gaga and Paramore are examples
- Higher percentage of royalties allocated to the artist because the record or promotion company is deriving revenue from other sources
- Record companies are more supportive of touring, both financially and with respect to patience with time
- Potentially longer relationship with the record label, allowing the artist to develop his or her brand

General Disadvantages of a 360° Deal for a Record Company

- Higher upfront payments are made to the artist
- The upfront payments are generally not recoupable
- If the company overestimates the projected revenue that an artist derives from a particular source, the company could overpay and take a loss
- The 360° deal potentially creates a partnership between the artist and company, which establishes a fiduciary duty between the parties
- Possible violation of the California Talent Agencies Act if the company is deemed to be procuring employment for the artist
The California Talent Agencies Act

Codified at California Labor Code § 1700 et. seq.

Prohibits any person from procuring employment for an artist if that person has not received a talent agent license from the California Labor Commissioner.

No definition in the Act for “procurement” but has been defined as, “any attempt, regardless of its success or profit, by a talent seller to bring about, solicit, cause, further, or negotiate employment for or on behalf of an artist with a third-party talent buyer.”

Actions that are not considered procurement:
- If a person acquires rights for him or herself
- If a person exploits his or her own rights
- When a person or entity directly employs the artist

Exceptions to Procurement

- Persons procuring recording contracts
- “Safe harbor” defense for persons working with a licensed agent

In order to qualify for safe harbor defense, the following conditions must be satisfied:
- The person must be acting at the request of a licensed talent agent;
  AND
- The person must be working in conjunction with a licensed talent agent
Consequences of Procurement Without a Talent Agent License

Prior to 2008:
- Contract would be considered void *ab initio*
- All portions of artist revenue that were earned from opportunities that were procured by the record company must be returned to the artist
- All expenses advanced to the artist would be forfeited

After 2008:
- Application of severability doctrine
- If unlawful activity was at the core of the contract, entire contract may be voided
- If contract includes both lawful and unlawful activities, only unlawful portions would be voided out
- Any revenues earned as a result of unlawful activities must be returned to the artist
- Any revenues earned as a result of lawful activities can be retained by the record company

General Disadvantages of a 360° Deal for an Artist

- Decrease in artist’s income because the record or promotion company is sharing in revenues derived from other sources
- New artists have little leverage to negotiate a shorter term for the 360° deal so if a company is not performing, the artist is bound to the company until the term of the contract expires (although newer 360° contracts include provisions that allow the artist to terminate the contract early if the company is not performing to a certain standard)
- The record or promotion company could be very conservative in estimating the profitability of a new artist, which leads to the company offering a low upfront fee in exchange for a big percentage of the revenues that the artist receives from additional sources (this is not a problem for established artists)
General Disadvantages of a 360° Deal for an Artist (con’t.)

- The record or promotion company could lack the experience or expertise necessary to perform the responsibilities imposed by the additional income sources in a 360° deal.
- If the record or promotion company has an active interest, the artist loses control over certain aspects of his career.
- Loss of checks and balances for the artist.

Rights to an Artist’s Name or Logo

- Revenue can be derived from the use, licensing, exploitation, reproduction, publication, and/or exhibition of an artist’s name or logo.
- “Name” can include all past, present, future legal, professional, group, and other assumed fictitious business names.
- Trademarks or service marks can also be included in “name” rights.
- Important because an artist’s name and logo appears everywhere.
Benefits to an Artist of Granting Rights to His/Her Name/Logo

- Potentially higher upfront payments contributed by the record or promotion company to marketing materials, touring, etc.
- More money = access to marketing, touring, etc. that artist might not otherwise have because they are cost prohibitive
- Increase in exposure to the artist because of the higher upfront payment
- Artist can expand fan base with increased exposure
- Upfront payments are not recoupable by the company

Disadvantages to an Artist of Granting Rights to His/Her Name/Logo

- Less income for the artist
- Long term nature of the 360° deal could lead to less income for a longer period of time
- Potential loss of control over where name or logo appears, and even the design
- In instances where the artist loses control, could lead to a strained relationship between the artist and the company
Rights to an Artist’s Website

 música Revenue can be derived from the creation, hosting, and maintenance of websites
 músico Could be a general website for the artist
 música Could be a website that is specifically for a fan club for that artist

Benefits to Artist of Granting Rights to His/Her Website

 música Record or promotion company could contribute funds for the development, design, SEO and maintenance of the website so there is no cost to the artist
 músico Artist could get increased site traffic because more funds are available to develop a good website and invest in SEO
 músico Artist does not have to worry about interacting with a third-party to develop and maintain the website
Disadvantages to Artist of Granting Rights to His/Her Website

- Record companies are asking for exclusive rights to host and maintain websites
- Artist loses control over the content and traffic
- Could lead to a strained relationship between the company and the artist if the artist loses control, or if the artist and the company disagree regarding the content
- Record company could lack the experience necessary to create and maintain a good website

Rights to Touring Revenue

- Revenue can be derived from concert ticket sales
- For most artists, touring revenue comprises most of their income
- The right to touring revenue may or may not include merchandise
- The record or promotion company receives a percentage of the artist’s touring revenue by essentially paying for it in the upfront fee
- For new artists with no past tours, record or promotion companies have no basis to compare so they are taking a gamble with the upfront fee paid
Benefits to Artists of Granting Rights to Touring Revenue

- The label is more inclined to subsidize the tours (more than the relatively small amounts that traditional recording contracts provided for) which actually provides artists with the opportunity to tour (when a traditional recording contract would have prohibited the artist from touring because of the costs associated)
- Artists are given more time to develop their skills and fan base
- Record labels are not exerting pressure on artists to produce more albums in a short period of time because the artist is generating revenue from touring
- Increase in the marketing of CDs, which were traditionally only marketed in order to increase the sales of the CDs themselves. Now, CDs are marketed to promote tours

Disadvantages to Artists of Granting Rights to Touring Revenue

- Reduced income to artist
- Artist could be placed in an inferior position if/when records labels develop new distribution models for records
- Loss of control over the tour and possibility that the label will micromanage
- Record company could lack the expertise to make wise decisions pertaining to touring
Rights to Merchandising

- Revenue can be obtained from tour merchandise or general merchandise
- Tour merchandise is any item that is specifically tied to a tour
- General merchandise is all other merchandise not tied to a tour

Benefits to Artists of Granting Rights to Merchandising

- Artist does not have to deal with the tour merchandising company or retail establishment
- Newer or less known artists do not have to worry about tour merchandisers or retailers refusing to sell their products if a big record label or promotion company is affiliated (tour merchandisers will typically only deal with proven headliners)
Disadvantages to Artists of Granting Rights to Merchandising

- Less income to the artist
- Loss of control over the merchandise that is developed
- Could lead to a strained relationship if the artist and company do not agree about the types or designs of the merchandise

Negotiating Points for Artist Presented with 360° Deal

- Ensure that the contract specifically identifies what rights are being granted
- Ensure that the contract states whether the rights that are granted are active or passive
- In cases where active interests are being granted, attempt to retain some control or approval authority
- Do not grant the record or promotion company rights to any revenues from sources in which the company is not actively participating or assisting the artist
- Specify whether rights granted are exclusive to the company
- Attempt to obtain a shorter term
Works Cited

• Erin M. Jacobson, *360 Deals and the California Talent Agencies Act: Are Record Labels Procuring Employment?*, 29 Ent. & Sports Lawyer 9 (Fall 2011).
• Edward Pierson, *Negotiating a 360 Deal, Considerations on the Promises and Perils of a New Music Business Model*, 27 Ent. & Sports Lawyer 1, 32 (Winter 2010).
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