

Master Licence Fact Sheet

What is a Master Licence

A master licence gives a label the right to essentially use and sell a recording as they please. The term “master” signifies that the label has the right to use and sell a master recording of a song – in other words, a recording that is fully finished and mastered.

When do you need a Master Licence

Master licences are used when a label or a person wants to use and/or sell a master to the public.

Why do you need a Master Licence

Master licences spell out the rules in which a label or third party can use the master. In many cases, the original owner. For example, that third party may only be allowed to sell in a specific area. Any restrictions or conditions of use must be clearly stated in a master licence to ensure that no parties are unsure of their rights and obligations to each other.

How to use this Fact Sheet and included Checklist

Included with this fact sheet is a checklist of many of the issues prevalent in master licences. The checklist will give you a quick idea of the key terms of the Licence whilst this fact sheet provides added details on key clauses. For ease of reference, all clause numbers used in the Checklist will be mirrored in this Fact Sheet.

By referring to both these resources, we believe that you will be in a position to better decide whether or not to sign on that dotted line, and how to better negotiate getting there!

Key Terms of a Master Licence

Clause 1 Master Owner’s Details

The owner of the master recording will either be the artist or the artist’s label, depending on the existence and nature of a recording agreement. As under a recording agreement it is common practice for the label to own the master recordings, they have the right to enter into this master licence agreement – not the artist. For more information, please see the Fact Sheet on Recording Agreements included in this pack.

Clause 3 Term

The term states how long the licensee will have the right to use the master. If the licensee is only using the music for one event or a small run of CDs, there is no reason for the licensee to look for a 7 year term – especially since more money is usually required for longer term master licences.

Alternatively, if a licensee wants a master that they believe may have selling potential 5 years later, the licensee may want to ensure that the term adequately allows them to use the song. With a short-term licence they would have to renegotiate a fresh set of terms with the licensor which may cost more in the long run.

At the end of the term, the rights granted to the licensee under this agreement will revert back to the licensor, allowing them to negotiate new terms, or engage other potential licensees.

Options

When labels licence an artist’s music, it is common for them to seek further licences of future music produced by that artist. When the term of an agreement comes to an end, the licensee will have the option to do one of the following:

1. extend the term for another set of years; or
2. licence the artist’s new masters/ album as set out in the now expired licence agreement.

The option is usually at the discretion of the licensee. If the licensee doesn’t want to continue working with that artist (for a variety of potential reasons), they are able to walk away from the agreement. Licensees frequently seek this option as they will have invested to develop the artist in the market, therefore, if anyone else licences the new masters that later licensee would also be benefitting from the original licensee’s prior work.

Clause 4 Territory

Often labels and artists grant master licences to other labels because they do not have the expertise, money or networks to adequately sell a master in a specific territory. For example, an Australian owner may licence a master to a Norwegian label because the Australian label doesn’t have the networks or resources to sell effectively in that territory. Accordingly, it is important for labels/ artists to understand whether or not their proposed licensee has the required skill and expertise to sell the master licence effectively – otherwise, it may be better to sell the master yourself. Describing the territory carefully is important when a licensor has multiple licensees across the world. If the licensor usually gives its licensees exclusive rights to their master, then 2 licensees with rights in the same territory cannot have the right to use the master – which creates various legal headaches.

Clause 6 Rights

Exclusivity

Licencees will often demand that they are the exclusive licensee of the master in their territory. As a licensee will invest money in their territory to generate sales of the music, they do not want to see any additional licencees profiting off and competing with their marketing spends to gain their own sales of the same music. If the label/ artist signs an exclusive master licence for the world, that label/ artist no longer retains the right to use the master as it has been exclusively licenced to the licensee. If the licensor also wants to use the music themselves, the licence agreement needs to state the non-exclusive right or that the territory is restricted accordingly. It is essential that the label who owns the master clearly describes which rights are given to the licensee under this agreement. For example, the label may want to sell and keep all money it receives from internet sales across the world – but wants to licence the master only for physical sales in Norway. These restrictions of use must be strictly provided in the agreement in order for the Owner to keep 100% of income derived in such areas.

Rights Being Granted

In order to use the master the licensor must grant the licensee specific forms of copyright. Such rights include the right to reproduce, copy, manufacture, communicate, distribute, adapt, perform in public and make available the entire music, and parts thereof. It is recommended that the licensee spend some time determining what rights would be required to ensure they can use the master to the best effect. Generally speaking, the more rights that the licensee requires, the more royalties or payments the licensor demands. The licensee may also ask for some non-copyright rights – like the right to use the artist's name, photos and biographies, so that the licensee can effectively promote the artist's music in a territory. Again, the licensor must determine whether they are happy to grant the licensee these rights, exclusively or otherwise.

Collection of Income

An important consideration for the label is to determine whether it will allow the licensee to collect public performance income that is earned in other territories that control the master. In other words, every time the Master is played to the public, income is paid to a public performance collecting society.

If the label licences a master to a Norwegian label, public performance income will be paid to the society based in Norway. The parties must then negotiate whether the licensee can just 'collect' such income, or if it is to be split between the parties in some other way.

Worldwide Synchs

Where a film studio or production house asks a licensee to use the master within a movie, TV show or game under a worldwide synchronisation licence the licensee must determine whether they have the rights under their master licence to grant this deal. For additional information please refer to our Fact Sheet and Checklist on Synchronisation Licences. Usually, the master licence provides that a licensee will be able to provide a synch deal only if that synch licence originated inside the licensee's contracted territory. That is, if our Norwegian licensee was approached by a Norwegian film studio. The licensor label must determine whether they will allow the licensee to grant synch licences that originate outside of the contracted territory. For example, if our Norwegian label was approached by a Brazilian production company. Usually, the licensor label would prefer to contract with the Brazilian production company themselves – to enhance their direct income. Such a restriction would make the licensee less motivated to pursue extra-territorial synchs to increase potential income from the master as they would not reap any rewards from their work, and this should be a consideration when determining the nature of the agreement. If the licensee has major international connections the label may miss out on potential income in the long run. This is a negotiation point under which the licensor label must weigh up the pros and cons of allowing such extra-territorial rights.

Copyright Clearances

If a licensee uses, promotes and sells the master without obtaining the appropriate consents and clearances from all the copyright owners of that master, they will be in breach of the Copyright Act (within Australia, and equivalent legislation internationally) and will usually have to pay out all the owners for such a breach.

As licencees do not write, produce or record the music, they may not know who all the copyright owners are in the music. To avoid this situation a licensee should always require the licensor to guarantee that all such clearances have been obtained. If it turns out that the music has not been cleared by all copyright owners, all claims and court actions must be incurred by the licensor and not the licensee. It is essential that the licensor knows exactly who owns the copyright in the music and gets written confirmation that all owners are happy with the use of the masters by the licensee. Licencees should also be wary of samples used in their masters – as those samples would have their own copyright owners who must consent to the use of their sample in the music.

Clause 7 Release Commitment

The licensor label usually requires the licensee to release the master within specific time periods in order to ensure that it is released in a timely manner. Additionally, the label may require the licensee to release the master at different times across different territories. For example, to coincide releases with touring schedules. To ensure a timely release, the label licensor may require that if the licensee does not meet delivery times, the rights granted under the master licence will revert back to the licensor – essentially meaning that the licence is terminated

Clause 8 Promotion and Marketing

It is often the case that the licensor will have artwork, promo material and other marketing products that the licensee would like to use when promoting the master in the relevant territory. The licensee may also like to make their own promo materials specific to their territory. In both cases, it is important to stipulate if there are any specific requirements or restrictions around promotion and marketing. Additionally, it is common practice for the licensee to recoup some of the costs it spends in producing such materials. Where this is the case it may be requested that all budgets and concepts are to be approved by the licensor prior to expenditure and execution.

Clause 9 Advance and Royalties

Advances

If the licensor gets paid an advance for the masters they must keep in mind that this is in advance of future payments and is not free money. Usually, an advance is a prepayment of royalties, meaning future royalties will be kept by the licensee until their pre-payment is recovered. This is the concept of recoupability – once the licensee recoups their costs, royalties to other parties will then be paid out. The ways in which payments are made vary depending on the proposed use of the licensor's master. For example, if a public event were the licensee and wanted to play the licence music once, they would most likely pay a one off fee to the licensor. However, if a label wants to sell the music over a period of time, the licensor would usually require royalties and possibly advances instead of a one off payment.

Royalties

Royalty rates vary significantly – depending on whether the licensee is a major organisation or label and whether the music/artist is recognised and/ or has high commercial interest.

When dealing with royalties, the percentage of income a licensor receives will usually be reduced due to various costs that the licensee incurs from selling the master. These may include packaging deductions and discounted/promotional goods, amongst others. There are various ways in which licensees account for income generated from the masters as well as many ways that they recover costs. The licensor must ensure that all accounting and deductions on their royalties are all warranted.

Clause 10 Termination and Post-Termination

Once the master licence is terminated, the licensee may require an additional time to sell off any of its physical stock relevant to the master. The sell off period is usually 6 months following termination of the master licence. Alternatively, another way to clear the excess stock is to require the licensor to buy back the remaining copies – this can be a stipulation of the master licence agreement.