

Recording Contract Fact Sheet

What is a Recording Contract

A recording contract states all the rules that both the artist and the record company must abide by when both parties agree to the production and release of the artist's music. At its simplest level, a recording contract states how many songs the artist must make for the company (from one single to multiple albums) and how much the artist gets paid for recording those songs.

It's important to remember that a recording contract is a legally binding agreement and should not be entered into lightly. Both sides must abide by the rules of the contract or risk legal action if those rules are broken.

When do you need a Recording Contract?

A label will offer a recording contract to an artist once it decides that it wants to exclusively (or otherwise) release the artist's music. This contract binds both parties to make and sell music in a strictly defined manner.

Why have a Recording Contract

Signing a recording contract can be a great way in which an artist can generate income as well as increase their profile and audience.

It is important to note that not all recording contracts are the same and terms can vary significantly. Record companies can offer artists lots of services that they would otherwise have little access to – like using a label's distribution and marketing networks to promote their music, have industry leaders develop, strategise and critique plans to promote their music and have increased access to funds, resources and personnel which have the potential to bring out better results in the recording process. Personnel may include songwriters, producers, musicians or other key contributors to the recording process.

On the flip side, there are so many avenues available to artists that allow for career development through a non-traditional route. There are more opportunities than ever in which artists can produce, promote, distribute and sell their music around the world. Artists must decide whether signing to a label is the best way in which they can achieve success as they define it.

How to use this Fact Sheet and included Checklist

Included with this fact sheet is a checklist of many clauses you will encounter in a recording contract. The checklist is to give you a quick idea of the key terms of a contract, whilst this fact sheet provides added details on the 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 better to negotiate getting there!

Key Terms of a Recording Contract

Clause 4 Range Of Rights

Recording Services

As the name suggests, traditionally the most important thing that a record label has wanted from an artist is their music in the recorded form. To understand how a label uses these recorded songs it is important to understand how the laws of copyright flow through a recording contract.

Depending on the nature of the agreement, once these songs are recorded and produced the masters (the recordings) of those songs will belong with the record label, not the artist. The artist will retain the copyright to the composition.

Under a recording contract, the artist gives away parts or all of its copyright in the sound recording, but retains all ownership rights of the composition. This is because the label has invested in the making of the sound recording and has the intention of selling copies of that recording, but not the actual composition. Once the label owns the sound recordings, they can use and sell them as they see fit, depending on the terms of the agreement.

Exclusivity

The label will, in most cases, require the artist to not record for anyone else during the term of the contract. The rationale for this is that a label invests significant amounts of money in their artists that they should be entitled to recoup upon for the term of the contract – e.g. studio costs, producer costs, mastering, cd manufacture, advertising and all other promotions.

Most recording contracts will state that the artist cannot provide their recording services to any other party for the term of the contract. Where an artist wants to ensure availability to record with other artists or in any other form the artist should include a clause to this effect, often referred to as a 'side project' clause.

Other Services

In addition to providing recording services, labels may seek the right to exclusively provide other services to the artist for the duration of the contract, such as the right to produce all an artist's merchandise or be involved in their sponsorship initiatives. These may range from exclusive and non-exclusive and may put significant restrictions on the artist. These contracts are sometimes referred to as 360 deals as they allow a label to receive earnings across all of an artist's activities. They are sometimes referred to as 'multiple rights' deals.

It is recommended that before signing an agreement of this kind you research the label's capacity to effectively fulfil the requirements

of these additional services to the level that you require (for example, their ability to make and sell merchandise). They may be the best label in the world, but their ability to provide these additional services may be substandard compared to other providers.

Variations on the 360 deal may include simply the right for the label to retain a percentage of earnings on all other income earned by the artist. The benefits of this for the artist will depend on the specifics of the agreement and we recommend you seek professional advice to determine the value in signing an agreement of this kind.

Clause 5 Product Commitment And Term

The term states how long an artist must exclusively make music for the label. It will either be in years (eg. 3 years from signing of the contract) or based on what is known as the 'product commitment' – for example, the contract could end once the artist delivers 2 EPs and 1 Album to the label.

If the term is based on product commitment, it's very important that the artist understands that they cannot make music for anyone else until they deliver those '2 EPs and album' to the label, unless otherwise agreed.

A term based on product commitment has a number of advantages for the label. Firstly, it makes the artist work in a timely manner, as they know that they will not be able to record for anyone else until they have fulfilled the number of releases stipulated in their contract. It also protects the label if, say after the 3 years, the artist has only made 1 EP, when the label had hoped for more. Essentially, a term defined on product commitment gives the label more control in ensuring a creative return from the artist.

If an artist is confident that their output levels can meet the product commitment quickly, the contract will be up in no time. This will free them up to potentially negotiate better terms (be that better money or otherwise) with the same label or another for all future releases. If artists take long periods to write quality music this situation may be less than favourable as it will see the artist locked into the contract for a longer period.

Options

A label will, more often than not, be taking a commercial risk when signing a new and unknown artist (they may not know how the artist will act and/or perform in the studio, whether their style of music will be commercially successful in the market, etc). Due to this the label may be less inclined to ask for a huge product commitment from the artist (like 2 EPs and 1 Album) as they may lose a lot of money in producing and promoting these products should they not be successful.

The option clause reduces this risk. Instead of having a large product commitment, the label can state their term as a product commitment of 1 EP. With an option clause, once the EP is released the label will have the option of either extending the term for more product commitment, or ending the contract.

For example, if the EP flops the label can end the contract and won't be required to invest more money in the project, while the artist becomes free to record for whomever they please. If the EP is successful, the label will most likely extend the term so it keeps the artist's exclusive services for a greater length of time and has the opportunity to build on the success of the first EP.

Clause 6 Income

Royalties

Royalties are the percentage of income the artist will receive from the label's use of their music. These percentages vary significantly and will, most likely, be determined on a case by case basis between the label and the artist.

APRA & the PPCA

Artists earn income whenever their songs get played on the radio, restaurants or anywhere else in public. Anyone that plays music to the public must get a licence to do so from both APRA (the Australasian Performing Rights Association) and the PPCA (the Phonographic Performance Company of Australia). The money generated by these licences is pooled and then paid to the relevant copyright holders in any recording.

The difference between these two organisations and the royalties that they each pay out rests with the different copyrights present in each recording. Songwriters and their publishers own the copyright of the written song, and the royalties from these collections are paid out accordingly through APRA. The copyright in a recorded version of a song, if you're signed to a record label, may belong with that label. If this is the case they will receive the royalties paid out through the PPCA.

For more information contact APRA (apra@apra.com.au) and the PPCA (ppca.mail@ppca.com.au) directly.

Calculations

If you thought recording contracts were boring, bad news! They get even worse when you start working out how royalties are actually calculated.

Royalties are usually based on monetary values such as net receipts, published prices to dealers (wholesale price) and net sales – the definitions of these values vary greatly from contract to contract and we strongly advise that artists sit down with their lawyers and managers to work out whether they are getting a fair deal.

Packaging Deductions

The percentage of income an artist will receive will usually be reduced due to various costs that the label incurs from selling the music.

One example comes in the form of packaging deductions. Where a label spends money in making and printing cases, artwork and CDs a packaging deduction will be taken off the artist royalty to help the label recover these costs.

As the digital market increases these packaging deductions become less relevant. As a result labels have now started to insist on 'digital ingestion' deductions in place of a packaging deduction – to recover the costs they incur from digitising and editing songs for sale over various digital platforms.

DFGs

Royalties may also be reduced through Discounted Free Goods (DFGs). DFG refers to where a label (or distributor) will offer discounts per unit to get retailers to buy a label's catalogue or to buy in bulk from that supplier. Labels equate the discounts given to retailers into an amount of CDs that are essentially given away for free. The cost of these free goods is then deducted from an artist's royalties. In order to minimise the impact of DFGs on an artist's royalty statement, artists should include a maximum amount of DFGs that the label is allowed to deduct in the recording contract.

There are various ways in which labels look to recover costs from selling the artist's music. The artist must ensure that deductions on their royalties are appropriate and warranted.

Clause 7 Advances

To ensure the artist has some income whilst making music for the label, the label usually gives them a loan of money known as an advance. This is a loan and is not free money – it must be paid back at some point.

If it is likely the contract may last a significant amount of time, the artist may require larger advances to cover their own personal costs.

The artist and label will also agree on a recording budget – this is how much the label will invest to make the songs required. This will be dependent on the type of music being made (if the artist needs just a computer, an orchestra or somewhere in between), the producer and the nature of the product everyone is after.

Additional budgets may also be determined under the recording contract – such as touring budgets (amounts the label will spend on touring the artist throughout a given area), marketing budgets (amounts that the label will guarantee will be spent on marketing promo for the artist) and equipment budgets (amounts that the label will make available to provide the artists with quality musical equipment).

Recoupability

All sums paid by the label to fund the making and selling of their music must be paid back to the label, unless otherwise agreed.

The artist will not earn any income from the sale of their music until the label earns back what it has spent on the release. This is the concept of recoupability – once the label recoups their costs (as agreed in the terms of the contract), the artist will get paid its royalties.

Clause 8 Artistic Control And Restrictions On Company

Acceptance

If an artist becomes unhappy with their contract, they naturally look to get out of it as soon as possible. For example, if the term of the contract is based on product commitment, the artist may make poor and rushed EPs and albums so that they can finish up the contract as soon as possible.

Labels usually include an acceptance clause which states that all music made by the artist under the contract must be accepted by the label. So if the artist delivers three songs to the label, and the label doesn't accept those three songs, the artist must get back into the studio and continue working on those songs until the label accepts them.

The acceptance test is very subjective and could ultimately hold artists in their contract forever (if the label never accepts any of their songs). To avoid this circumstance artists usually require that the test be based on a few measurable elements – this may be something like having recordings to be made to a standard that is in line with the artist's previous work or a discussed change of direction.

Creative Control

A label may request that they are involved in the arrangement and production of the artist's music. Labels may also request that they will choose the producers and engineers who work on the record, and which studios to use (the rationale being that it is that label who is paying for the recording). The level to which the artist can be independent from the label's creative control usually depends on the bargaining power of the artist and what they're able to embed within the contract, as well as the nature of the working relationship between label and artist.

Additional Performers

If the artist chooses to use additional people, such as session musicians, DJs or MCs to feature on their music the label usually requires all payments to these people come out of the artist's royalties (that is, that they're recoupable).

Clause 10 Release Requirements

International Releases

If an artist signs with a smallish label, it's important that the artist protects the promotion and sale of their music overseas. Sometimes, small labels will not have the networks, expertise or contacts to adequately promote music overseas. In such cases, artists can look to have the territory of the recording contract restricted to only Australia, or they can put in certain requirements for international releases.

Clause 11 Groups

Side Projects

In the event that an artist wishes to write and record as a side project or in a further collaboration, labels may require that they control the artist's interest in that side project or collaboration. This means that the label may negotiate all contracts on the artist's behalf and collect the artist's share of income.

Leaving Members

If a band member chooses to leave a band, the label's rights in the band will continue to operate under a leaving member clause. These clauses usually state that the label will have the option to terminate the agreement (if, say, the key member of the band leaves) or continue with the agreement. The label may also have the option of holding the leaving member liable for all of its previous work and payments – so leaving the band would not be an easy out for someone looking to get away from their recording debts.

Clause 12 Termination Rights

There may be many directions that the parties could go down in the event of termination. In any event, unless prevented by the Courts, the label will seek to get any advances they paid to the artists back.

For this reason, artists should always remember that in nearly all situations, they will have to pay back all advances paid – watch your finances wisely!