

Mommas Don't Let Your Babies Grow Up to Sign Contracts...

by Bob Gray

...at least, not without a law degree. The world of performance artists, particularly singers and songwriters, is a very nearly impenetrable maze of irrationality that defies any honest application of reason. If you've wondered at the deluge of artists working independently in recent years, read on.

Starting with the simplest case: You and your band have been performing for ten years. You've written your own music, and you've developed a loyal fan base willing to travel many miles to enjoy your show.

In the movies, a talent scout is sitting in the front row of your third performance. Afterwards he approaches you backstage lugging a suitcase full of money, signs your band to his label with a simple one-page contract, and everyone rejoices – the future is secure.

Ha! First, no one brings money. Second, when the money is finally put on the table – it's a loan – and *you are going to pay it back*, no matter what else happens. Third, if you haven't already accumulated a large and loyal audience, no label will pay the slightest bit of attention, no matter how good you are. Fourth, if you sign the 180-page contract, you no longer own your music. You can't even perform your music without paying for the privilege. And you will have no control over what happens to that music, or your future, until the contract expires.

This is an unnecessarily complicated profession, so hang in with me here. The money is a loan. You are expected to use that money to promote sales of your CDs and related merchandise. Whether you do or not – you are going to repay the money. If you don't sell enough CDs to repay the loan, you may lose your car, your house, your equipment, bank account, and everything else you own – until the debt is satisfied.

Because you didn't actually sign a contract with the label. You signed an agreement with investors. And this is the only business I've heard of in which the investors have nearly nothing at risk [two exceptions: (1) you declare bankruptcy or (2) you die – and then they go after anything in your estate].

Nor is this the end of the money you owe. Everything the label does that relates to your music, i.e., promotions, studio time, back-up musicians and vocalists, production costs, those limos out back, security, *everything* goes on your tab.

The real kicker: You no longer own your music. For the duration of the contract, the label owns your "Catalogue". The catalogue is all the original music you've written up to the time you sign the contract. Without knowledgeable negotiation otherwise, they own it, and they get to decide what to do with it.

If you sign and take the money, and the label decides to shelve the CDs you make for them, not release them, not promote them, doesn't matter. You still have to pay back

every penny spent – and you can do nothing with the music yourself, because the label owns it.

One of my sources has been offered contracts by labels on several occasions. Fortunately, she spent thirty years self-educating on the ins and outs of this insane business before the first one was offered. She has refused contract offers because she already knows she can make more money marketing her own music.

The average take for the performer(s) on a national label is between twenty-five and thirty cents for each CD sold – *after* the investors have been paid their original investment. Think about that – twenty-five cents from a fifteen-dollar sale. The major labels traditionally get *all* of the income from publishing your music. Also, if you're not very careful, they will get all the income from related merchandise sales (T-shirts, posters, etc.)

My source arranges her music, contracts with a studio, a producer, a production facility, and the other musicians. After paying everybody involved, each CD costs her between six and eight dollars to produce for 1000 copies (at 10,000 copies the total cost drops to about a dollar each). If she sells the thousand for twelve dollars each, she makes between sixteen and twenty-four times as much as a label would pay her for the same sales. Or, said another way, it would take 20,000 CD label-sales (*after* repayment of the “loan”) to equal the money she will make for a thousand of her own. She's debt free, can sell at a cheaper price, and her life is her own, as is her music.

And, as any artist will tell you, the point of a gun (or a lawsuit) is not the best place to get first-rate creativity. When you sign with a label, *you* are now their property. You go where and when they say. You perform when, where, and what they dictate. You promote as they determine. You have no control over what they do – but they have near absolute control over you. And, after recouping all of their original investment, they continue to get all but a few cents of all the money made on your sales.

The intricacies of a label contract are rather amazing. In addition to the above problems, there are countless points that must be negotiated – mechanical releases, the Statutory Rate (and the similarity to the phrase you're thinking of probably isn't accidental), merchandising, promotion schedule, radio station rotations, the number of studio *versus* live albums, percentage ownership of publishing and reversion of ownership at contract's end, tours, and so much more arcane stuff that it's simply too exhausting for most artists to contemplate.

Then you have the major problem of representation. It's so easy to get screwed in this business, it's little wonder that most artists who have signed with a label come to feel like unpaid prostitutes. Examples abound of performers, wanting only to create and perform, getting ripped off by their promoters and reps. Most recent and well-known - LeeAnn Rimes had to sue her father to try and recover some of what was taken. If you have to file for bankruptcy, forget ever being offered another contract – after all, what investor is

going to take a chance with someone who filed bankruptcy (and didn't pay off the investors) in the past?

Putting your unconditional trust (things like power of attorney) in anyone in this business, especially a lawyer, is asking for it. So what's the answer? A good beginning is to get **The Musicians Business and Legal Guide**, from Jerome Headlands Press. This huge volume is a fairly comprehensive excursion into the morass of possible pitfalls, and must be read and understood. Otherwise, mommas, don't let your babies grow up to sign contracts... without first getting a degree in entertainment law. BG