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the boiler plate in recording industry contracts

The views and opinions expressed in this article are not meant to substitute for legal advice which should be sought in each particular instance.

Introduction

Standard music industry contracts are drafted for specific circumstances. Almost every contract is different. However, some of the terms are consistently used in such agreements no matter what the particular circumstance. These standard terms are sometimes referred to "boilerplate" or "the fine print". Even though they appear in every well-drafted contract they can have serious ramifications depending on the language used.

This article will describe several of the most important standard boilerplate provisions and discuss briefly how they can impact on your individual case.

Audit Rights

This section will grant each party (if necessary) the opportunity to examine the books and records of the other party to ensure proper payment is being made under the particular agreement. For example, record companies will normally grant an artist the right to examine the books and records of the company once per year to ensure that the artist is receiving proper royalties. This is obviously a valuable provision to include in your agreement where you suspect you are being underpaid for records sold.

Unfortunately the cost and expertise required to fully examine a record companies' books and records are cost prohibitive for an artist and unless such discrepancies are potentially significant (i.e. enough to cover the cost of a thorough audit: \$5,000-\$10,000). Companies will often limit the number of audits allowed under the agreement to limit the amount of time they must spend preparing adequate documentation for the examination.

Notice

This section will address where all correspondence should be sent during the course of the agreement. For example, if option rights need to be exercised in writing, when and where would such an option notice be sent? Will a faxed notice suffice? Regular post? It is important to remember to notify parties when addresses change so important

notices are not lost or delayed during the term of the agreement. Often times artists will include a provision where the opposite party must also copy their legal counsel to ensure that such notices are received and dealt with.

Default & Cure

When a record company defaults under an agreement you cannot, normally, automatically terminate the agreement. The default and cure section in a standard recording agreement, for example, normally protects the company against defaults under the agreement. This section requires the non-defaulting party to put the defaulting party on notice when a default has occurred under the agreement, i.e. where the company has forgotten to provide a timely royalty statement. The artist in this particular example must send a notice notifying the company of the default; the company normally has a particular period (30-60 days) to remedy the default, i.e. provide a royalty statement. If the company remedies the default in a timely enough manner, the potential negation of the contract is avoided. If the company does not remedy the default in a timely manner the contract will be potentially terminable.

Representations & Warranties

An artist will often be required to acknowledge that:

- i) they have been advised to seek independent legal representation under the agreement prior to entering into the agreement and has either obtained the same or irrevocably waives such right prior to signing the agreement;
- ii) they have read the terms of the agreement, are entering into it freely and fully understands its force and effect;
- iii) they represent and warrant that they have the full legal right and capacity to enter into the agreement free of all claims whatsoever and perform all of the obligations described herein, and that there are no other agreements in force which prevent them from doing so;

- iv) to the best of their knowledge, owns any and all rights in and to the professional names of the their group (if applicable); and,
- v) there is nothing preventing them from entering into the contract and fulfilling it to the best of their ability.



by Chris Taylor

Governing Law

In the event of a dispute between the parties which law will govern? The state of New York, the province of Ontario? In which jurisdiction will the parties have to file claims? The laws differ from province to province and state to state. It is important to select the governing law and jurisdiction in your agreement to avoid disputes on this issue in the future.

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