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Session and Guest Musicians

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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

Whether you are a major label recording artist or an independent musician paying for your own recording, you may occasionally hire a session musician to record tracks on your record. Session musicians could include a backup vocalist, cello players, a hot guitar player brought in to spice up a recording, or it could include an entire band brought in to play behind a vocalist. Regardless, the performance of this musician should be addressed in a written agreement – particularly if you intend on selling copies of the finished master down the road.

Fee/Royalty

Clearly one of the most important aspects of this Agreement is the fee that is paid to the session musician. The American Federation of Musicians (“AF of M”) regulates performances of its members and major recording agreements require the recording artist to adhere to the standards set out under the various rules and regulations of the AF of M. The session rates set out by the AF of M provide a basic minimum of fees required; you can pay higher if required (of course).

Not all recording is governed by the AF of M guidelines (see www.afm.org for a summary of the requirements and rules). Session musicians who are NOT members of the AF of M may opt to charge whatever fee they think is reasonable in the circumstances. In some cases you may be able to get a musician to perform for free; whereas, others may require substantial fees. You have to weigh the cost and benefits and negotiate the amount.

It is very rare for a session musician to be paid any sort of royalty on the recordings; however, this may happen where the musician is a high profile artist or where the musician performs for free in lieu of an equity interest in the master. Be careful about negotiating this – royalty/equity positions must be drafted precisely to be clear and effective.

Master Ownership

It may sound like overkill but you should confirm in the Agreement that the masters are owned solely by you. Disputes may arise where a musician feels they have become

part of your group by virtue of their contribution or where they have performed for free.

You can help avoid such complications by including in the contract a declaration that you are the exclusive owner of the entire right, title and interest in and to all of the masters that are the subject matter of the Agreement (Sanderson, 317), free of any claims by the session musician. Furthermore, you may stipulate that the session musician irrevocably assigns to you, in perpetuity, all rights in and to said recordings, thus ensuring that the “hired gun” retains no stock in the material beyond fulfillment of the contractually outlined fee and/or royalty.

Songwriter Splits

Musicians may occasionally add a substantial artistic contribution to the song that is being recorded. Normally musicians are hired to play/sing a specific part but other times they may arrive at the studio with a blank canvas and be allowed to jam over a beat.

Is this songwriting? We discussed this point in a bit more detail in our last article (for a copy e-mail me at ctaylor@sandersontaylor.com). There is no wrong or right answer on this point but your Agreement should be clear whether or not there is songwriting credit attached to the session musician’s contribution. Obviously, if you are a songwriter/artist, you want to ensure that you are not giving away any songwriting credit unless you have deemed it appropriate.

Creative Approval

You want to make sure that the session musician delivers a performance that is satisfactory to you. Your Agreement should stipulate that payment is not due unless a technically and commercially satisfactory performance is delivered.

Credit Information

Most session musicians will be satisfied with a standard credit that accords them the same credit afforded to other session musicians on the recording. Language such as the following normally suffices: “Session musician shall be accorded credit on all album liners as follows: ‘Xylophone performed by <insert session musician’s name>’.”

If the session musician is already signed to another record company they are normally restricted from allowing their name to be stickered or featured on the cover of the CD or in other advertising. Be mindful of this restriction if applicable.

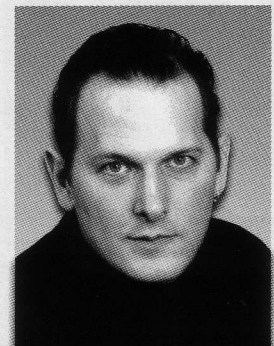
Neighbouring Rights

Neighbouring rights are an exciting development for session musicians. While not a copyright per se, “neighbouring rights are the performance rights performers have in their performances, the makers of sound recordings have in their recordings, and broadcasters have in the communication signals they broadcast” (Paul Sanderson’s, *Musicians and the Law In Canada*, pg. 15). Neighbouring rights became statutory after a 1997 amendment to the Copyright Act, and shortly thereafter the Neighbouring Rights Collective of Canada (NRCC) was established to administer these rights and collect monies generated by radio use and public performances, as well as digital pay audio services. As a result, session musicians may now be entitled to monies related to their commissioned performances beyond the aforementioned fee and/or royalty. This aspect should be clearly addressed in your Agreement.

Conclusion

Though often perceived as a simple arrangement, there are clearly a number of points to consider when it comes to the use of session musicians. Certainly, the session musician can be an invaluable asset in the studio – artists generally want the best performances possible on their recordings and often the session musician is just the tool needed to achieve this goal. However, the nature of the relationship between yourself and any session musicians you may hire should be clearly defined in order to avoid any potential legal quagmires, and to best protect your art. For the handshake agreement may be the harbinger of headaches.

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