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Distribution Agreements

business

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

This article provides an overview of some of key provisions found in standard distribution agreements.

Term

The term of a distribution agreement will vary depending on particular circumstances. Average distribution agreements range from two to six years. In some cases a distributor may opt for a definite period of two years with options for two more years; and, in some cases an option for a further two years (six years total).

Territory

Most distribution agreements I have seen are for Canada only, however some distribution agreements are limited to particular regions of Canada (i.e., Québec; East Coast provinces). Canadian-based distributors may occasionally participate in foreign royalty income.

Advances

Some distribution agreements provide for advances while others do not. Advances can range from \$0, for an artist with no sales track record and little bargaining power, to seven figures, for an established label with a firm sales track record. You may be able to get some of this advance as non-recoupable while some or all of it will be recoupable from your net receipts from sales of records under the agreement.

Fees

One of key provisions in any distribution agreement is the fee structure. Distribution companies typically charge anywhere from 20-25 per cent of proceeds derived from sales of records. This percentage may slide one way or the other depending on the success of the parties. For example, if the distributor sells your record(s) to HMV for \$14 you would get \$10.50 (after deduction of a 25 per cent distribution fee).

The issue of "reserves against possible returns" is an important one to focus on in the negotiation. Distributors will often require the right to retain gross collected income in the event that some of the records shipped are returned from stores. Normally this reserve level is about 25-40 per cent of shipments and is liquidated with 12-24 months of holdback. Distributors may require a higher reserve level in the final periods under the agreement to protect them against being "out-of-pocket" with their artist/label partner at the end of the term.

Services

It is important to realize, whether you are an individual artist entering into a distribution agreement or whether you are an actual label, that distribution companies are normally only responsible for a limited number of functions including: shipping; safe storage of records; collection/invoicing; sales; and accounting. Many artists (and sometimes companies) are under the impression that a distribution company is somehow responsible for substantial marketing and promotion of records; however, this is not the case unless this is stipulated in your distribution agreement with the distributor. Some distributors will offer "enhanced" services over an above typical distribution services such as, extra marketing support or radio/promotion services, which are provided for an extra fee on top of the fee described above. This enhanced fee can range from 5-20 per cent depending on the circumstances and the level of services requested.

It is important for the artist or label to consider whether or not they are equipped to handle the job of marketing and promoting their own records. Clearly, if a record is not marketed and promoted properly the distribution aspect is almost irrelevant.

Manufacturing

Distributors may also provide manufacturing services to its distributed artists and/or labels. This type of agreement is often called a "P&D Deal". In this case the "P" stands for "Pressing" and the "D" stands for "Distribution". Normally a price list will be attached to the distribution agreement to confirm which

prices will apply. It is important for distributed artists and/or labels to be careful to monitor and control production runs on their product because they will ultimately be responsible for these costs if the distributor has not recouped enough manufacturing costs from sales of records under the agreement. It is important for all parties to take a reasoned, well thought out approach to manufacturing orders. If you under-manufacture you could lose valuable sales. If you over-manufacture you could waste a lot of money or be on the hook for this cost.

Off-Stage Sales

Some agreements will make provisions for off-stage sales for the artist. The distributor will likely want to get "a piece" of these sales because, they would argue, these off-stages cut into sales that would go through their retail channels. The distributor may look to cover its manufacturing costs (if applicable) and at least its distribution fee for these sales. Obviously this is an important point for a label or artist who believes they will sell a substantial amount of records off-stage. It is a more important angle for distribution for the independent artist that faces a lot of barriers at traditional distribution channels (i.e. retail).

Product Commitment

Distribution agreements will often have language determining how many albums must be delivered during periods under the agreement.

General/Conclusions

Distribution agreements for labels get into more complicated issues such as recoupment of advances; cross-collateralisation of artist income streams; and more detailed product commitment language. Novice and experienced label owners often work alongside qualified counsel to ensure they are not selling themselves short or putting themselves in a vulnerable position under these tricky provisions.

Other issues are also addressed under most distribution agreements such as pricing issues; Internet rights; accounting; indemnities and post-term inventory return policies; however we do not have room to get into those points in this article.

A good distribution company is an essential ingredient in any record's sales success. It is important to do your research and determine who the best choices are. An experienced music industry attorney should be able to assist in making this determination as well.

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