business

recording agreements

Part II

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

Welcome to Part II of this article. Last issue we discussed Canadian Major Record Company ("MRC") agreement provisions including: Term; Advances; Recording Budgets/Funds; and the concept of recoupment. This issue we will address some of the other important negotiating points found in the typical MRC deal.

Royalties

Royalties are expressed as percentage of a Base Price of either: (a) the Suggested Retail List Price of an album (i.e. $19.95); (b) as a percentage of the record company's price to their dealer (Purchase Price to Dealer, i.e. $14.75); or, (c) finally, as a percentage of a wholesale price ($11.50).

When the Base Price is based on Suggested Retail List Price the royalty will tend to range in the area of 12%-15%. When the Base Price is based on the Purchase Price To Dealer your beginning royalty will be closer to 18-24%. When the Base Price is based on a Wholesale Price the royalty can range from 28%-34%.

At the end of the day, under the various calculations, you end up at a similar so-called "penny rate" but you get there through entirely different routes. A skilled attorney should be able to walk you through these provisions and give you an approximation of how much money you will make per record sold under your recording agreement (the "penny rate"). This number will range from about $1.60 - $1.95 per album.

Many of you have probably read about packaging deductions, free goods, producer payments, CD reductions, foreign royalty reductions and other reducers that negatively impact your penny rate. If you are interested in a fuller discussion of this detailed topic I would suggest Paul Sanderson's, *Musicians and the Law in Canada, 3rd. Ed.*

by Chris Taylor

Territory

Record companies will typically attempt to retain control over your masters on a worldwide, or even a "universal" basis (in case people start selling records on the moon). As an artist you would typically want to narrow down the territorial rights of the MRC. Some Canadian artists have even managed to retain portions of Canada to themselves. Artists with substantial bargaining power may be able to secure deals for "Canada only"; or, where the bargaining power is reduced, artists may grant worldwide rights to the MRC who in turn attempts to release the artist's masters in various territories within a particular time period.

It is important to remember that even though a company may be required to formally release a record in a particular territory there is normally no absolute requirement for the releasing territory to *meaningfully* release the record. Often, Canadian artists are focused on a guaranteed US release and/or other significant territories such as the UK, Germany or Japan.

Normally the MRC will relinquish territorial rights where the MRC fails to release two consecutive albums in a particular territory. You may be able to license single albums for non-release territories ("one-offs") and split the receipts with the MRC on a 50/50 basis.

Creative Control

Ideally an artist would secure full creative control with respect to songs on the album; singles on the album, album/single artwork; selection of producers; marketing materials; video concept and budgets, etc. Normally an artist with average bargaining power will gain a mutual consultation right to such matters with the MRC maintaining a final approval right in "the event of disagreement."

Controlled Composition Clause/ Mechanicals

Record companies pay an "artist royalty" for records sold (see above). The record company is also obligated to pay a "songwriter royalty" for each record sold which is called a "mechanical royalty". This mechanical royalty is addressed in the controlled composition clause (CCC).

The CCC limits the number of songs the MRC will pay a mechanical royalty on (for full albums: 12 songs) and the amount the MRC will pay per song (currently 7.4 cents per song). The CCC clause also typically reduces the per song rate by 25% to 5.5 cents so in effect the total payable by the MRC is 66.6 cents (12 x 5.5). If your albums contain more than 12 songs the MRC will only pay 66.6 per album. Finally, if your albums include many outside writers the MRC may pay the outside writer full rates first and *only* give you the surplus remaining from the 66.6 cents.

For example:

On a 14 song album:

- Record obligates itself to pay: 66.6 cents per album
- Outside writers are paid for writing four songs: 29.6 cents per album @ 7.4 cents per song
- Remaining mechanicals for artist/writer: 37 cents per album 3.7 cents per song

This is a key clause because this mechanical royalty income is not cross-collateralized against unrecouped amounts; therefore, the artist/writer actually receives mechanical royalty income despite the artist/writer's recoupment account with the MRC.

Video Budget

MRC's will normally guarantee a minimum of 1 video per album at $50,000 minimum per video. Video costs are normally 50% recoupable as opposed to 100%.

Tour Support

MRC's will normally guarantee a minimum amount of tour support per album at $25,000 per album. Tour support costs are normally 100% per recoupable.

Off-Stage Sales/Equipment/ Miscellaneous

There are many other items that you may want to explore in your recording agreement. Some artists are successful at maintaining their right to purchase CD's from the record company to sell off-stage. Other artists convince MRC's to provide funds for the artist to purchase recording equipment.

There are many, many other issues that will be addressed in the long form recording agreement which often runs from 50 to 100 pages such as Web site rights; artist name rights; leaving member clauses; marketing restrictions; accounting provisions; and standard boilerplate indemnity and representation/warranty language.

I hope these articles have provided a basis for understanding the many complex issues found in these agreements.

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