

# Record producer agreements

*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

Record producers and recording artists should be mindful of several major points when entering into an agreement. This article briefly outlines those major points to give the reader a general overview of checklist points that should be addressed in most instances.

## Advances/Fees

A producer will normally charge an upfront fee or "Advance" for his/her services. This fee will range depending on a variety of factors including: a) the track record of the producer; b) the budget of the artist; c) the desire of the parties to work together; etc. This fee can be based on a per track basis or on an album basis. Fees range from \$0 for whole albums up to \$1,000,000 in the case of top shelf record producers in the US such as David Foster or Timberland. In Canada, the normal fee charged by a producer to produce an entire major label album will range between \$15,000 - \$50,000 and, where applicable, on per track basis between \$500 - \$10,000 depending on the bargaining factors referred to above.

The Advance is typically a non-returnable, recoupable advance which is recoupable against the producer royalty which is discussed below.

## Royalties

A typical producer royalty is expressed as "three per cent of suggested retail list price (or wholesale equivalent)." Most artist royalty rates are expressed as a percentage of suggested retail list price and normally range between 12-16 per cent. The producer royalty is normally paid out of the artist royalty thereby reducing the artist's royalty. This amounts to approximately 30 cents per album (or 10¢ per royalty percentage point) for the producer.

The producer royalty rate will normally be subject to the same reductions (i.e. foreign sales reductions), deductions (i.e. free goods), and other terms that the artist is subject to under his/her recording agreement. The producer merely "piggy-backs" on the artist record deal in this respect. Producers should demand to have these recording agreement provisions attached to the producer agreement as an exhibit in order to ensure the fairness of the provisions.

Producers will also want to share in the artist royalty increase (if any) under his/her recording agreement. For example, if the artist's royalty increases by one per cent at gold (50,000 units in Canada) and platinum (100,000 units in Canada) the producer will want the producer royalty to increase on a pro-rata basis. A typical pro-rated increase for the producer would be calculated as follows: @50,000 units sold - Artist royalty increases from 14 to 15 per cent - Producer royalty increases from 3 to 3.214 per cent (the producer increase is 3/14ths of the one per cent increase).

Producer royalty rates will vary from 0-4 per cent but typically the 3 per cent figure and the escalations are granted to an average, experienced producer.

## Recoupment

The calculation of the recoupment of the producer advance and the payment of producer royalties is the most complicated aspect of a tightly negotiated producer agreement. Under most agreements, producer royalties become relevant when the artist's recording costs are recouped under the artist's recording agreement. Note, this recoupment described in the foregoing sentence does not typically include such recoupable costs as tour support, video monies, etc.; therefore, the producer is typically owed payment prior to the artist being in a recouped position with his/her record company.

Once the recording costs are recouped at the "artist's net royalty rate" under his/her agreement, the producer must recoup out his/her advance prior to being paid further royalties. (A more detailed discussion about this point and producer agreements in general can be found in *Musicians and the Law in Canada*, Paul Sanderson.)

## Credit

Producers should confirm the wording and location of their producer credit. Often this credit clause will read: "Artist shall instruct and use reasonable efforts to cause Company to accord Producer an appropriate credit on the packaging and liner notes of records derived from the Masters in substantially the following form: "Produced by (insert producer name here)."

The parties may also confirm if such credit will appear on the back covers of records; and whether the producer name will appear in trade advertising.

## Letter Of Direction

A standard letter of direction clause will confirm that the artist will direct his/her record company to account/pay directly to the producer. Producers obviously prefer to be accounted to directly from the Company; however, often the letter of direction will not provide the producer with any right vis a vis the record company such as audit rights, etc.

Often the actual letter of direction will be attached to the producer agreement as an exhibit to the Agreement. Most artist recording agreements confirm that the Company will accept reasonable letters of direction in this regard.

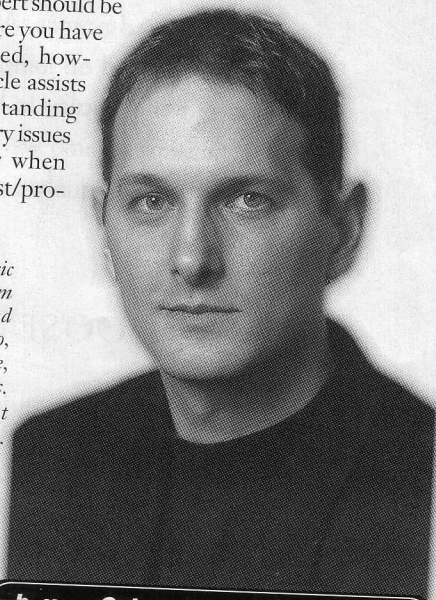
## Songwriting

Artists, in their recording agreements, are subject to controlled composition clauses which cap and reduce the amount the artist/writer will be paid for his/her publishing interest in the songs contained on the artist's album. The producer should agree that he/she will also be subject to these controls on a pro-rata basis.

Several other critical points should be addressed in the typical producer agreements such as: a) recording budgets; b) timelines/due dates for master delivery; c) confirmation of copyright ownership; and, d) name and likeness rights.

A trained legal expert should be employed to make sure you have all your bases covered, however, I hope this article assists the reader in understanding some of the preliminary issues one should consider when entering into an artist/producer relationship.

*Chris Taylor is a music lawyer with the law firm of Sanderson Taylor and works with Nelly Furtado, Sum 41, Jelleestone, and Wave among others. Visit online at [www.sandersontaylor.com](http://www.sandersontaylor.com).*



by Chris Taylor