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business

recording agreements

Part I

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 is the first of a two-part article reviewing the major terms found in a typical Canadian Major Record Company recording contract. Of course, individual circumstances can vary widely depending on the bargaining power of the artist.

Major Record Company

When we use the term "Major Record Company" ("MRC") we mean one of the following companies in Canada: Warner Bros., Universal, BMG, EMI and Sony. Several other record companies in Canada including Jive, Aquarius, and Nettwerk can, on occasion, make competitive offers against MRCs. Smaller record companies may be more flexible on the length of term and creative control issues whereas MRCs are often stronger in the financial guarantees of artist advances, recording funds, video budgets, tour support, etc. All of these terms are discussed below.

Term

Every recording agreement should explicitly outline how long the contract is for. Typically, the term is tied to a delivery commitment for a particular number of albums. In most instances a Major Recording Company will attempt to tie up the artist for as many albums as possible with the maximum being up to eight albums. The artist (or their representatives) should attempt to reduce this requirement to as few albums as possible (three to six).

The MRC will commit to producing and releasing one album and will retain options to the remaining albums. It is important to remember, although a recording agreement may be for up to eight albums the MRC will not guarantee to fund the production of all eight albums. It is *their* option to decide whether or not they wish to extend the relationship with the artist beyond the first album.

Occasionally an artist may be able to have the MRC commit to a guaranteed two albums but rarely beyond that. The artist tries to get the MRC to commit to as many albums as possible and to reduce the overall option periods as much as possible. The reduction of option periods will hopefully put the artist in a better position to re-negotiate an extension of their current agreement

if they enjoy success on their first four or five albums. As we know, artists rarely reach the end of their option periods with the MRC; however, it doesn't hurt to plan ahead just in case.

Advances

Normally when an artist signs a recording agreement with an MRC the artist will receive an advance of approximately \$20,000 to \$50,000 Cdn. This is money for the artist to use at the artist's sole discretion. Often this money is used to pay living expenses, management commissions, legal fees and artist debts. This money, especially if it is the sole source of income for the artist, must also provide for the artist's basic living needs (i.e. food, rent, etc.) before, during and after the recording of the first album under the MRC agreement. Sometimes MRCs will kick in further monies when the artist is in desperate need – other times they won't and the artist may be forced to entertain a publishing offer or work a second job prior to release of the first album.

The artist will receive further artist advances for subsequent albums under the recording agreement when, and if, the MRC elects to exercise its option(s).

[Note to reader: do not forget to address Goods and Services Tax (GST) issues under this section.]

Recording Budgets/Funds

The agreement will also guarantee a minimum amount for recording each album. An average guaranteed recording budget for a first album would likely range between \$100,000 to \$200,000 depending on the anticipated recording costs for the artist. Many times recording companies will guarantee a minimum recording budget but authorize larger actual recording budgets once the process of recording the actual album begins. Very few albums are recorded for amounts lower than the recording budgets granted in the agreement.

It is important to understand the distinction between recording "Budgets" and recording "Funds" in a recording agreement. "Recording Budgets" are often bare minimums where, if the artist comes in under budget, the surplus does NOT go to the artist; whereas "Recording Funds" pay any recording money surplus, remaining after delivery of the applicable album, to

the Artist. Make sure this is clarified in the agreement.

Recoupment

This issue of recoupment is important to understand. In brief, many of the costs incurred by the record company such as artist advances; recording budgets; tour support and video monies are paid back to the MRC through the artist's royalty (described below). For example, if the record company costs listed above totalled \$450,000 and the artist's royalty was \$1.50 per album, the artist would need to sell 300,000 copies of their album (triple platinum in Canada!) to be in a "recouped" position.

On the bright side of the equation the advances described above are *only* recoupable from artist royalties under the agreement and are "non-returnable" so, if you don't recoup under your agreement you do not have to repay the MRC through your personal funds. In addition, many of the MRCs costs such as marketing, promotion, and other overhead costs are not included in the recoupable amounts.

Next Issue

Next issue we will review Royalties, Territory, Creative Control, Controlled Composition Clauses/Mechanicals, Video Budgets and Tour Support. Join us.

Chris Taylor is a music lawyer with the law firm of Sanderson Taylor and works with Grammy Award Nominees, Nelly Furtado, Gerald Eaton and Brian West among others. Find him online at www.sandersontaylor.com.



by Chris Taylor, B.A., LL.B.