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Producer "Spec" Deals

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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

Often record producers are approached by recording artists who do not have the funds to record professional sounding demos. The artist needs to have good sounding demos to attract record company interest but cannot afford the producer fees or sometimes the studio costs to produce the required demos.

This article describes the terms and provisions of what is commonly termed a, "producer 'spec' deal" wherein the producer has foregone immediate fees in the hope that the artist will secure record company (or publishing company) interest. Later, when the artist secures the record deal, the producer is financially compensated.

With the help of legal counsel the parties can draft a brief, effective agreement which protects both parties' interest in the event that the production of the demo masters assist in securing record company interest for the artist.

Term/Delivery Commitment

The agreement should describe how many masters are going to be produced. Typically an artist will require three to six demos to attract record company interest. This provision should describe approximately when

the demos will start and when they will be delivered.

As an artist you want to confirm that the final demos will be commercially and technically satisfactory.

Normally the parties will agree that the demos are to be used to solicit recording company interest for a particular period (6-12 months). If the record deal is secured during this period then the specific compensation provisions of the agreement would apply. The theory behind this time limited period is that a record deal will only be reasonably related to recent/fresh demos that have been used to solicit record company interest.

Recording Agreement Definition

Your Agreement should clearly define which types of "recording agreement(s)" would entitle the producer to claim future income from the Artist. A small recording agreement with a very small independent record company may not qualify; whereas, an agreement with a "Major" record company will normally suffice. You may also want to address what would happen if the Artist elects to merely sell the demos "off stage" at a later date.

Studio Costs

The agreement should be clear about who is responsible for studio costs. Ideally the parties would attach a mutually approved budget to the agreement. If substantial studio costs are also incurred by the producer, the producer may justifiably argue for more compensation than outlined hereinbelow.

Compensation

The agreement can be structured to address a variety of circumstances when (and if) a recording agreement is secured:

i) No masters used/Producer not retained

The record company may want to sign the artist to a record deal but may not be interested in using any of the demo masters as part of the artist's delivery commitment under the recording agreement. It may also be possible that the artist and

the record company do not want the producer to produce further recordings for the artist. In this circumstance the producer will normally be paid a fee for his services previously provided on spec. Usually this fee (\$1,000-\$3,000 per master) will take into account the risk and speculative nature of the producer's previous efforts which can result in a higher fee than the producer might normally charge for services when a fee is paid up front on initial delivery.

ii) Masters used/Producer not retained

The record company and the artist may not want the producer to produce further masters for the artist but may want to use the demo masters as part of the artist's delivery commitment under the recording agreement. In this case the producer could be paid a flat fee for his services related to production of the masters (\$1,000-\$3,000 per master) and a pro-rated royalty related to sales of the demo master(s) in question. Briefly, this royalty can be expressed as 3 per cent of suggested retail price which is pro-rated according to the total number of masters on the applicable LP. (For a more detailed review of royalty structures in a typical producer agreement see, *Paul Sanderson, "Musicians and the Law in Canada" (Carswell)*)

iii) Producer retained

In a perfect world for the producer he/she is retained by the artist and the company to produce the first LP for the record company and artist. Sometimes the producer and artist might agree in the spec agreement to predetermine the fees and royalties that the producer will be entitled to when the producer is asked to produce the LP at this juncture. Other times, the artist and producer might agree in the spec deal to negotiate the terms and conditions of the producer agreement in good faith.

Some producers will suggest that they should automatically be retained to produce an artist's first LP under their recording agreement which is secured, at least partially, due to the demo masters produced on spec for the artist. For the typical producer working on spec it is unfair for them to force themselves on a new artist and record company who may not want to retain their services further. The buyout provisions outlined above illustrate a fair compromise to compensate the producer for working without guaranteed payment without unduly jeopardizing the artist's career.



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