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Tips on the Music Business

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How To Know If Your Band Has A Shot

by Dave Genn

Life isn't fair. We all know this. The music business is even less fair than life itself. Okay, that sounds a bit dramatic, but if you've stuck it out as a musician for any number of years then you also know this statement to be true. Why is it that some bands succeed where others fail? Is it talent? Luck? A combination, perhaps? I don't claim to have all the answers, but what I have learned through experience and disappointment is that there are certain elements, some within our control and others beyond, that increase a band's odds of carving out a career for itself. There are, of course, exceptions to each one of these rules, but knowing beforehand what labels, managers, producers and tastemakers are looking for in a new artist will allow you the greatest chance for success.

Work Ethic

This one is absolutely essential. Nobody has ever had a lasting or meaningful career without an innate drive to work harder than his peers. Nowadays major labels are not as willing to develop young acts as they were in the past, and often won't even consider signing a band until they have proven that they are willing to do whatever it takes. This means endless touring, without the aid of tour support, and probably an independent release or two under your belt before anyone is going to take you seriously. Once you've established yourself, say with a record deal and a couple of hit singles or a steadily selling album, the real work begins. Doors will open and opportunity will knock, and a promising artist will do everything in her power to play every show, do every television appearance, and endure every interview no matter how tired or inconvenienced they might feel. We all know that incredibly talented individual who is always complaining that they never got their shot, but more often than not, that person just wasn't willing to do the work necessary to put themselves in a position to succeed.

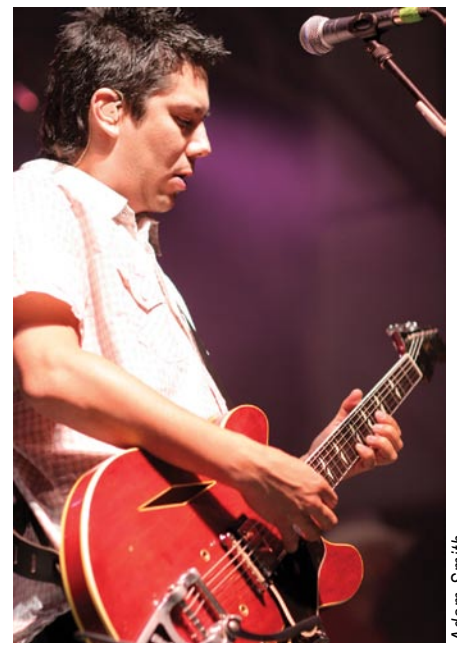
Timing

This one is probably the aspect that is the least in our control. Great artists never chase trends, and career artists will develop and evolve independently of what's popular at any given moment.

There is, however, an undeniable element of luck involved in finding oneself in the right place at the right time. Often you will hear bands being described as "dated". In other words, they're playing a style of music that, although competently performed and well-crafted, sounds stylistically like what was popular 15 minutes ago. Your average garden-variety rock and roll fan is looking for the NEXT BIG THING, and in order to place yourself ahead of the curve it is essential to take artistic risks. The other side of this coin, of course, is when bands are described as being "ahead of their time". This description seems only to apply to bands that have already broken up in fits of disillusionment and bankruptcy, but hey, they almost always become some obscure influence on the platinum sellers of the future, and that's something, right? Besides doing the right thing at the right time, an act must find itself aligned with the right representation, label, publisher, producer, etc. Many great records have gone the way of the dodo simply because the label to which the band was signed just happened to endure a messy corporate merger at the precise time of release. Unfortunately, politics do play a major role in how a record will perform in the marketplace, and timing is indeed everything.

A Star

If the singer in your band is not the strongest link, you are wasting your time. There are exceptions, of course, but very few. What constitutes star-quality in a front person is somewhat indefinable by nature, but could be construed to include an outstanding voice or songwriting ability, drop-dead gorgeous good looks, undeniable originality or an outrageous fashion sense. Sometimes star-quality is an indeterminable "spark" or X-factor that can't be described any other way than "I just can't take my eyes off of him/her". A world-class front person has an insatiable desire to be the centre of attention, either consciously or sub-consciously, and is often miserable if they don't find themselves in that position on a near constant basis. Good times in the van if you happen to be the drummer, but it is exactly this quality that allows a great singer to shine when the lights go down and the pressure's on.



Adam Smith

Songs

Obvious, right? Then why are so many turds floating up to the top of the charts, while great songs sink like stones? I wish I could answer this admittedly mixed metaphoric question with unwavering insight but, truth be known, I can't, other than pointing out that there is an incredible amount of back-room wrangling, back-scratching/stabbing and occasionally, payola, that goes into the process of determining what gets played and what doesn't. The best position that you can put yourself in is to have UNDENIABLY GREAT SONGS, and lots of 'em. Songwriting is a craft and craft is learned. I often tell people that nobody writes a great song until they've written a hundred, and after that you can probably keep one in five. You can expedite this process by co-writing with friends, colleagues, or pros, as each experience is bound to teach you a little more about the process. There are no hard and fast rules to writing great songs and every writer's modus operandi is different, but I can't stress enough the importance of not becoming precious about your art. When a writer becomes precious, all the fun is taken out of the event for all involved, and if you're not having fun creating, why do it at all?

So there you have it... The Formula. If you are in a young band eager to take the next step, then ask yourselves the following questions: Do we work harder than everyone else? Are we doing the right thing at the right time? Is our singer a star? Do we have undeniably great songs? If you can honestly answer each of these questions with an unmitigated "Yes!" then your chances of success are better than most. Good luck!

Dave Genn is a Vancouver-based musician, songwriter and producer, best known for his guitarist and keyboardist roles in (currently) 54-40 and (formerly) Matthew Good Band.

My Definition Of The Music Business: Artistic Creative Invention + Making Money For A Corporate Enterprise

By Rick Rose

Personal gratification, being recognized, making a statement, beating the odds – the list of why we all wanna be rock stars can go on forever. The music business can attach a whole other list of priorities to yours: you have to write us a hit song, you gotta stay up with the times, let's work on the image, are these gonna sell, will radio play this stuff, we have to at least make it to the top 10, are we showing a profit yet, you have to tour for a long time to get the name out there, they're not gonna play the video so we have to be in front of crowds, we've over-spent ... this list can also go on forever. We basically have oil and water and they will always be two separate entities working together as one. So, let's get started!

You have to believe in yourself. I'm not saying that you're always right and the music industry is always wrong when they don't agree with your thoughts and theories, but if you have a record label that is bank-rolling the project, you'd better listen and co-operate – remember that Keith Richards didn't think "Satisfaction" was the song. You will still have to attend meetings and be co-operative with all divisions within the music label such as promotion, radio, marketing, etc. You have to be resilient because it's not always gonna go your way. The ups and downs in this business are crazy; if you're not good with rejection then there are a lot of colleges you can attend to change your career because being in this business is a journey of highs and lows. Tenacity is just as important because when everybody around you is letting go, you have to be strong and carry on. If you really have the desire and passion for the music business, you will find your place – you might make some detours along the way, such as producing, writing, or arranging – but you will still remain in the business and work on the big prize!

Comprehension and knowledge of this business is very important. You can

pick up on a lot by hanging with industry friends or acquaintances. Remember, music industry folks love it when the artists are interested in the business side of things; it re-assures them. Their mindset can often be: "these guys are great and that but we're in it to make money for all of us." It's a partnership.

Patience and perseverance ... it's like being in front of a slot machine and you don't know when it's gonna pay out, but if you leave you might have been 20 minutes away from the jackpot. Hang in there!

Laughter is also a must. You will witness some of the most unorthodox events and they will make your head spin. Some songs are climbing the charts and others die rapidly. Don't get jaded or cynical – all you can really do is laugh. Consider a song like "Who Let The Dogs Out" which changed the world for about two weeks (don't get me wrong, the writer is a friend of mine). Who'd have thought?

Being competitive is also important, but don't get nasty. Sure, it's a tough business, and you have to look out for number one. You will learn how to protect your thoughts, ideas, creations, and emotions, but don't deliberately try to slow down someone's career.

Two Canadian songwriters have, in their early years, opened for me at different gigs without me having any indication as to where they would be today. I just tried to help out some young kids who wanted to play in front of people. These "young kids," Ron Sexsmith and Stephan Moccio, are now good friends, and I am very proud of their success. Lucky breaks come to those who are out there and working hard: networking, attending functions, being supportive of others, performing at fundraising events, and so on.

The old cliché about being in the right place at the right time still works. I landed the theme song for *Rude Awakening*, an Orion film in the early '90s, by my manager having dinner with Aaron



Russo, a New York movie producer. Aaron asked my manager for someone who could write him a theme song for his film. The next day, my manager sent me the script, and that was it; I ended up writing the song with Jim Steinman and Paul A. Rothchild. There have been many breaks in my career like that; you just have to be active outside of the studio and hotel room.

Pay attention to expenses. It's a numbers game and, when the smoke finally does clear, it's all about what the cash register is ringing in at the main office. Yes, be creative and be on the cutting edge, but you have to generate money to make money. Then, make more money and, that way, the music and the business will have a happy marriage.

Rick Rose has written songs for Sony Tree-ATV Music and Warner Chappell Music, and has recorded for Columbia, Elektra Records, and Attic-Polygram. He is the founder of the Niagara Institute Of Music Arts, The Music Shoppe, Tangerine Records, and Tangerine Broadcast Signatures. www.rickrosemusic.com

Cover Songs

Or, As Jenny Lewis Would Say By Way Of The Traveling Wilburys, "Handle With Care"

by Pat Leyland

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

We all have our favourite. For me, it's a toss-up between Annie Lennox's version of Bob Marley's "Waiting in Vain" and the Smashing Pumpkins' adaptation of "Landslide," as originally performed by Fleetwood Mac. Other tracks commonly cited include Johnny Cash's spin on Trent Reznor's "Hurt," and, more recently, Nelly Furtado's acoustic take on the currently ubiquitous Gnarls Barkley smash "Crazy." Of course, what we are talking about here are cover songs. For the purposes of this article, the term "cover song" refers to a new performance or recording of a composition written and/or previously recorded by another artist.

Live Performance

A cover song can be a valuable tool in a live setting. If placed appropriately in the set list, a cover can elevate the overall performance and reinvigorate the audience members by infusing them with a dose of familiarity. However, an artist should consider the possibility that a first-time audience member may only recall a handful of songs from a set, and a recognizable cover song may effectively displace an original song from the listener's memory (for better or for worse).

In terms of the legalities of performing covers, Canada's *Copyright Act* grants the creator of a copyright protected musical composition the sole right to perform the work in public. As such, in order to perform a copyright protected song, an artist must first obtain permission from the creator of the song or the owner of the copyright in the song, if such copyright has been assigned by the creator. Fortunately for the musician seeking to perform a cover, this burden is effectively relieved via the Society of Composers, Authors and Music Publishers of Canada (SOCAN), the non-profit collective that administers performing rights in Canada.

In exchange for license fees, which vary according to the nature of the particular usage, SOCAN issues blanket performing right licenses that grant users

of music the right to publicly perform in public any song in SOCAN's vast repertoire. Due to reciprocal agreements with international performing rights organizations, a SOCAN license offers access to songs from all across the globe. It will very rarely be the case that the responsibility to obtain a SOCAN license lies with the performing artist. Generally, such responsibility falls on the owner of the venue and/or the promoter of the event in question. However, if you are planning on performing a cover, it may be wise to inquire with the venue and/or promoter in advance to ensure that the performance is covered by a SOCAN license. Please visit www.socan.ca for more information.

Recordings

As in a live setting, an artist must be careful that the inclusion of a cover song on an album does not overshadow the original material. At the very least, an artist should produce covers in a manner that tilts listeners in the direction of the artist's original works. A good example here is Marilyn Manson's cover of the Eurythmics "Sweet Dreams." This cover, which gave Manson his first commercial hit, contains the dark and distorted goth-industrial elements that helped define the artist, as does his later (and excellent) cover of the song "Tainted Love." On the flip side, note the many bands that effectively became one-hit wonders after recording cover songs (e.g., Alien Ant Farm). A cover song can give your career a boost, but it can only carry you so far.

On the legal side, recording cover songs engages issues of law distinct from those related to the performance of cover songs, namely because an entirely different right is at play. While performing cover songs involves the right of public performance, recording cover songs implicates the right of reproduction. This right also originates from the *Copyright Act*. The owner of a copyright protected musical composition has the sole right to reproduce a composition in any material form. Therefore, if you want to manufacture an album that includes a cover song, you need to first obtain permission from the person(s) holding the copyright in the song in question. Such permission takes the form of a "mechanical" license, which is essentially a contract between the par-

ty making the reproductions and the party administering the copyright in the song.

Similar to the case with SOCAN and the performing right license, a non-profit agency provides administrative assistance to an artist who seeks to manufacture copies of an album that includes a cover song. The Canadian Musical Reproduction Rights Agency (CMRRA) issues mechanical licenses to music users on behalf of the copyright owners represented by the organization. The mechanical license differs from the performing right license in that the artist manufacturing copies of the cover song is responsible for paying a fee, currently set at 7.7 cents per song per copy sold or distributed if the song is five minutes or less. Each additional minute or part thereof adds 1.54 cents to the fee. Therefore, if you wish to manufacture 1,000 copies of an album containing a cover song that is five minutes or less, then the mechanical license for that particular pressing will cost \$77, provided the CMRRA represents the applicable copyright holder(s). If the CMRRA does not control the rights to the composition in question, then the artist seeking to manufacture copies of the cover song must obtain the mechanical license directly from the pertinent copyright holder(s). Any fee related thereto will be entirely subject to negotiation. Note that the reproduction of a song protected by copyright in the absence of a mechanical license constitutes copyright infringement. Please see www.cmrra.ca for more details.

Conclusion

While the cover song can be a valuable weapon in the arsenal of a musician, it must be handled with care. Use it sparingly, use it strategically, and use it legally.

Pat Leyland is a law student at Taylor Mitsopoulos Burshtein (www.tmlawyers.com), a former recording artist for Arista Records, and co-manager of the upcoming metal band Threat Signal.



Photo credit: Michael Gorman.

Don't Lose Your Shirt: Legal Issues Surrounding Merchandise Agreements

by Lynn Burshtein, B.A., LL.B

As revenues from the sale of records continue to decline, band merchandise comprises an integral part of an artist's total revenue stream. Today's definition of band merchandise has expanded beyond the traditional concert merchandise of yesteryear (e.g. T-shirts, baseball caps, and bumper stickers). Today, artists sell all kinds of wares – everything from action figures to perfume – to supplement their income. Some artists, such as Gwen Stefani and Jennifer Lopez, have forged identities as full-scale fashion designers.

All of this increased merchandising activity raises a host of legal considerations. Most importantly, it is necessary to identify who owns the underlying rights in the merchandise. This includes both copyright in the artwork and designs, and trademark rights in the band name, brand logos, and any slogans utilized in the merchandise. If the artist in question is a solo artist, this is usually less complicated than if the artist is with a band. To assert ownership in the underlying rights, a solo artist will need to ensure that he or she has proper rights to his or her professional trade name, and has obtained a complete assignment of copyright from any third party artists who designed the artwork in the first instance. In terms of the latter, under Canadian copyright laws, any assignment of copyright must be in writing. Otherwise, copyright in the designs rests with the original creator. Thus, an artist should never assume that just because he or she has paid for the designs that he or she is the actual owner of the copyright in such designs. Indeed, in order for an artist to be able to freely exploit the merchandise, unencumbered by any future claims by a third party designer, there should be a written agreement evidencing an assignment of "all right, title and interest in and to the copyright of the designs in perpetuity, throughout the universe." Of course, if the musical artist is the person who is actually designing the artwork, no assignment will be necessary.

For a band comprised of multiple members the situation is somewhat more complex. First, the various members will need to sort out who owns the rights to the band name; e.g. if one band member leaves the group, will he or she be entitled to any profits from the sale of band merchandise after such departure,

and if so, for how long? The band will also need to ensure that the designs and artwork have been assigned to the band by the relevant copyright owners in the manner noted above, and, as well, how any profits derived from the sale of the merchandise should be split between the members. These internal band issues relating to ownership and division of profits are best addressed in a band partnership agreement (or as some like to call it, a "pre-nup for rock stars").

Once it is established who actually owns the designs in the merchandise, and how any resulting profits are to be divided, there are other legal issues to bear in mind. It is not uncommon for record companies to try to participate in band merchandise revenue. Record companies argue that since sales of records are in decline, they should be entitled to recoup their substantial investment in an unknown artist through the artist's merchandise (as well as touring receipts and sometimes even publishing income). Whether or not an artist should agree to a record company's right to participate in their merchandise revenue, and if so, to what extent, will depend on the relative bargaining power of the parties.

Other related legal considerations to bear in mind are the terms of a merchandise distribution agreement. For bands with a certain degree of notoriety, they may want to use a third party distributor to mass market their goods. In that case, certain key terms should be set out in a merchandise distribution agreement. These key terms include the definition of the territory – would the applicable territory of the agreement be limited to Canada only? Or would it be in effect throughout the world?

Another key provision is the length of the term of the agreement – Will the term last for two years? Five years? (from the artist's point of view, the shorter the term, the better). Moreover, the parties need to determine whether the distributor has exclusive rights to distribute all of the band's merchandise throughout the territory or whether any specific sale of merchandise (e.g. off-stage sales) or any channels of trade (e.g. the Internet) should be excluded from the scope of the agreement. Of course, the royalty rate is important to determine, and the rate should be based on industry standards. Some artists will be required to pay 50-75 per cent to a distributor with



solid distribution channels although a well-known artist should be able to command a higher royalty rate than a lesser-known act. The rate may also fluctuate if the distributor is responsible for securing a sublicensing deal in a foreign territory in which case a third party distributor in that particular territory will also need to be paid its share of royalties. It is also important to determine which costs may be considered allowable, deductible expenses before the distributor determines the net profits to be split. Reasonable, out-of-pocket third party costs should be allowed as deductible expenses, but the distributor's general office overhead should not. In addition, artist approval over the look of their merchandise is something that may be important so both parties should clearly set out their expectations to this effect in the agreement.

Now, more than ever, merchandise plays a vital role in an artist's ability to make a living; it is also an important medium for artistic expression. It is therefore well worth taking the time to consider these issues in detail.

The views and opinions expressed in this article are not meant to substitute legal advice which should be sought in each particular instance.

Lynn Burshtein is a lawyer and founding member of the entertainment law firm, Taylor Mitsopoulos Burshtein, which represents clients such as Avril Lavigne, Nelly Furtado, Sum 41, and Three Days Grace, among many others. For more information, please see www.tmblawyers.com.

Showcasing

by Sue McCallum

Bands at every level showcase. This past March at Austin's SXSW The Tragically Hip showcased – you might think “my God, why would they showcase?” but Austin's festival is internationally HUGE in the music industry and you see all levels of artists and bands flocking there to perform. With so many levels of artist showcasing, I'm focusing my point surrounding North By Northeast (NXNE). It takes place June 6-10, and it has a great reputation of selecting the best new music from Canada and internationally.

So first of all, congratulations, you've been chosen. Get excited and now think about this: what do you want to achieve with this show? Your aim should be to gather all the right people together to get you to the next level. Do you want the music media to be there? Do you want to get a manager, an agent, a publisher? Make a list of who you want to attract and focus on your list.

Let's start with media. Do you want advance coverage in the local media? If you have a budget for a publicist, get one. If not, most festivals and clubs these days provide local media contacts. So make eight to 10 packages or more, send them to the correct music contacts at the daily papers, online music sites, the weeklies, the music magazines, campus radio stations, and entertainment TV stations that feature music. Mark NXNE clearly on the envelope and follow it up with a couple of detailed e-mails and a couple calls. Follow-up is one thing, overkill another – and there is a fine line. Some media just get mad if you pester them too much. Make sure they have everything they need and that is: music, contact information, a 300 dpi .jpeg by e-mail or a link, your website info, and maybe a few clippings or quotes. Get them excited and remember 400 other bands are doing the same thing. So do it early. If you are hoping that the weeklies will do something, remember their deadlines; contact them at **LEAST** a month in advance and



if there is something unique about the band make sure they know that. The media want a great story – that is their aim. Now with that list you made earlier of all the people you want at the showcase, properly invite them and focus on getting them there. That's the hardest part, but get them excited. Maybe it's an agent or a manager or a club promoter or an international distributor. Do some research to make sure you are spending your time on the right contact, think of the match. Don't focus all your energy contacting someone who just does blues if your act is pop, for example.

During this type of festival, whatever location you have been given and whatever time slot you have – embrace it, work it. Get a hold of the other acts on the bill because they may want to split on flyers or advertising. Also remember you are surrounded by music fans at the conference hotel and at the other events. Target these people too if they are just standing around. Not everyone has a full agenda some make their decisions on the fly, so get them interested. Flyers, signs, posters, T-shirts, busking, airplanes ... well that can get expensive but not all publicity stunts cost money.

At the club you are dealing with sound techs and stage managers and a lot of them are volunteers, so make sure you are respectful to all around you and all the other acts on the bill – and that includes being **ON TIME**. It's an old saying that rock shows are always late; well, since the rock show became corporate, rock shows run on time, and specifically at a festival like this. You have a specific amount of time and hundreds actually depend on that. You and everyone else are listed in print in schedules at specific times, so start when you are supposed to and don't go over your allotted time – you could potentially throw hundreds of other people's schedules off. It's not cool.

Of course, first and foremost your band needs to be ready. Obviously the sound and visual are most important but you would not be showcasing at NXNE if you were not together, so it is up to you and your band to bring it. Kick some @\$\$! Your performance that night needs to be a million dollar performance. You have invited all the right people you want to be there to advance your career, so make them take notice. Most importantly, have a blast and make it worthwhile, isn't that why you are doing it?

Surviving During The Waiting Game

by Rick Rose

Well, we all know that the music business revolves around the famous cliché "hurry up and wait." This phrase has been in effect for many years and it will stand strong, so accept it and don't try to change it – roll with it, and in the meantime, keep your cool!

What I'm getting at is that all of you new, young, eager, and talented songwriters, artists, producers, musicians, and managers have to maintain integrity and dignity. Don't let desperation take control of you and let it run your life in this business.

Yes, we all would like that break that changes our lives forever for monetary reasons and for creative satisfaction. It would make us stand above all the rejection that we faced in the years of trying to make it, and it is the ultimate high!

But remember, there will be winners and there will be losers, just like when the Maple Leafs play the Canadiens. They're both great teams – the epitome of hockey – both teams are winners within the overall perspective of hockey, but in any given game there is only room for one champion. So, sort of like the music business, there's only so much room for number one songs, top 10 songs, bands getting signed, bands landing a great tour opening for a major band, getting a FACTOR grant for a video or tour support, landing an endorsement ... the list goes on forever.

So what do you do while you're waiting for your ship to come in?

It usually works this way: stay busy, stay creative, pay your bills, respect your loved ones, live your life, find time to play road hockey or baseball, and always try to learn something new every day.

One of the greatest feelings is finding something that you really love to do and finding a way to make money doing it. It's like the old saying: "find a job that you love and you'll never work a day in your life." While you're waiting for replies from record labels or publishers, stay active and earn a living with your other talents, and, believe me, you all probably have some God-given talents that you can put to use and make money with while you're waiting for the phone to ring.

Now don't get me wrong – playing gigs, selling T-shirts, selling CDs, and hoping people will pay a cover charge to see your show are all ways to earn an income, but how about the other facets of the industry? Some of the avenues for you to explore to help you subsidize your expenses while you are out there working on your career are: teaching music, writing radio commercials, doing studio session work, producing bands, managing artists, doing graphic design and/or website design, booking bands, repairing instruments, selling equipment, sound engineering, becoming a lighting technician, music consulting, and performing many other roles ... the list can go on forever. If you offered these services, you would get paid on completion or very close after it, so that means that you would have consistent cash flow to stay afloat.

While you're spending all that time in the studio recording your new creations and racking up bills, hoping that a label will change your life forever, still fit time into your crazy schedule to go out and earn money because when you're earning an honest dollar, it enhances your dignity, and you have a certain kind of energy that travels.



So stand tall and don't let anybody say that you don't have what it takes, especially if they can't back it up with a success of their own, not a success they road on someone else's coat tails – there's a big difference. A lot of folks in the music business are great at pretending, so do your research and be cautious.

Tom Petty did sing, "the waiting is the hardest part," but what I'm saying is, "the waiting is just part of it."

Rick Rose is currently working on his new CD entitled Once Upon A Time In Niagara for Tangerine Records. Rick has written songs for Sony Tree Music, Warner Chappell, and Attic/Polygram Music. He is the founder of the Niagara Institute Of Music & Arts, Tangerine Broadcast Signatures, and Music Supply Outlet. Contact: rickrose.ent@cogeco.ca.

Collaborative Songwriting: Doing The Splits

by Jason Klein

One of the most important, but often overlooked, steps in protecting one's musical assets is properly documenting songwriting splits. Collaborative songwriting is a positive, constructive experience. It is natural to be focused on the creative process, rather than papering copyright shares to avoid future disputes. But failing to be proactive at the outset can be costly once the song is a success and recollections of the creative process become distorted.



The Split Sheet. My advice is simple – as soon as you have completed a song with collaborators, have everyone sign a “one-pager” setting out the following:

1. **Title.** The title of the song and any alternate title(s).
2. **Date and Location.** When and where the song was written.
3. **Names.** The legal name of each collaborator. You may include collaborators (such as producers or arrangers) who are not entitled to a share in the song in order to have written confirmation of that fact.
4. **Publishing Info.** If available, the performing rights society (e.g. SOCAN, ASCAP, BMI, etc.) affiliation, membership number and CAE number, as well as the publisher of each co-author.
5. **The Splits.** Each collaborator's percentage share of the song. Standard practice is to attribute 50 per cent to the lyricist(s) and 50 per cent to the composer(s) of the music, but you are not bound to that convention. Separating the music and lyrics simplifies things

where a song is subsequently translated – a portion of the “lyricists' share” would be allocated to the translator, leaving the “composers' share” intact. Similarly, if the lyrics are set to new music, the composers' share can be adjusted without affecting that of the lyricist.

The form should be kept simple. There is no need for detailed legalese that will prompt negotiation beyond the percentage shares. The purpose is merely to identify the song, the collaborators, and their respective authorship shares. The key is to do this as soon as the song is completed, before it generates revenue, and while the collaborators (1) remember what they contributed, (2) can still be contacted easily, (3) are on speaking terms, and (4) are less likely to be motivated by greed.

Use of the Song. While it is important to keep the split sheet simple, it may be appropriate to add a line or two regarding use of the song. Under Canadian law, one co-author cannot license the use of the song without the consent of the other co-authors. So where a producer co-writes with a recording artist, the artist may want the producer to agree not to restrict his use of the song, and may also want language preventing the producer from recording his own version of the song for a period of time. In some cases, it may be appropriate to appoint one author as administrator, allowing her to authorize use of the song on behalf of the other co-writers. This is a tricky area, so it is important to consult experienced legal counsel to draft language appropriate to your circumstances.

What is Songwriting? To truly appreciate the importance of the split sheet, it is helpful to understand how Canadian law defines “songwriting.” It is commonly believed that the only collaborators entitled to copyright in a song are those who write the lyrics, melody, and chord progression. While infinite different versions of a song may be commercialized, they all boil down to those three basic elements. Using this rationale, it would be relatively easy to determine the authors of a song in a dispute. Many bands have one or two writer-members, who rely on this assumption as the basis for believing they own 100 per cent of the band's songs, and see a split sheet as an unnecessary formality. However, the Canadian courts have given a much broader meaning to the concept of songwriting.

The Element of Contribution. In 1999, the B.C. Supreme Court ruled on this very issue in *Neudorf v. Nettwerk Productions Ltd.* Darryl Neudorf sued for a share of certain Sarah McLachlan songs that he produced. Neudorf argued that his production ideas, arrangements, and other contributions were sufficient to qualify as songwriting. McLachlan and her experts argued that songwriting is limited to the lyrics, melody, and chords. While Neudorf was ultimately unsuccessful in his claim, the Court agreed with him that songwriting goes beyond the three basic elements. Instead, it ruled that any “significant or substantial contribution of original expression” can qualify as authorship. This contribution might be a significant hook, arrangement, or drum part, for example. This ruling suggests that ALL persons involved in the creation of a song (including producers, arrangers, and band members who are not involved in writing melody, lyrics, and chords) sign a split sheet, even if it is just to confirm that they have NO share in the song.

The Element of Common Intention. The importance of the *Nettwerk* decision goes beyond defining songwriting. The Court also ruled that each collaborator must show not only that s/he intended to contribute to the song, but that each of the other co-authors considered him/her to be a co-author. This common intention requirement makes it essential to have a split sheet signed at the outset. Without it, the only evidence of common intention will be the testimony of your collaborators (whose interests may not be aligned with yours if there is a dispute!).

The Bottom Line. It takes a few minutes to complete a basic split sheet, and the cost of preparing a reusable form is nominal. But not documenting your splits could cost you a lot of time and money if a dispute arises. Music is your business, and your songs are the assets on which that business is built. Proactively recording your song splits is a key step in protecting those assets and avoiding costly disputes in the future.

Jason Klein is a lawyer and founding member of the entertainment law firm, Taylor Mitsopoulos Burshtein, which represents clients such as Nelly Furtado, Sum 41, Billy Talent, Alexisonfire, Bedouin Soundclash, and Three Days Grace, among many others. For more information, please see www.tmlawyers.com.

Production Agreements In The Evolving Music Business

by Jason Klein

The recorded music business is evolving. In recent years, we have seen fewer major label direct signings, but steady growth in deals at the independent level. Due to changing consumer trends in music consumption, major record companies appear to be streamlining their operations to focus on the more lucrative and predictable business of licensing and distribution, while increasingly shifting the speculative business of artist development and production to smaller businesses with a greater appetite for risk.

Production Companies, Labels, and Distributors

In contrast to the "direct sign" model, where a major record company does everything from development and A&R, to production and marketing, to sales and distribution, there is an increasing trend toward compartmentalization of roles. For example, a developing band might sign a "production agreement" with a "production company," which licenses the completed record to an independent record label, which is distributed by a major record company. The production company (usually owned by a producer) finances the production of the record. The label licenses the record from the production company, taking responsibility for the marketing, promotion and sale of records. The label's distributor collects a wholesale price from retailers, retains a distribution fee and flows the balance to the label. The label pays the production company a royalty under its licence, and the production company accounts to the band under the production agreement. This illustrates the fundamental nature of the production agreement – it is the contractual foundation of the band's recording business.

Production Agreements vs. Producer Agreements

Given their similar titles, there is often confusion as to the distinction between a production agreement and a producer agreement. The names are often mistakenly interchanged, and an inexperienced artist presented with one or the other by her producer would likely assume they're the same thing. But the business relationships that they contemplate are entirely different.

A "producer agreement" (or "producer services agreement") involves the artist (or her record company) hiring the pro-

ducer to render production and related services in connection with the recording of masters to be owned by the artist (or record company). The producer is typically paid for his services, and his involvement following completion of the work is limited to collecting royalties (or "points") if the masters produced are commercially released or exploited.

A "production agreement," on the other hand, looks very much like a traditional recording agreement. The artist is typically bound to record exclusively for the production company for a period of time, usually covering two or more album cycles (though the production company's right to record subsequent albums is often tied to negotiated conditions being met). The production company pays all recording costs and typically owns the masters. Rather than the artist paying producer royalties, the production company pays royalties to the artist, based either on a percentage of the retail or wholesale price of the record, or a negotiated split of the production company's "net receipts." The definition of net receipts is likely the most important financial term in any profit sharing agreement, and must be carefully negotiated.

Rationalizing The Production Agreement

Whether a production agreement makes sense for a particular artist depends on her circumstances. Where the artist has a budget and merely requires a producer to produce a record, which she will own and solicit or exploit through her own network (e.g. lawyer, manager, label, etc.), it might make sense to stick with a services agreement, hire the best producer she can afford and own her masters. On the other hand, where a producer invests significant time and money in an artist's development, is willing and able to cover recording costs, has the resources, business sense and connections to secure and maintain the business relationships required to sell records, and is able to account for royalties payable on an ongoing basis, a production deal might be appropriate. From the producer's perspective, a production agreement ensures a longer-term involvement with the artist, unlike the traditional "fee for service" arrangement.

Ancillary Revenue Streams

A fundamental problem with the "old model" of the music industry is that the major record companies, who spent mil-

lions of dollars finding and developing new talent and building their careers – enabling them to tour, sell merchandise, and earn publishing income – only partici-



ipated in record sales revenue. The labels' financial investment and promotional efforts built the goodwill in artists' names and images, but they did not share in the related merchandising, sponsorship, and endorsement income. Similarly, the labels financed artist's concert tours (i.e. through "tour support"), but never participated in any of that revenue. Now that record sales are dwindling, labels (and, by extension, production companies) are looking for ways to diversify their revenue base to justify their continued investment in artists' recordings and careers. To that end, it is not uncommon to see proposed recording and production agreements tap into merchandising, live performance, publishing, and other revenue streams. While including non-record revenue sources in a production or recording agreement is not currently accepted as the norm, participation in one or more of these areas may be justified, depending on what the label or production company contributes to that area of your business. Since industry standards for "multi-rights" deals have not been established, professional advice is essential to ensure that any non-record revenue participation is appropriate and justified in each case.

To sum up: as an artist, you should take the negotiation of a production agreement as seriously as any other recording agreement. It is fundamental to your career to establishing the legal framework for your recording business, and to potentially impacting other income sources as well. Production agreements have many negotiable parameters, only a handful of which are mentioned in this article. Always seek advice from an experienced music lawyer before you sign any contract, particularly one as important as a production or recording agreement.

Jason Klein is a lawyer and founding member of the entertainment law firm, Taylor Mitsopoulos Burshtein, which represents clients such as Nelly Furtado, Sum 41, Billy Talent, Alexisonfire, Bedouin Soundclash, and Three Days Grace, among many others. For more information, please see www.tmblawyers.com.

Legal Aspects Of Independent Recordings Part I

by Paul Sanderson

The proliferation of independent recordings released makes this set of legal issues highly relevant, particularly in view of the fact that most musicians who release independent recordings are not aware of the numerous legal issues involved. A number of the key legal aspects to independent recordings are outlined and discussed below.

COPYRIGHT

a) THE MASTER

Copyright of the master recordings is owned by the maker of such recordings. This is typically the entity that pays for such recordings, such as the record company, unless there is an agreement to the contrary.

In the case of independent recordings, it is often either a musician individually, or a musical partnership in the form of a musical group who would be the maker, and therefore owner, of the recording.

b) THE ARTWORK

Other copyright aspects with respect to recordings include copyright ownership to the artwork, and any and all materials which may be printed on the CD inserts.

For example, in many cases, the artwork is often done by a friend or a graphic artist who is an independent contractor. In the absence of an acknowledgement in writing assigning or licensing the copyright to the artwork, the copyright will remain with the artist who created it; therefore, it is advisable to obtain an agreement in writing with respect to ownership of this copyright. This is particularly important if the artwork is also used on T-shirts, for example, or if copyright to lyrics or other literary works is included on the CD materials, consent should be obtained from the copyright proprietors, such as in the case of a poem which is reproduced on a CD insert, consent should be obtained from the owner of such copyright.

c) COPYRIGHT REGISTRATION

One should also consider registering copyright to the sound recording and artwork, although copyright registration is not required under The Copyright Act.

d) MECHANICAL LICENCES

The issue of who pays mechanical royalties and to whom they are payable are relevant to the songs that are on the record. In particular, if a song is "covered," a mechanical licence must be obtained from the copyright proprietor and the applicable mechanical royalty paid.

This can be done under a mechanical licence from the Canadian Music Musical Reproduction Rights Agency (CMRRA), for example, and in some cases from SODRAC (Société du Droit de Reproduction des Auteurs, Compositeurs et Éditeurs du Canada) depending on who has the right to administer such musical copyrights.

CONTRACTS

a) GENERALLY

There are a number of contractual issues, including: (i) obtaining copyright clearances for samples; (ii) copyright clearances with respect to the artwork and other literary works that were used with respect to this independent recording; (iii) the contractual issue of who should be entitled to a share of record sales income.

b) PRODUCER

A producer is often entitled record royalties in addition to producer fees. Producer royalties are typically in the range of one to three per cent of suggested retail list price for records sold and not returned.

c) PERFORMERS' PERFORMANCES

Also, one should acquire the rights in writing to use the performers' performances, such as background vocalists or background musicians' performances on the recording since there is currently copyright in a performance under the Copyright Act.

d) ARTWORK / PHOTOGRAPHS

In cases where artwork or a photograph is used, proper consent or a model release should be obtained from the appropriate party.

e) MANAGEMENT

A manager by custom, and often by a written agreement, is legally entitled to a percentage of the artist's record sales



royalties and the artist's mechanical royalties accruing from sales of such recordings.

f) LOANS

In some situations, a loan may need to be paid back either to a private investor, or government funding agency, and this raises a contractual issue as well. A loan agreement stipulating pay back provisions and interest is often entered into.

Paul Sanderson is an entertainment lawyer who entered private practice after having spent several years as a professional musician. He has practical experience as a songwriter, guitarist, keyboard player, and is a publisher and writer member of SOCAN. He is also the author of Musicians and the Law In Canada, now in it's third revised edition.

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Check out the March/April issue of CM for **Legal Aspects Of Independent Recordings Part II**

Legal Aspects Of Independent Recordings Part II

by Paul Sanderson

LABELING, CREDIT, AND NOTICE ON RECORDINGS

a) NOTICES

i) Copyright

It is advisable to place copyright notices on recordings, which consists of the following: the copyright notice, i.e. ©, the copyright proprietor's name, and date of publication. This constitutes copyright notice for copyright in the lyrics, artwork, and music. The symbol ©, the copyright proprietor's name and the year of publication, constitutes notice of copyright in a sound recording.

Neither of the above notices is required under the Copyright Act in Canada; however, it is a useful practice. The effect of these notices is to give notice to the world that copyright is being claimed.

ii) Trademark

A number of valuable trademarks may be credited and be identified as follows: "TM" and "®". The ® stands for registration of a trademark in the United States. The "TM" symbol gives the world notice that you intend to claim rights in a trademark.

Neither of the above notices is required under the Trade-marks Act in Canada; however, they are advisable for the reason offered above, concerning copyright.

iii) Business Name

Also, the business name under which the group is releasing a recording should be registered with the appropriate provincial Ministry of government office.

iv) Labeling

Under the Consumer Packaging and Labeling Act, the principal place of business of the person for whom the product is manufactured should be identified on the label: on the CD insert material, for example.

The minimum height for type size under this statute for upper case letters (whether these are used alone or with lower case letter; or where both upper and lower case letters are used on the principle display service of the contain-

er) is at least 1/16th of an inch, or 1.76 mm in height. The type must be legible. It also makes sense to have the telephone number and mailing address indicated for purpose of selling recordings by mail order. One should also consider the use of French language recordings distributed in Quebec. Contravention of this statute may result in fines.

v) Credit

Also, false accreditation can result in legal action being taken. Credit in this regard is recognized by contract or by statute, by case law or custom in the industry. Credits can be extensive and usually include producer, musician, record company, etc.

vi) Other Notices

Other industry notices are given by custom and practice, for example the MAPL logo, which consists of the circle of letters "MAPL" in four sectors. M = music composed by a Canadian. A = the musical lyrics were principally performed by a Canadian Artist. P = (1) production consists of a live performance of music that is wholly recorded in Canada, or (2) performed wholly in Canada and broadcast live in Canada. L = the lyrics were written by a Canadian. The notice is particularly relevant to radio for purposes of complying with CANCON requirements.

Other industry credits and labeling could include digital coding and other designations such as whether or not the recording was originally recorded in mono or stereo, and bar coding, which is used in inventory and sales control.

The use of warning stickers may also be advisable, for example, as an explicit lyric advisory.

THE LIBRARY AND ARCHIVES CANADA

Independent recordings must be deposited with The Library and Archives Canada. One copy of any sound recording that includes Canadian content published in Canada for public distribution or sale, must be deposited. Contact 1-866-578-7777 or legal deposit at www.lac-bac.gc.ca for more information.



TAX: RETAIL SALES, GST

The sales of independent recordings have tax implications not only with respect to income tax, but also retail tax statuses. The purchaser of any such recordings must pay retail sales tax on the fair value of such recordings at the time of purchase. In most provinces, vendors must be licensed prior to making such a sale and if they are not, they may be liable to a fine; however, distribution of promotional recordings is exempt from retail sales tax. Books and records should be kept and returns made periodically in accordance with the applicable statutes. Also in applicable cases, GST should be charged, collected, and remitted.

Paul Sanderson is an entertainment lawyer who entered private practice after having spent several years as a professional musician. He has practical experience as a songwriter, guitarist, keyboard player, and is a publisher and writer member of SOCAN. He is also the author of Musicians and the Law in Canada, now in its third revised edition.

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360-Degree Deals

by Stacey A. Mitsopulos

There is a new form of record deal emerging, and like it or not, more and more labels are expected to continue to want to share in a piece of all of an artist's revenue streams. This "new" deal (which is commonly referred to as a "360-degree deal") cuts the label into a sizeable portion of the artist's live performance, publishing, merchandising, fan club, and endorsement earnings while continuing to take a significant portion profits from record royalties.

What's the benefit from the artist's point of view? Many artists and artist managers will tell you "none whatsoever," especially in this day where record label infrastructure is shrinking amid industry-wide cost cutting. Other experts recognize the need to incentivize the label and are prepared to leave something "on the table" in the hope that the record label marketing machine will increase their efforts in return.

RECORD ROYALTIES

The recording agreement itself remains largely unchanged; however, advances have come down significantly since the early part of the decade. Go to www.tmlawyers.com/publications.php for a look at Recording Agreements Part I and II. Some labels are offering a higher royalty share in return for being cut into touring and merchandise or a reversion of master ownership, but this is not the norm so far.

PUBLISHING INCOME

In a typical co-publishing deal, the record label would own the copyright in the artist's compositions in exchange for receiving 50 per cent of the publishing income. One of the many issues in doing a publishing deal with a label is: how well do they know the publishing game? Also, are your publishing royalties going to be cross-collateralized with your record royalties? They shouldn't be. If you do decide to do a publishing deal with your label, they should be offering you a cash advance for the rights they are seeking. Again, go to www.tmlawyers.com/publications.php for articles on Publishing Agreements Part I and II.

TOURING, MERCHANDISING, FAN CLUB, & ENDORSEMENT INCOME

For many artists, their main source of income is touring and merchandise, and labels now want a slice of this. To jus-

tify this, labels argue that they can put up more money and marketing efforts behind the band and take more time to develop and build a long career with the artist.

The question that arises again is: how well does your record label know the touring or merchandise business?

If you are doing this type of deal, the label should be offering a "development budget" which is only recoupable from touring income and not any other royalty stream. Further, participation in touring should not kick in until the artist is playing large venues or running profitable legs for x months at a time. You may want a solid, guaranteed tour support budget before allowing the record label to participate in this income stream.

Many of these deals have the label wanting to act as business manager and collect the touring income, and in some cases hire the artist's tour manager. Try to limit the label to passive participation, so that the artist collects the money, and the artist remits to the label what is owing, as opposed to vice versa

These deals vary anywhere between 30 per cent of touring income to 5 per cent of touring income being paid to the label, depending on the label. These amounts should reduce per album cycle, and obviously the less the artist pays, and the shorter the term, the better. Percentages can be calculated on "net" or "gross." These provisions should be carefully reviewed. Try to include as many deductions in the "net" definition as possible like booking agency fees, crew fees, opening acts, sound and lights, and any commissions paid to venues for merchandise sales.

It might be best to keep 100 per cent of the merchandising for yourself, but often that is not possible. A best-case scenario is where the label gets no merchandising but has a "matching right." This means that the artist can go out and shop around for the best deal, but must come back to the label and give them a chance to make the best deal on the same terms as the best offer you have received.

If that does not fly, try and negotiate a merchandising deal that limits the label to a certain number of merchandise items (ie. two t-shirt designs, two posters, and two buttons only), and limits what outlets the label has control of – perhaps the label keeps retail only, and the artist keeps online and touring merchandise. Again, you would want to



negotiate some advance, with "rolling" advances when you recoup the advance from merchandise sales, so that there is a constant infusion of income. An artist will also want full creative approval over all merchandise designs and limit the percentage of net profits that are being paid to the label, ensuring that these amounts reduce with each album cycle. The same applies to endorsement deals. The artist should have approval over which company they choose to endorse, and how much they are paid.

It is very important to ensure that all of these income streams are separate and not cross-collateralized, meaning that the label should not be using your merchandise income (for example) to recoup your record label advances/expensures.

Rather than give up so much potential income, does it make more sense for new bands to distribute their own music and hire a publicist and independent marketing company to handle the business side? That really depends on the deal being offered and what type of deal you and your lawyer can negotiate.

Stacey Mitsopulos is an entertainment and media law lawyer with the law firm of Taylor Mitsopulos Burshtein. Stacey is a strong supporter of independent musicians across the country, as evidenced by her client list which includes Wintersleep, Constantines, Stars, and Sebastien Grainger to name a few. For more information go to www.tmlawyers.com.

Key Elements Of A Great Performance

by Tom Jackson

Why does it make sense, from a business point of view, to have the best live show possible?

What you're trying to do is create fans that buy things and support you and tell other people about you. In a sense it's Marketing 101 – word of mouth. I've worked with a bunch of artists that have a lot of radio airplay and what I've tried to explain to them is that all radio does is get people out to the show. Now the question is: when people get to the show, what happens? If you can create fans right there, they'll be fans for life.

Personal Skills. Who you are on stage is more important than what you do. It's creating authority, it's developing confidence, it's learning how to be truly spontaneous, and listening to your audience. An audience doesn't understand what's happening musically, but it does understand human behavior. An artist in control leads an audience and has some charisma – all that stuff is teachable. Some people say it isn't, but it is.

Technical Skills. There are certain places on stage that are more important than others. I always ask a band: "Do all your songs sound the same?" They, of course, say no. Then why do they all look the same? Because they do. Fifty-five per cent of communication, to the people in the audience, is what they see with their eyes.

Placement on stage is important; movement on stage is important. There are things that we make up as we go because we've been told it's gotta be spontaneous, but there are practical things you can do to rehearse delivering a solo, movement, placement, and spacing. If you did a solo from a certain side of the stage because it's a dramatic solo instead of behind your pedal board, it would sell 10 more CDs. If you have nine solos in a night, I guarantee you eight out of nine solos are in the exact

same place – behind a pedalboard. The phrasing is different, the tones are different, everything is different about it except one thing – the visual part. An audience generally doesn't understand musical things, so songs start sounding the same because the audience is not locked in to what the musicians are locked into.

Planning. Usually when you put a set together, you string songs together 30 minutes beforehand. Don't! When I work with an artist, I will listen to songs. I'll listen to them many different ways, with headphones, without headphones, small speakers, half a headphone ... and I'll start trying to find the moments inside those songs and get a vision for those songs. I can see the audience responding a certain way in each song – this is a fun, musical thing. I'm looking at how to create moments out of these songs and I take that vision into the rehearsal room, develop the musical ideas, the verbal ideas, the feel of each song, and basically rewrite the song. This brings us to the fourth element, which is the creativity.

Creativity. Eight out of 10 bands record the music first, which I feel is a mistake, personally. Musicians record their songs and then they go and play them the way they are on the record. There's no reason in the world to do that. An artist will play the song the way it's recorded because he or she is trying to create, in 3 ½ minutes, a moment that a record company is looking for, and what connects with people while they're driving down the road in their car or listening on their iPod. When you do it that way live, you're discounting the fact that 55 per cent of communication from the stage is visual. On a recorded song, it's zero. There's nothing that applies to a show. What you've got to understand is how to deliver a song visually and be authoritative and confident on stage, and bring it in a way



that the audience will receive it as a moment, not just a song.

Let me put this all into perspective. When I work with a band, I usually spend at least a day on a song. Sometimes, I'll spend as much as nine days on a song. I have a real good friend, Dez, who played with Prince for eight years. I asked him how long they rehearsed for. He said they'd rehearse a show six days a week, for six weeks, 12 hours a day. Now your eyebrows raise! Well, does Prince have a great show? You bet. There's a reason for it. It's like recording a record. The reason we spend months recording a record is because the record company is protecting its investment. What the artist has got to understand is that his or her investment is in the live show.

Tom Jackson is one of the premier performance consultants and live producers in contemporary music today. Check out www.tomjacksonproductions.com for some of the coaching materials he has available. Also check out World Vision, a cause that Tom cares a lot about, at www.worldvision.ca.

Music Business Tactics: Professional Prosperity Proffered

By Chase Sanborn

This column marks my return to *CM*. It's good to be back! In my absence, I've been busy. My new book, *Music Business Tactics*, takes a look at the business of being a musician.

Achieving success as a professional musician involves more than playing or writing well. While you are first and foremost an artist, you must also think of yourself as a business if you hope to make a living in this competitive marketplace. A successful business creates a product or products, identifies a market for those products, and actively promotes its products to the market. Your musical abilities are your products; it is your responsibility to make sure your products are marketable and marketed. This is the business of being a musician.

Consider the following:

- Your product line must be excellent; no amount of marketing makes up for mediocrity.
- Your products must constantly be "new and improved!" If you stop growing as a musician, you become stale.
- Your products must be unique; you need to distinguish yourself from the competition.
- The greatest product in the world can languish on the shelf if it is not promoted properly.
- The packaging of the product affects people's perception of its worth and value.

The Eight Ps

Music Business Tactics is organized in eight sections, each beginning with the letter "P". Minding your P's will lead to success in all facets of your life: musical, personal, and business.

Performance: The better the musician you are and the more musical "hats" you wear, the greater the chance that there will be a gig for you tomorrow. Every day, strive to become a more accomplished and versatile musician; if you are not practicing, someone else is. Play your best on **every** gig; you never know who is listening!

Personality: Managing your relationships with your colleagues is at least as important as your musical ability. If people like you, they are more likely to hire you. Be interested and interesting. Respect others and they will respect you.

Punctuality: Managing your time, showing up on time, and responding in a timely manner are crucial elements of the musical business plan. Return messages promptly, show up early for the gig, and don't waste time watching TV when you should be practicing!

Presentation: A well-dressed person commands respect. On stage, it is even more important. Improving your appearance will improve your success rate. Look like you mean business.

Promotion: It's not good enough to be an excellent musician; others have to be made aware of your abilities. Learn how to promote yourself. Hire a photographer. Learn how to write an effective bio. Build a mailing list. Put together a killer website. Show yourself in the best possible light.

Preserving For Posterity: Recording your music preserves it for posterity. Marketing it properly can lead to prosperity. While it is easier than ever to make a good recording, it is also just as easy to make a bad one. Make sure the details involved with recording your music don't distract you from the true purpose: making a musical statement and capturing you at your best.

When it comes to marketing your recordings, we are in the midst of a shifting tide. Whether digital music reproduction represents a threat or a golden opportunity for the musician, burying your head in the sand or pining for the "old days" is not the answer. Stay abreast of current developments, and figure out how to use technology to your advantage.

Pennies: Take care of your pennies, and the dollars take care of themselves. Managing your money is an essential component of any business plan. Learn



what expenses are tax-deductible, and keep accurate records. Strive to increase your avenues of income, and be ready to adapt to changing musical landscapes. Be prepared to supplement your playing income, one way or the other.

Passing It On: Teaching is good for the soul. It can also be good for the pocketbook. Passing on what you've learned is cathartic, and will make you a better musician. Teaching is a good way for a musician to earn extra income; however, that should never be the primary motivation. It's too much work to do it for the money!

Chase Sanborn is a jazz trumpet player and teacher based in Toronto. He is a member of the jazz faculty at the University of Toronto and a Yamaha artist. Books by Chase Sanborn include Jazz Tactics, Brass Tactics, Tuning Tactics, and Music Business Tactics.
www.chasesanborn.com

Your Band's Bio Is Horrible

by Luther Mallory

You want your band's bio to be a representation of your band's music. The music is the point; the bio is to drum up interest about the music while giving the reader a sense of your band's personality. You want them to go "Oh, that's interesting. I'll check this out," and not "Oh, that's obnoxious. I want to fight this band." Let's not concern ourselves with how to

every single instrument than anyone, like, ever. That seems crazy, but that's what he said, so I'm sure he's on top of it. I put on his demo; it was rap-rock or something – drums, bass, guitars, keys, and vocals, all performed by the bar code guy like he said. I made the discouraging realization half-way through the second song that the bar code guy was in fact full of unbelievable bullshit,

- The Golden rule is: Your band needs to be exactly as good as your bio says you are.

- Please don't use the term "brainchild" in your bio. You're describing your ska band; it probably wasn't THAT conceptual. There is no reasonable use for this term. It's only stupid and a little bit gross.

- Consider what is actually interesting, and what is just interesting to you. Nobody in the world will ever care where and when Mitchell met Terry, or how Becky was a fry cook at Burger King when she "fell in love with music." You know how outside people don't get inside jokes? Becky's position at Burger King is only interesting to people that know Becky, or possibly really love Burger King.

- Keep it short and use structure. People don't have an attention span for anything that they have to work to care about, so if it's long, doesn't flow well, or is poorly put together, they'll usually just pass.

- Spell check. MSN has been battling the education system for years taking a hard stance against proper spelling, or "speling!!!! .FTW ;)" as it usually reads on MSN. Spelling mistakes are really unprofessional and very easy to fix, so make sure you take the time.

- Be creative. You're not applying for Governor General; creativity is your job so don't be afraid to be a little bit funny or even strange if it suits your band's style, because people won't read it if it's boring or dry.

- Only list "notable" achievements. Your third-place victory at the Campbellford Battle of the Bands doesn't count. Plus, two other bands other than yours also covered "Faith" by Limp Bizkit so that's nothing to be proud of. If you've opened for somebody cool or had some radio play, that's worth a mention.

There's no need to be "wretched." You can be sitting comfortably at "passable" if you just consider your audience and tame that ego. If you write something better than "passable," then you're a legend – and I'd like you to please write a "non-wretched" bio for my band. We'll talk.



write a "great" bio, because in 50-some years of rock n' roll, there hasn't yet been a "great" bio. Currently, the scale goes from "wretched," to "still very poor," to "passable" (which unfortunately scores 10/10 because it's the best anyone has ever done). We'll just concentrate on how to write a bio that isn't "wretched" and won't make your fans quit typing <3 <3 <3 on your MySpace wall. If we can agree on this then we can move on: my band's bio sucks and your band's bio sucks, so let's at least figure out why.

I went to college for a few minutes a few years ago, and on the first day of class I got chatting with this dude with a bar code tattoo on the back of his neck about music. I asked him if he had a band and he said, "Bands are far too incompetent for me, so I just play every instrument myself." I thought, wow, this guy must be some kind of a genius. We swapped demos and on my way home I silently wrote my Juno acceptance speech for the "Best Everything Ever in Music" award that I would be winning in my future band with the bar code guy. Bands are too incompetent for him, so that would mean he has to be better at

and was actually the worst musician in the world. It made me furious; I mean come on, you can't tell a guy you're Led Zeppelin, when you're actually Insane Clown Posse. That's not fair and for God's sake have some self-awareness.

If bar code guy would have simply said, "Here's some stuff I'm working on, let me know what you think," I would have thought it was alright, but my brain was set up for awesome, so when it turned out to be far from awesome, it really sucked extra hard.

Bands seem to think that a bravado-riddled bio chock-full of completely absurd self-proclamations is the best way to drum up that interest. What that style of bio actually does is creates an unattainable reference point in the reader's mind that they are expecting to attain because you said they would. So when they put on your music, the things that aren't great about your songs or the quality of your demo are HUGELY magnified relative to The Beatles and The Velvet Underground comparisons you made in your bio.

Let's make up a few rules in hopes that we can move up from "wretched":

US Taxes Often Surprise Canadian Musicians

by Wendy Wixson, CPA, MS

After reading Andrew King's Indie Insider (*CM* July/August 2008) about taking your tour Stateside, you made the decision to pursue glory down south. The performances are scheduled, the US work permits are in place, and you are headed to the US for a great show. You dream of energetic crowds, great performances, and cash in your back pocket. Your thoughts are nothing but pure bliss until the promoter shakes you back to reality with the mention of US withholding taxes...

When a Canadian artist performs in the US, the venue or promoter is required to withhold 30 per cent of the artist's gross receipts and remit to the Internal Revenue Service (IRS). In addition, many of the individual states have their own withholding requirements. For example, California will withhold another 7 per cent to bring your total withholding to a monstrous 37 per cent!

Tax is withheld on the total proceeds you receive from the venue and does not take into account out-of-pocket costs. For an artist who is already shelling out a lot of money for an agent, travel, hotel, and crew costs, withholding can suck up that last penny you earned in the US, or more. The good news is, with a little advance planning, there are ways to reduce the withholding requirements. First, let's walk through the methods to avoid the withholding altogether.

Generally, if your gross income earned from US performances is less than \$3,000 and you are in the US fewer than 90 days, there is no federal withholding. California has a similar rule that says if your gross payments are less than \$1,500 in a calendar year, there is no California withholding. But let's get serious – you ultimately want to build a US market for your music and pay the bills. You are not going to do this by keeping your US receipts under \$3,000 per year.

There is an income tax treaty between Canada and the US, which raises the threshold slightly. Under the treaty, a Canadian artist can gross up to \$15,000 CDN per year before federal withholding

kicks in. But be careful – gross income not only includes your performance fees, but also any travel or other expenses reimbursed by the venue. To claim this benefit, provide a completed IRS form 8233 to the venue or promoter. Your manager may be familiar with this form and able to help you.

Many of the US states do not follow the treaty. There may be situations where you are taxed by a state, but not the federal government due to treaty benefits.



Since this treaty exemption is based on annual earnings and it is often hard to know what your earnings will be before the end of the year, not all venues will accept this withholding exemption. If you meet the treaty exemption and the venue withholds tax anyway, you will need to file a US income tax return to claim your treaty benefits and request a refund of the withholding.

The sure bet for all artists to reduce federal withholding is through a Central Withholding Agreement. These agreements are negotiated in advance of your US tour with a group in the IRS that specializes in such agreements. The IRS will issue a letter providing for withholding on the performers' net income after

deductions instead of their gross income. The withholding rate will vary depending on your expected annual taxable income in the US. These agreements are extremely valuable in situations where you have large guarantees or there is expected to be nil or minimal net income from the US tour.

Central Withholding Agreements are generally enacted at the individual level. If you are a member of a band, a separate agreement is negotiated with each bandmember. Even if you tour through a corporation, the agreement is usually still with the individual bandmembers. If you have a manager, he or she should be able to handle your reduced withholding request with the IRS.

Finally, the IRS may also include any additional income earned at the performance, such as merchandise revenues, in the Central Withholding Agreement. It is important that your tax advisors understand what income is subject to withholding and taxed in the US. The US and Canada often have different rules regarding how income is categorized and taxed; therefore, advance planning is necessary to reduce or eliminate double taxation. Double taxation is a bad result for anybody!

Are you a US citizen living in Canada? If so, the US tax implications are even more interesting, and advance planning is even more important.

Remember: the goal is to open up a new market for your music, have fun, and come home with some cash in your back pocket. With a little advance planning, and of course some good music, the cash will stay in your back pocket – where it belongs.

Wendy Wixson is a Senior Tax Manager in the International Services Division of Moss Adams LLP, and has over 15 years of public accounting experience. She has published several articles in trade and business journals applicable to international business, foreign athletes, and entertainers. Wendy has presented on US-Canada cross-border taxation and other international topics to a number of groups, including the Canadian Society of Certified General Accountants and Council for International Tax Education (CITE). Contact: wendy.wixson@mossadams.com.

Where The Money Goes *A Breakdown Of The \$9.99 Digital Album*

by Pat Leyland

About 10 years ago in this column, entertainment lawyer Chris Taylor provided an approximate breakdown of the \$19.95 retail price of an average CD as follows:

Manufacturing	\$1.00	(5%)
Retailer	\$5.95	(29.8%)
Distributor	\$4.39	(22%)
Songwriters	\$0.69	(3.5%)
Artist	\$1.31	(6.6%)
Producer	\$0.44	(2.2%)
Record Label	\$6.17	(30.9%)
Total:	\$19.95	(100%)

Since 1998, the recording industry has been dramatically propelled by the original Napster and its P2P progeny into a new age marked by unprecedented levels of piracy and the challenge of establishing and developing a legitimate digital market for sound recordings. Let's take a general look at "where the money goes" today by breaking down the \$9.99 retail price of the average digital album sold through Apple's iTunes Music Store.

Retailer

In April 2008, the iTunes Music Store became the number one music retailer in the world. While the bulk of iTunes sales are in the form of \$0.99 individual track downloads, sales of digital albums are accounting for a growing portion of overall album sales in Canada.

So how much does iTunes make from the sale of a digital album priced at \$9.99? Roughly 30 per cent of the gross revenue: \$7.00 from each digital album sale is paid to the record company, with the remaining \$2.99 pocketed by iTunes. This amount offsets various expenses incurred by Apple, such as technology costs, credit card transaction fees, and, of course, advertising.

Distributor

Digital distributors fulfill a valuable function as an intermediary between online retailers and record companies. By way of compensation, distributors generally receive a fee in the range of 15-20 per cent. While some distributors offer a lower percentage, one should be cautious of additional fees that may be charged.

Choosing a mid-range fee of 17.5% for this example, the \$7.00 netted by the record company on a \$9.99 digital album sale results in a payment of \$1.22 to the distributor. The revenue is applied against expenses such as the cost of encoding and delivering music and related

metadata to online retailers, though the costs of digital distribution generally pale in comparison to the costs associated with physical distribution, such as manufacturing, warehousing, and shipping CDs.

Songwriters

The songwriters on an album are paid a mechanical royalty for each copy of the song sold or distributed. In Canada, mechanical royalties are generally paid at the industry standard rate of \$0.081 cents (where the song is five minutes or less), as negotiated between the Canadian Musical Reproduction Rights Agency on behalf of music publishers and the Canadian Recording Industry Association on behalf of record companies. In the case of permanent downloads, however, the mechanical royalty is set by a tariff requiring online music services to generally pay songwriters 7.9 per cent of the amount paid by a consumer for the download. On the sale of a digital album priced at \$9.99, a sum of \$0.79 cents would therefore be divided between the related songwriters.

Artist

Broadly speaking, a record company pays an artist a percentage of the revenue generated from the exploitation of the artist's sound recordings. In 1998 Taylor noted that an artist's royalty rate is usually subject to many contractual deductions and reductions, which have the affect of diminishing payments to the artist. He noted that an artist royalty of 12-14 per cent applied to the sale of a \$19.95 CD would likely result in a so-called "penny rate" of \$1.31, rather than the \$2.39 to \$2.79 one might expect based on the simple application of the royalty to the base price.

Sensibly, there has been a movement in recent years towards simpler and more transparent royalty provisions. While certain of the deductions and reductions applied to CD sales do not (or at least **should** not) apply to digital album sales (e.g., packaging deductions), others, such as amounts owing to producers, are subtracted from the artist's share. Assuming an average artist wholesale royalty rate of 17.5 per cent (including 3.5 per cent to be allocated to the producer of the recordings), a \$9.99 digital album sale might be expected to yield a payment to the artist in the amount of \$0.98, calculated as follows: \$7.00 (net wholesale price received by the record company) x 14 per cent (artist royalty less producer royalty) = \$0.98.



Producer

The producer of the \$9.99 digital album in this example is provided with a royalty of 3.5 per cent, which has the effect of reducing the artist's 17.5 per cent royalty to 14 per cent. A producer's royalty is customarily calculated and paid in the same manner as the artist's royalty. In this illustration, the sale of a \$9.99 digital album would therefore result in a payment to the producer in the amount of \$0.24.

Record Company

The record company will receive the \$3.77 remaining after the payments to the retailer, distributor, songwriters, artist, and producer. The record company will claim that its relatively large piece of the pie is reasonable based on the speculative nature of its business activity and the increased risk the company bears given the state of the industry. It also covers general operating expenses (which does not include as many sushi lunches these days).

Conclusion

In summary, the \$9.99 from the digital album sale breaks down as follows:

Retailer	\$2.99	(30%)
Distributor	\$1.22	(12.2%)
Songwriters	\$0.79	(7.9%)
Artist	\$0.98	(9.8%)
Producer	\$0.24	(2.4%)
Record Label	\$3.77	(37.7%)
Total:	\$9.99	(100%)

Formerly a recording artist for Arista Records, Pat Leyland is a lawyer at the entertainment and media law firm Taylor Mitsopoulos Klein Oballa, which represents artists such as Nelly Furtado, Alexisonfire, and Saint Alvia, among many others. For more information, please see www.tmkolawyers.com.

The views and opinions expressed in this article are not meant to substitute for legal advice, which should be sought in each particular instance.

Will You Play My Charity Event?

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

Introduction

Every week or so, I am approached by an individual or an organization inquiring whether or not a client of mine would be interested in performing or appearing at a charitable event. Most of these events assist great causes, and the people behind them are often willing to dedicate significant time and money to help others. This drive and dedication to help others in need, along with a lack of sophisticated knowledge on recording artists' careers, often clouds the expectation in this area.

The reality is that popular recording artists are approached daily to make themselves available for charity events, and while many artists dedicate themselves to helping those in need, they have limits on the number of charitable events they can be available for – especially where the organizers are expecting the artist to perform live.

So, what guides the decision on the charities they do choose to be available for?

Time

As discussed above, recording artists get approached to make themselves available for a countless number of events throughout the year. The life of recording artists can be incredibly taxing on an artist and their loved ones. They are often spending months away from their families, and time spent at home is a treasured commodity. Charity events often involve rehearsal, travel time, and general preparation. In my experience, artists are incredibly giving with their time, but there is only so much time to go around. Consider how you can make the time commitment minimal.

Busy artists are often booked 6-24 months in advance, so plan far enough in advance to plan around their schedule.

Money

An artist can show up to play a golf tournament a lot easier than they can show up to play a show. Artists normally have to pay for rehearsals, transportation, accommodation, and crew costs relating to performances. It's not as simple as showing up with the band and playing a set for ticket buyers. That being said, some artists can show up and play a few songs acoustically or on piano and save on the costs relating to a charity event. Consider whether a stripped-down musical performance can serve

the needs of your charity as much as a fully-instrumented show. Your event may be more attractive if there is a fee for the performers at least to cover costs. If the fee is significant, some artists might consider contributing it back to the charity and thereby receive a charitable receipt.

Dedicated Charities

Many artists I work with select their causes with which to affiliate themselves. Some of them may have a family member affected by a particular ailment (i.e. Multiple Sclerosis) or want to dedicate themselves to children's issues (i.e. SickKids), while others may be passionate about international issues (i.e. War Child) or environmental issues (i.e. Greenpeace). More and more artists I work with are finding dedicated causes and focusing their efforts toward areas they feel passionately about. It doesn't mean that they won't be interested in providing their time for your event – but they are more likely to volunteer if the event benefits a charity they are known for. Find out which artists already feel passionately about your cause and approach those artists first.

Professionalism

Once an artist has reached a certain level of prestige, he or she has to consider the professionalism of the event in question. If you have never put on an event before, most high-level acts will not consent to appear. There are too many items that can go wrong for a first event producer such as proper promotion, venue readiness, insurance, and live presentation (i.e. sound & lights). Get some experience under your belt or retain an experienced production company to help with this element if you are trying to entice big-name acts.

Career Benefits

There are a number of charity events on the calendar that involve significant prestige and artists will often elect to play benefits or charities that can further their careers. The Prince's Trust, for example, features the world's elite artists performing in front of the Royal Family for the benefit of charity. Other events such as Music Cares, Band Aid, and Farm Aid litter the charity calendar and compete for space on the artist schedule. As a charity organizer, you are up against these events, and it is tough to make a case that your event



is "good PR" when there are so many of these events that provide fantastic profile and a real benefit to a successful artist's career.

Conclusion

The reality is that your request will not make it to the artist if you haven't crossed a bunch of the hurdles listed above. The typical charity request often ends up on the manager's desk or the booking agent's desk, and both of them are paid on a commission basis; so, in an indirect way you are asking them to work for free as well.

If your request takes into account all of the above, you will have a better shot at landing that big-name act. The reality is, although famous recording artists give of their time generously, most big-name acts are booked up far in advance, and the career obligations and numerous charity requests compete for dates on the calendar, and it's often impossible for an artist to do it all.

The views and opinions expressed in this article are not meant to substitute for legal advice, which should be sought in each particular instance.

*Chris Taylor is a music lawyer with the law firm of Taylor Mitsopoulos Burshtein and works with Nelly Furtado, Billy Talent, and Sam Roberts among others.
www.tmkolawyers.com.*



by Heather Ostertag
with Krista Culp

Applying For FACTOR Funding Online



ten, and then printed out, and then sent in needs to be re-input so it's whole and complete in our database.

So really, prior to us going virtual for being able to apply for funding, it would take our staff about 20 minutes to process an application, and for a juried sound recording program it can take up to four hours for one application. And the thing that people need to really, really understand is the fact that we can't start to actually process forms and get decisions on funding until all the applications from that deadline have been processed. So people are holding each other up and we're spending more and more time having to chase people for materials.

Another point: people wait until deadline day to apply. The system has crashed. We had 52,000 hits simultaneously. Don't do that. We've staggered our deadlines to try and deal with that. The system crashes, and people say, "The system doesn't work." No, it works, but if all of you decide you're leaving it to the last minute, what do you expect?

Our new policy is going to be if the system goes down because of a clogged artery, that's not our problem. Now, we've taken steps to try and prevent that from happening, but if there was one tip that I would recommend to everybody, it's not to wait until deadline day to submit your application. And don't just start putting it together at 9 a.m. that morning, because chances are it's not going to be very good and that's going to translate through to the jury.

Go online; our programs are available with the new criteria. Let's get started. Work on it as you've got the pieces because when you leave it to the last minute, it's not going to be your best. This will also ensure all of the components are there.

Along with encouraging the industry to take up and use our online system, we're also going to start rejecting applications out of hand. If they are incomplete, in the past FACTOR's had a history of trying to be supportive of the industry from the standpoint that, "Oh, well they're busy and they forgot to include this and they forgot to include that but it'll get better," and our experience and our analysis of history shows it doesn't get better – it gets worse. People then begin to expect handouts, and we simply don't have the time or resources to do this.

The online system lets you see your attachments and what you've got going with your application. It can help to ensure that it's all there. We are required because of our agreement with Canadian Heritage to still allow people to submit hard copy applications, but people need to understand the online system is in place to support you – the artists.

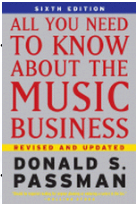
FACTOR's online submission system has been created to support artists in being able to expedite their submissions to the FACTOR programs. It will calculate the budgets for you, and will allow you to go in and out as a program. You can start an application, go away from it, and come back at your leisure. If you're confused on something, you can pick up the phone and call the staff, and they can go online and look at it with you.

There are reminders there about what needs to be included with your submission so you're not wasting time. You attach a JPG of your photo, you attach your MP3, and you upload these things as opposed to having to burn them and send them in, eliminating any challenges with burnt CDs – with which we've had a lot of trouble. The MP3 allows us to have your submitted recording available instantly.

It supports FACTOR going green, in the sense that we're trying to become paperless so that everything can be viewed from monitors and heard through computers with great sound systems.

It's a lot harder for the FACTOR staff if we have to sort submissions manually because, as people need to understand, the way the information is gathered from an applicant finds it held in one database and then moved over into our internal database. So all of the information that you've manually writ-

RECOMMENDED READING



ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS, 6TH EDITION BY DONALD PASSMAN

Universally regarded as the definitive and indispensable guide to the music industry it is now in its sixth edition.

<http://musicbooksplus.com/all-need-know-about-music-business-edition-p-8541.html>



I DON'T NEED A RECORD DEAL BY DAYLIE DEANNA SCHWARTZ

I Don't Need a Record Deal is a completely comprehensive step-by-step guide to the new world of independent recording.

<http://musicbooksplus.com/dont-need-record-dealb-p-6226.html>

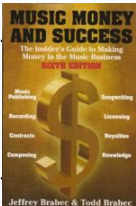


MUSIC DIRECTORY CANADA, NINTH EDITION BY NORRIS-WHITNEY COMMUNICATIONS

The Ninth Edition of this ESSENTIAL GUIDE to the Canadian Music Industry has been completely updated and revised.

Featuring over 60 categories, each listing includes: Company, Contact, Address, Phone, FAX, E-mail, Web Address and Description.

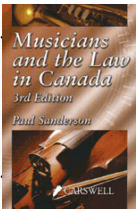
<http://musicbooksplus.com/bmusic-directory-canada-ninth-editionb-p-8066.html>



MUSIC, MONEY & SUCCESS - 6TH EDITION BY JEFFREY BRABEC AND TODD BRABEC

Music, Money & Success covers every aspect of the music business and gives you real facts and hard numbers so that composers and performers can know what to expect in terms of contracts and incomes.

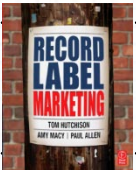
<http://musicbooksplus.com/bmusic-money-success-editionb-p-10259.html>



MUSICIANS AND THE LAW IN CANADA, 3RD EDITION BY PAUL SANDERSON

A unique and practical text, *Musicians and the Law in Canada*, 3rd Edition, provides a fully current overview of the law, contracts and the legal issues confronting musicians in Canada.

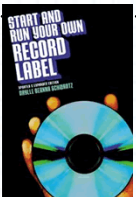
<http://musicbooksplus.com/bmusicians-canada-editionb-p-2263.html>



RECORD LABEL MARKETING BY TOM HUTCHISON, AMY MACY, PAUL ALLEN

Record Label Marketing provides clear, in-depth information on corporate marketing processes, combining marketing theory with the real world "how to" practiced in marketing war rooms.

<http://musicbooksplus.com/brecord-label-marketingb-p-6582.html>



START AND RUN YOUR OWN RECORD LABEL, UPDATED AND EXPANDED BY DAYLIE DEANNA SCHWARTZ

In this updated and expanded edition, three new chapters address the business end of running a record label, exploring alternative markets for all genres of music, and maximizing the use of the Internet.

<http://musicbooksplus.com/bstart-your-record-label-updated-expanded-p-5013.html>



THE MUSIC MANAGEMENT BIBLE BY MUSIC MANAGERS FORUM

Here at last is a guide that will steer both artist and manager through the turbulent seas of music management, lifting the veil on such matters as publishing and recording contracts, merchandising, mediation and PR.

<http://musicbooksplus.com/bthe-music-management-bibleb-p-4916.html>

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