

RECORDING AGREEMENTS

Recording agreements are often the main source of revenue for an artist. They allow the a more substantial exploitation of their talent. Indeed, without recordings, there would be limited opportunities for songwriters and music publishers to exploit their songs.

1. SPECIFICITIES OF AGREEMENTS BETWEEN MAJOR AND INDEPENDENT RECORD COMPANIES

Independent record companies can be distinguished from majors in many regards

THE FACTORS AMOUNTING TO THE CHARACTERISTIC DIFFERENCES BETWEEN MAJORS AND INDIES	THE CONTRACTUAL DIFFERENCES RESULTING FROM THOSE FACTORS
<p>∅ The company size: Majors are obviously much larger than indies. The latter have a limited number of staff and very often the communication will be directly between the company owner and the artist, whereas artists signed with majors have as main interlocutor, the A&R man and the artistic director.</p> <p>∅ The financial resources to create and exploit the work: Once an artist breaks, majors are more likely to have the resources to exploit the opportunities fully. They can fund more expensive videos and more substantial marketing campaigns, including TV advertising. Majors can usually co-ordinate international campaigns more effectively.</p> <p>∅ The artist roasters: Major labels have a high number of artists who all want to be promoted. They are lead to put forth more efforts on one or two "promising" artists rather than giving each of them equal importance. Independent labels, not confronted to the same degree to these obligations, can devote more time and energy to the few artists they've signed.</p> <p>∅ The money invested in an artist: Record companies invest much more than indies. The amount of money put at risk is much more substantial so they have interest in making sure that this will be compensated by the profit generated by the record's exploitation</p> <p>∅ Independence of the artist's interlocutors: The artistic director or A&R man in a major is accountable to the hierarchy (Managing Director or Financial Director) to secure immediate chart success rather than allowing a gradual artistic growth. The owner of an indie is often in charge of the artistic work and therefore can give the artist more time and artistic freedom without this pressure.</p>	<p>∅ Flexibility : Independent record companies are in general terms much more flexible than majors. This can be verified in the contracts negotiation which is close to a partnership between the parties.</p> <p>∅ Artistic control : The artist retains greater artistic and creative control with indies. Majors prefer controlling certain elements of the creative process via their artistic director or A&R man</p> <p>∅ Royalty rate : Artists signed with independent labels can enjoy a very high royalty rate in comparison with the one fixed by majors (around 50%).</p> <p>∅ Duration: Major labels tend to impose the recording of at least 5 albums, obligation which is very seldom imposed by indies, which are often satisfied with a one-album commitment.</p> <p>∅ Territorial scope: With their limited financial resources, independent labels prefer not to exploit the work worldwide and therefore restrict recording agreements to just a few countries, whereas majors expect artists to sign for the whole world, as they a considerable worldwide influence.</p> <p>∅ Method of payment: Indies usually give the artist a share of the "net receipts" (50%), whereas majors calculate the remuneration on the basis of a percentage of the price of units sold.</p> <p>∅ Artist's overall income: When the artist is successful, he'll be more likely to be better remunerated by a major than an independent label. Even without success, he's guaranteed more security by means of a considerable advance payment which is not reimbursable. The artist's financial situation with an indie is much more uncertain in that regard.</p>

MAIN CLAUSES OF A RECORDING AGREEMENT (WITH A MAJOR)

The contractual negotiation and obligations stemming from an indie / artist relationship is very flexible, as we have seen earlier. It would consequently a utopia to present a general contractual practice and claim its accuracy.

As far as contracts with major record labels are concerned, common trends can be found even though all contracts are negotiated (if not, they should certainly be negotiated) between both parties' lawyers. Companies policy changes along with time, artists claims for emancipation (e.g., more freedom), court judgements (interdiction of forced labour), technological and socio-economic evolution (e.g., internet and online distribution, democratisation of music around the world...)

Ø OBJECT OF THE RECORDING CONTRACT

The record company is to exploit the rights in performances contained in a sound recording, via:

- sale of recordings
- licensing of the rights in the sound recording to third parties
- public performance of the sound recording
- on-line distribution

Ø THE ARTIST'S CONSENT TO THE RECORDING CONTRACT

- It is recommended that the record company obtains the consent of all the artists involved in the sound recording and that the contract details the mediums and formats under which the work is to be exploited. Depending on the size of the record company, the format can be limited to record sales (indies) or all formats (major)
- Session musicians should seek a form from the BPI and the Musicians Union in order to grant, under negotiated terms, the rights to the record company

Ø EXCLUSIVITY

- Artists are usually bound to an exclusive contract, banning them from signing any other recording deal with another label.
- A temporary re-recording restriction after the term of the agreement can be agreed.

Ø TERRITORY

- The territory can be the "world" and can go as far as "the world together with the universe which may from time to time be visited or occupied by man". The latter is to cover satellite distribution.
- It can also be a certain region of the world and thus exclude the "restricted territories"

Ø RIGHTS GRANTED TO THE RECORD COMPANY

The right in sound recordings is assigned to the record company if the latter did not itself own the rights in the first place (by carrying out the production)

Ø TERM

- There must be a minimum recording commitment. This can refer to a minimum period of time since the signature of the agreement or to the delivery of recordings. The contract may be automatically extended or terminated if the delivery time is not respected. Majors often impose the recording of at least 5 albums. Indies usually start with a one-album deal.
- Option period: The contract may contain option periods only exercisable by the record company

Ø ADVANCES

- An advance is a payment made upon signing the contract on account of future royalties.
- Advances are usually recouped from all royalties received by the record company under the artist's contract.
- However, the advance money is not returnable
- An advance may be increased at the commencement of each option period
- Advances should be paid in full even at the commencement of each option period, even if the previous advances were not entirely recouped.
- Royalties from successful recordings may be used to recoup previous advances from less successful recordings. This is called "cross-recoupment".

Ø ROYALTIES

- The rate is usually comprised between 10% and 14% of the retail price of the records sold or between 13% and 18% of the published price to the dealer. Indies usually redistribute 50%.
- They are received after the recoupment of the advance and the recording and video costs.

Ø PRODUCERS

Independent producers can ask to be paid out of the artist's royalties.

Ø PROMOTION

- Promotion costs should not be recoupable.
- Out-of-pocket expenses for promotional purposes, incurred by the artist should be reimbursed by the record company.
- The record company may provide promotional "tour support"
- Video costs are usually recoupable by 50%. The remaining 50% is recovered from commercial exploitation of the video.

Ø ACCEPTABILITY OF RECORDINGS

A record company may require the right to refuse recordings if they are not "technically suitable". Considerations of commercial suitability should be avoided.

Ø BANDS AND LEAVING MEMBER

In case of departure of a band member, the record company may give him/her the option to terminate the agreement.

Ø ARTIST'S OBLIGATIONS

The artist usually commits him/herself to:

- record material that is not defamatory, obscene or in breach of any third party right
- perform to the best of his/her abilities
- attend interviews, public appearances... that are arranged by the record company for promotional purposes.
- assign to the record company rights that he/she owns.
- be free from any other contractual commitment preventing him/her to sign with any other record company

Ø ACCOUNTS AND AUDITING

- The artist should be entitled to receive twice a year, from the record company, a cheque and a financial statement with a breakdown of all record sales and royalties owed
- An accountant should, on behalf of the artist, be authorised to audit the record company's figures and calculation. He should have the right to take copies of the relevant documents.

Ø TERMINATION OF THE CONTRACT

- The termination may occur in case of entry into liquidation or breach of contract by either party.
- The artist will still be entitled to receive the royalties relating the exploitation of the assigned rights after the termination of the contract.