

MANAGEMENT CONTRACTS

MAIN CLAUSES IN MANAGEMENT AGREEMENTS

1. SCOPE

It is primordial to agree on the extent to which the contract will be applicable.
The scope can be territorial and material.

1.1. TERRITORIAL SCOPE

Ø *THE WORLD:*

Managers tend to insist on being world managers and generally want to have an ambit of responsibility as wide as possible. As a consequence, they are usually appointed throughout the world.

Ø *A DETERMINED REGION:*

such as Europe, rest of the world (North America excluded) for British managers. The artist can judge that his/her international career will be better looked after by local managers. For instance, established British artists often have a manager who is in charge of the whole world but the North America. In that case, the artist can appoint an US manager independently from the British one. Both managers will be remunerated from the income generated in these respective territories.

However, fierce competition between the managers can arise from this duality. They indeed have an interest in having the artist deploying all his/her efforts in their territory because this would generate more money there, which implies a higher commission for them.

Ø *COMPROMISE: DELEGATION OF ACTIVITIES TO ANOTHER MANAGER WHEN NEEDED*

An artist wishing to receive effective management in a certain region can require the manager to delegate some of his/her activities to a manager in charge of this region. The main manager's world-wide rights will be maintained will not be challenged and the earnings (commission) arising from delegated management will be shared by the two managers (usually 50/50)

1.2. MATERIAL

1.2.1. EXCLUSIVITY

The artist is expected to appoint the manager exclusively in a given territory. The manager is however entitled to look after the career of other artists. Managing different artists can be beneficial as this can help multiply the contacts that the manager has. Consequently, an artist should seek to limit the manager's activities only if it is reasonable, bearing in mind that the manager will not be able to profit from other activities of this nature.

1.2.2. CONTRACT BINDING AN INDIVIDUAL OR A GROUP?

The consequences of a group break-up can be disastrous for the manager. However, by signing individual agreements as opposed to a group agreement, the manager will still be responsible for the leaving members.

1.2.3. CONTRACT LIMITED TO THE MUSIC INDUSTRY OR THE WHOLE ENTERTAINMENT BUSINESS?

Managers often insist on being appointed for all the fields of the entertainment business such as acting, modelling or writing.

Ø *LIMITATIVE LIST OF ACTIVITIES CONTROLLED BY THE MANAGER.*

Artists should resist and insert a list of activities to be promoted by the manager because the appointment of other people for these other activities may well be more appropriate and productive.

Ø *OBLIGATION FOR THE MANAGER TO APPOINT AN AGENT IN CASE OF MULTIPLICATION OF ACTIVITIES.*

The management agreement can appoint the manager for “the entertainment and literary industries” under the condition that if the activities of the artist expand to other field of entertainment, the manager has to appoint an agent competent for the industry concerned and chosen by the artist.

The manager would then give the agent a percentage of the commission arising from the relevant activity.

It should be mentioned in the contract, when applicable, that the artist already has a career in other areas of the entertainment business.

2. DURATION OF THE AGREEMENT

2.1. INITIAL PERIOD

Ø YEARS

- Fixed term: When the contract contains a fixed term, it is usually comprised between three and five years.

An option period can be assorted to the initial fixed term, but in total, the agreement should be limited to five years. The Musicians Union recommends the signature of a one-year contract with two one-year options.

- Undetermined duration: When there is no fixed term, the management agreement is terminable by any party upon notice. The notice period can vary from three to four months and sometimes six months.

It can be agreed that the contract shall have a minimum term which corresponds to the album’s shelf-life.

Ø ALBUM CYCLES / SHELF-LIFE.

The term can be defined by reference to the shelf-life of a specific number of albums, the shelf-life corresponding to the period starting from the writing to the end of the album promotion.

Ø TERMINATION OF INITIAL PERIOD: THE PERFORMANCE CLAUSE.

It can be decided that the contract can be terminated by the artist if certain success criteria have not been fulfilled.

Ø TRIAL PERIOD.

The artist, not knowing whether the manager is really competent, usually requires the guarantee of a trial period, commonly of six months.

- The parties may sign a primary agreement and if the contract is reconducted, they can renegotiate it and sign the new one for a longer duration.
- An elaborate agreement can be signed at the early stage of the relationship, but it will be assorted with a clause allowing either party to terminate it at anytime during the trial period.

2.2. THE SUNSET CLAUSES

The manager can be entitled to receive commission on the artist’s income after the termination of the agreement for a certain period of time and at a reduced royalty.

The income distributed to the manager must derive from:

- the deals signed by the artist before the termination
- the deals negotiated by the manager before the termination and which gave rise to a contract after the termination.

3. THE MANAGER’S REMUNERATION

Managers usually receive a percentage of the artist’s earnings. The standard rate is 20%. It may reach 25% when the manager is exclusively involved in the artist’s career. Correlatively, producer managers usually take 15% because they seldom offer full-time management.

3.1. GROSS OR NET INCOME?

Artists and Managers generally accept to calculate the commission on gross earnings after the deduction of certain expenses.

3.2. INCOME SUBJECT TO COMMISSION

Ø *ADVANCE PAYMENT*

The artist's earnings include the advanced granted by the record company. It is commissionable only if it is paid to the artist as an income and not as a way to finance the recording costs.

However, a common practice consists for record companies to include recording costs in the advance. As a consequence, an undetermined part of the sum is dedicated to recording costs and is not recoupable, and the remaining is regarded as an income to the artist. Until the end of the recording, a manager does not know the amount of money his commission must be calculated on. He can:

- be totally paid after the recording has occurred and after the costs have been evaluated
- receive an account payment at the time the advance is received by the artist and the rest once the recording is finished

Ø *ROYALTIES*

The manager is entitled to receive a commission of the royalties resulting from the exploitation of the exploitation of the work. This includes the income generated by the recording and publishing deals negotiated by the manager.

- Publishing income: the manager can be entitled to a percentage of the gross publishing income. The commission is usually at a lower rate. In relation to the performing royalties, the commission can be paid directly by the artist, who directly receives 6/12 of the performing income by the PRS.
- Touring income: Touring is not always profit making, therefore a gross-income based commission can cause the artist a problem. The latter usually insists on paying a percentage based on net income.

A compromise solution can consist in:

- paying a higher percentage on the net or a lower percentage on the gross (10% of the gross and 20% of the net revenue, as advised by the Music Managers Forum)
- paying the commission upon the gross income after the deduction of certain specified expenses
- paying the commission upon the net profit but adding a fee payable to the manager.

When the manager acts like a tour manager, he can ask to be paid separately for these services

3.3. *THE SUNSET CLAUSE*

The manager generally receives a post-term commission which applies to the income generated by activities undertaken by the artist during the term. He rarely receives commission on work carried out after the contract term, even though he had negotiated the relevant deals.

The sunset commission rate should be gradually reduced because after a certain period of time, the income resulting from the exploitation of the work created during the term becomes attributable to the new manager.

4. THE MANAGER'S OBLIGATIONS (As suggested by the Music Managers Forum)

- to use best endeavours to advance and promote the artist's career and to ensure the artist gets paid.
- to consult regularly with the artist and keep the artist informed of all substantial activity undertaken
- to maintain records of all transactions affecting the artist's career and to send the artist a statement within a given number of days at the end of each calendar quarter disclosing all income, sources of income, expenses, commission and other debts and liabilities arising during the preceding three months.
- to obtain the artist's approval for any expenditure over a given amount for a single cheque or over a higher given amount over a period of one month.

5. THE ARTIST'S OBLIGATIONS (As suggested by the Music Managers Forum)

- to carry out to the best of his ability and in a punctual and sober fashion all reasonable agreements, engagements, performances and promotional activities obtained or approved by the manager.
- to attend promptly all appointments and to keep the manager reasonably informed of the artist's whereabouts and availability at all times.
- to reveal to the manager any income such as PRS, PPL or touring overages etc paid directly to the artist.
- to accept that this is a job and that it involves hard work and a professional approach.
- not to engage any other person to act as the artist's manager or representative in connection with any aspects of the artist's career.

6. ACCOUNTING PROVISIONS

The artist's income must be paid into a separate bank account. Nowadays artists and managers tend to agree on the fact that the money will be received by the artist who hires an accountant and who will give the manager his commission. This is generally welcomed by managers who are being freed from the accounting responsibility.

7. THE EXPENSES

A management contract provide for the reimbursement of the expenses undertaken by the manager on behalf of the artist.

The Music Managers Forum gives proposed a list of expenses to be reimbursed when "reasonably incurred in connection with the artist's career"

- *costs/wages payable to a tour manager, mail shots on behalf of the artist including paper printing envelopes and postage for the mail shots,*
- *advertising on behalf of the artist,*
- *artwork on behalf of the artist,*
- *50% of management hotel phone and fax charges, hotel room charges (both artist and management)*
- *air fares, rail fares and sea fares (both artist and management),*

Are excluded the manager's general office and business costs

Managers can be required to seek approval by artists for expenses exceeding a certain threshold.

Managers can be paid back on demand, or out of commissionable income, (which is more common) and possibly out of the artist's future entertainment related income if the commissionable income is too low.

8. TERMINATION OF THE CONTRACT

Ø For breach of the contract

The artist can invoke a breach of a term of the agreement to be freed from the contract.

Ø For departure of the key-man

The artist, bound to management company, can insist on inserting a key-man clause stipulating that one manager (whose name is on the contract) will represent him/her and that his/her leaving of the company would amount to a right for the artist to end the contract

PROBLEM OF ENFORCEMENT OF MANAGEMENT CONTRACTS

An artist wishing to leave the manager before the end of the term cannot be forced to execute the contract. This would indeed amount to forced labour, which is illegal.

All that the manager can do is claim for compensation for breach of contract.

VALIDITY ISSUES AND UNDUE INFLUENCE

2.0 Undue Influence

Manager/artist relationship are personal and based on trust and confidence.

Undue influence is presumed in presence of a relationship of trust and confidence.

As a consequence, managers are theoretically more likely to be accused of using undue influence through pressure.

In order to avoid this kind of trouble, a manager submitting a contract to the artist should make sure that the latter has benefited from independent legal advice.