



## THIS MONTH'S features

- **The 4th Annual Independent Music Awards Winners Announced!**
- **Technology: P2P: Boon or Bogeyman?**
- **Business & Legal: Sign on the Dotted Line**
- **It Could Happen To You!**



photo: [www.canstockphoto.com](http://www.canstockphoto.com)

### **Business & Legal: Sign on the Dotted Line**

The music industry is fraught with, well... let's just call them honest misunderstandings. If it's not a club owner who "forgets" to pay the headliner the agreed-upon amount, then it's a headliner who "forgets" to show up on time. If it's not a manager who somehow pockets 15% of the gross rather than the 10% he told the band he would collect, it's the band who fires the manager who helped establish them as soon as they think they no longer need him.

And how about the booking agent who sweats and toils for months to get an act into the best clubs only to lose that artist to a larger firm as soon as the artist "makes it" in the circuit? Conversely, plenty of booking agents (and radio promoters, etc) make a lot of promises and fail to deliver on them.

Then there's the whole world of music licensing, merchandizing and even product endorsements and sponsorships. Did I mention intellectual property? All of these areas are usually complicated and involve many players and details.

Disagreements over terms aren't always misunderstandings, per se, but they are almost always contentious and drawn out. Yes, it would be nice if we could all just shake hands and fulfill our obligations in line with one another's expectations. But like it or not, this is a business. In the real world, the written legal contract is the only way either party can "trust" the other. After all, the music industry often involves multi-album deals that are difficult for artists to escape, accounting structures that resemble a Rube-Goldberg device and endless debates about how to define marketing costs or discern gross revenues from net revenues.

Anyone who has signed a record deal, owned a nightclub, produced a record or gone out on tour knows that contracts don't really resolve every issue. They just put everything into very complicated legal language that lawyers for either side will twist for their own benefit, if they can. That's why every word of a legal contract is significant and can advantage or disadvantage either party. Artists especially need to understand how critically important this is (the labels and other corporate interests already know the ropes). A well-crafted, relatively straightforward agreement can help avoid problems down the road.

For the new artist just starting out (or perhaps just starting to generate label interest), retaining legal counsel is absolutely essential—even if it costs a bit of coin to do so. An experienced music attorney can spot things an artist never could and, more importantly, make sure things are in the agreement that ensure that the artist will at least have a fighting chance. "If you are a new artist without a fan base and are negotiating your first label contract, you most likely will not have great leverage unless you have several labels chasing you," says Los Angeles-based entertainment lawyer [Steve Sessa](#). "As the artist's attorney, I try to obtain all the things that I need so that my client can have the operating resources to function as a business for the next 18 months."

So a major-label deal, for example, might include a big advance to cover living expenses, adequate tour support (artists should never underestimate that one) and—here's a relatively new one that can be absolutely vital in the new millennium: guaranteed money earmarked for street-team marketing and Web site/Internet promotion. "There are many other important points in these deals," Sessa says, "but not losing sight of the big picture is what's important." And, by the way, don't expect a big advance or other goodies in a small indie deal... it's more about getting your foot in the door so you can reach the next level.

To be sure, lawyers can be expensive, but there are many ways of knocking those costs down, especially if artists already have a good manager who understands the industry basics. "What I like to do is actually save the artist money," says James Citkovic, president of New York City-based

management firm Countdown Entertainment. A contract with 50 clauses may contain mostly standard fare. "I can do 45 of those," says Citkovic, noting that the attorney can then concentrate on those five really tough clauses that require extensive negotiation (your lawyer should, of course, also double-check those other 45 clauses as well). In the end, this can lead to fewer billed hours for legal work.

This scenario, however, requires a good manager, which is easier said than done. "A new artist is often not in the position to get a big famous manager," acknowledges Citkovic. But he notes that some of the biggest managers are also some of the busiest and may have lots of clients demanding their attentions. "The best thing is just to find someone who's hungry," he says. "A hungry person is going to work harder." But always—and we mean always—check that person's credentials and get references from past and current clients (especially clients who worked with that manager to negotiate deals similar to the ones you might face). "Your grandmother can get you a record contract," says Citkovic. "What I and other experienced managers can do is cut through the red tape and make things happen quicker."

Cutting through the red tape is one thing. But how about all of those paragraphs in most contracts these days? "People like to make jokes about how contracts are done on napkins, but that's so far from the truth," says Robert Darwell, who heads the transactional side of the Entertainment and Media Practice Group at the national law firm [Sheppard, Mullin, Richter and Hampton](#). "The average contract is 70 pages long," he says. "That's a lot of napkins."

Darwell suggests that artists and their lawyers push for simplifications no matter what kind of deal is at stake. In a music licensing agreement, for example, a five-member act might want to designate one person in the band as the primary authority. This comes in handy if, say, the music supervisor for the latest blockbuster (who wants to toss the band \$10,000 to use their song in a movie) needs to quickly track down the appropriate person to sign on the dotted line. Too many obstacles may result in missed opportunities.

Music-industry watchers have noticed that many record label contracts now use streamlined language in clauses covering issues such as accounting and royalties. And many label deals now include shorter-term agreements that avoid tying artists to multiple record deals spanning several years. This may be the result of recent contract challenges by big-name artists such as Prince and, more recently, Courtney Love, who threatened to take her contract dispute with Vivendi Universal to the Supreme Court, if necessary.

A portion of Love's suit challenged the corporate giant's right to hold her to a contract that she had originally signed with

Geffen Records prior to it being acquired by the corporate machine that she was trying to avoid. Love finally settled out of court, but her Santa-Barbara, CA.-based lawyer [Barry Cappello](#) says her suit affected the way labels now conduct business. "The case got so much publicity and the exposure was so great that record companies changed," he says. "Record contracts are different today than when Courtney signed with Geffen."

He even suggests that artists and their lawyers read up on the Love case to crib legal language that could benefit their own agreements. "There's a library of material out there that people can use," he says.

In the end, you don't have to be a nationally known star like Courtney Love to assert yourself during the contract process (although you'll probably get less media coverage). The key is to proceed with caution, despite the intoxicating thrill associated with receiving sudden attention in the form of a contract offer. Just because someone thinks you're great doesn't mean you should just sign whatever they shove in front of you. "Artists will sign almost anything to get themselves in the game and rarely realize that a typical recording agreement can govern their lives for more than a decade," says [Michael Friedman](#), head of the entertainment law practice in the New York office of [Jenkins & Gilchrist](#). "Issues like length of term, recording commitments, advances, royalties, contract deductions, foreign sales deductions and the like are critical. The artist also has to be savvy enough to negotiate for a fair share of digital revenues and license-fee revenues."

If any of the above seems confusing, get a lawyer. Or to paraphrase an old adage usually associated with Washington politics but equally relevant to the music business, if you're looking for someone to trust with a handshake, buy a dog.

([Mike Grebb](#) is a writer, journalist and singer/songwriter based in Washington, D.C. He has written for numerous publications, including *Wired* and *Billboard*. He just completed his debut solo record, *Resolution*, which is available at [www.mikegrebb.com](http://www.mikegrebb.com)).