

Publishing Contract Fact Sheet

What is a Publishing Contract?

A publishing contract states all the rules that both the composer and publishing company are to abide by when making and selling music to the public at large. It states that the publisher will own the copyright in an artist's songs (past or future) and in return, the artist will get a share of any income the publisher earns from those songs.

Publishing contracts are legally binding and usually stop artists from writing for or selling their compositions to anyone else. These contracts are usually long term in length and sometimes quite onerous. It is important that artists consider the terms of such contracts in detail, and that they do not enter into such contracts without the proper advice to best understand the terms of the contract.

How do Publishing Contracts differ from Recording Contracts?

It is very easy to become confused about the various contracts an artist may have to sign in order to fully promote and distribute their songs in the market. The reason for numerous contracts is due to the forms of copyright that exist in any one recording.

On a basic level, the Copyright Act states there are 3 forms of copyright inside a given song:

1. the composition of the song
2. the recording of the song
3. the lyrics in the song

Note – there are other rights, but they do not significantly impact on the number of contracts you may have to sign.

Nearly all contracts artists encounter in the music business deal with who controls the above rights. Publishing contracts deal with rights #1 & #3 and recording contracts deal with rights #2. Publishing contracts aim to give the publisher control of the copyright within the compositions that exist in a song, whereas the recording contract gives labels the right to control the copyright that exists in the actual recording of that song.

When do you need a Publishing Contract?

When a publisher wants to exclusively control the use of either all or some of your compositions for a period of time they will enter into a publishing contract with you. This agreement binds both parties to make and use songs within a strictly defined manner.

Why have a Publishing Contract?

Publishers look to promote an artist's songs to all companies that use music in their products. For example, publishers will actively look to get film companies to include songs on their soundtracks so that they may expand income that comes from such usage.

Usually artists don't have the connections nor the expertise to promote their music to film studios, TV stations, radio and printed sheet music. Publishers can provide great services that may allow an artist to promote their music to companies that they otherwise would not have access to.

How to use this Fact Sheet and included Checklist

Included with this fact sheet is a checklist of many of the issues of a publishing agreement. The checklist will give you a quick idea of the key terms of a contract whilst this fact sheet provides added details on key clauses. For ease of reference, all clause numbers used in the checklist will be mirrored in this fact sheet.

By referring to both these resources, we believe that you will be in a position to better decide whether or not to sign on that dotted line, and how better to negotiate getting there!

Key Terms of a Publishing Contract

Clause 3 Territory

Usually a publisher will look after an Artist's repertoire of compositions within a specific territory – eg. Australia. It's common for large publishing houses to require artists to have the territory as 'the World'.

It is important that artists do their research on prospective publishers to ensure that the territory, as written in the contract, is not over and above the publisher's means. For example, if the contract states the World as the territory – does the publisher have the expertise and networks to promote an artist's material worldwide?

Clause 4 Licence Or Assignment Of Copyright in Songs

One major aspect of publishing agreements that artists must understand is whether the agreement is a licence or an assignment. When an artist 'assigns' their rights in songs to the publisher, the artist loses all rights to those songs forever. However, if an artist 'licenses' its rights, the publisher controls the rights in the songs for the term only. At the end of that term, those rights come back to the artist. It is therefore more favourable for artists to have their publishing agreements as a licence.

Clause 5 Rights Of Publisher

Exclusive vs Non-Exclusive

If an artist finds themselves under a publishing contract that controls all of their future compositions, publishers usually require that the artist is exclusive to that publisher only. This means that the artist cannot provide their songwriting services to any other publishers for the entirety of the term/ retention period. Exclusivity is required because publishers aim to employ a variety of resources in promoting an artist's songs and do not want to see others gaining from their efforts and expenditure. Artists should remember that this clause does not stop them from playing or performing with others – they just cannot write with or for anyone else without the consent of the publisher.

Knowledge about the publisher and the careers of other artists signed to that publisher should assist your decision when considering an exclusivity deal.

Other Rights

Publishers usually require a wide range of exclusive rights so that they can sell and promote an artist's repertoire to its maximum potential. In such cases, they would administer the commercial and accounting sides by collecting all money earned as well as actively seeking and selling the songs to would-be buyers.

Clause 6 Minimum Commitment And Term

Material Required

A further important factor artists must understand before signing publishing agreements is the number of songs the publisher will control under the contract.

Many publishers require that the artist transfer all past, present and future compositions written by the artist. However, some publishers may only require specific songs that an artist writes, thus leaving the artist free to use all other compositions they write as they please. Most Publishing contracts require set delivery targets and requirements as set out below.

Initial Term and Timetable

An artist will be required to deliver a minimum number of new songs to the publisher during the set term of the agreement.

As a term may be over a number of years, and in order to prevent the artist from under-delivering (for example, 5 songs in 10 years), publishers usually require that the artist delivers in accordance with a set timetable – eg. 3 songs per year.

In many cases, artists write songs in collaboration with other songwriters. Most publishing agreements acknowledge this and generally state that an artist's percentage ownership of those collaboration songs represents the delivery of the same percentage of one song under their minimum commitment. In other words, if an artist writes 50% of a song, that song will count as 1/2 a song under the artist's commitment.

Options

Publishing agreements may also contain option clauses which, at the end of the term, publishers will have the option of either ending the contract or extending it. If publishers opt to extend the contract, new minimum commitments must be established. In many cases, publishers will provide the artist with higher royalty rates or advances during option periods.

Retention Period

Some publishers require retention periods where once the term of an agreement expires, the artist is free to go and write music for another publisher, but the songs already written by the artist will remain with that original publisher for a period of time – being the retention period.

The reason for including retention periods is to ensure a publisher's return on investment.

Clause 7 Compensation

Royalties

Royalty clauses state the percentage of income the artist will receive from a variety of sources.

These include:

Print when songs are notated in music books

Record Sales when songs are sold as singles or albums (both physically and digitally)

Mechanical Royalties royalties received from APRA | AMCOS derived from the reproduction of songs in all formats

Flat fee/ Sync when songs get included on TV shows, films, videos and other forms of content

Publishers may also provide bonuses in the form of higher royalties to their artists in the event that sales of their albums reach specific targets.

Deductions

Royalty rates will often be reduced to ensure the publishers can recoup the costs spent in promoting and selling the songs. It is highly recommended that artists go through each deduction listed in their contracts with their lawyers and publishing representatives to ensure all deductions included are fair on both sides.

Clause 8 Advances

Many publishers offer artists a one off payment upon signing the initial contract – this is known as an “advance”. In some instances, publishers provide advances in the form of non-cash benefits – such as studio time or musical equipment.

Artists should note, however, that this is not free money and should be viewed like a bank loan – ie, you will have to pay it back. Publishers enforce this by requiring that any royalties earned by the artist must first go to paying off the advance. The artist will start earning royalties only once the publisher earns back its advance – this is the concept of recoupability.

Clause 9 Artistic Control and Restriction on Publisher

It is common that publishers seek the consent of the artist before they allow a song to be used in certain ways – such as on syncs, compilations and TV shows. This is to ensure that the artist remains happy with all uses of their music and to make sure that the songs are not used in any ways that the artist finds derogatory or in opposition to their image.

Clause 10 Termination Rights

Cure Period

To ensure that a publisher doesn't unknowingly breach a condition of the publishing agreement, the agreement usually states that the Artist must notify them of any breach, after which they will have 30 or so days to rectify the problem. If the publisher doesn't 'cure' the breach within the 30 days, the contract can be terminated.

Advances Repayable

Artists must be aware that if an agreement is terminated, they may be obliged to pay back any advances that have been paid to them.