

Before You Sign a Contract

1. Show it to your lawyer.

This is the A-Number-One best way to ensure that you get the deal you deserve without giving up your rights to your work, ending up with no money, or worse, owing money to someone for your work.

Many artists trust agents, managers, galleries, publishers, venues, promoters or record labels to treat them fairly, especially when the artist already has a friendly relationship with the person or entity that gives the artist a contract to sign. This is a huge mistake. On the whole, the only person with your best interest in mind is you. Even if the person who gives you a contract to sign is a friend of yours, DO NOT SIGN IT without first showing it to a lawyer.

2. If you don't have a lawyer, show it to our lawyer.

For qualified applicants, Entertainment Law Legal Assistance (ELLA) will read your contract and explain exactly what you and the other parties are entitled to when you sign the contract. Make an appointment to see us on Friday morning between 9:00 am and 12:00 pm at the Arts Council of New Orleans, or Friday afternoon from 1:30 pm to 4:30 pm at Tipitina's Music Office Co-Op.

To Schedule an Appointment: Contact Gene Meneray at the Arts Council of New Orleans by phone, 504-523-1465, or by email, gmeneray@artscouncilofneworleans.org.

Locations:

Arts Council of New Orleans
818 Howard Avenue, Suite 300
New Orleans, Louisiana 70113

Tipitina's Music Office Co-Op
501 Napoleon Avenue
New Orleans, Louisiana 70115

Our legal services are available to low and middle income artists and professionals working in visual arts, music, theater, dance, etc.

3. If you can't sign the contract without a lawyer, don't sign it until you have read and understand every element, every clause, every agreement, etc. before you sign.

** Disclaimer: ELLA does not advocate ever signing a contract that a lawyer has not reviewed, ever. Seriously, it's a bad idea. **

If there are terms you don't understand, try to think of someone you know who might have expertise in the area of the business you are entering. You might have a friend that has dealt with contracts before, and they may have some advice to offer. Be aware that your friend might think they know more than they do, and if there is something wrong with the contract that you don't know about, *you are still bound to the agreement you signed*. Sincerely, *don't sign your contract without showing it to a lawyer*.

4. Know the basic elements you want guaranteed in your contract.

Is the agent/label/manager asking for a percentage of your GROSS or NET profits?

This is a crucial distinction. Your **GROSS** income is your total income before **RECOUPABLE COSTS** are considered. Your **NET** income is **GROSS** with costs subtracted, or **NET = GROSS – COSTS**. If you contract for a percentage of your net, you could end up with no profits, or, even worse, owing money.

RECOUPABLE COSTS

Generally recoupable costs are costs paid on your behalf by the party with whom you sign a contract. This could be a record label, gallery, venue, agent, manager, or other party that spends money on your behalf. Usually this includes recording studio time, session musician pay, studio space, etc. Usually your contract will include a section of general costs that are recoupable by the other party.¹ Make sure the contract *specifically* lists all costs that are considered recoupable. The more detailed the list, the better it is for you. Remember that everything on that list will be subtracted from your earnings by your label/manager/agent *before you get paid*. So if "touring costs" is an item on the list, make sure you get clarification *in writing* of what *exactly* gets recouped. Does this include promotions?

Transportation? Manager salary? Operating costs? Getting an itemized list ensures that you won't be surprised at the end of the tour when your label tells you that you only get to keep customarily a small percent of your total earnings.

If this section is confusing to you, don't worry. It is confusing to lots of people, and attorneys are the best translators if you need clarification.

¹ Passman, Donald J., All You Need to Know About the Music Business, 5th Ed. Free Press, 2003.

Is the agent/manager asking you to sign an EXCLUSIVE or NON-EXCLUSIVE agreement?

An **EXCLUSIVE** agreement means that you can't contract with anyone else for the same service during the same term. Sometimes, it also means that the other party will have access to your total earnings, depending on the nature of the contract. That means they can demand money from you for gigs or jobs that you secured for yourself. If your agreement is **NON-EXCLUSIVE**, customarily, you will only owe a percentage of the earnings for jobs/gigs that the other party secures on your behalf.

TERRITORIALITY

Do you travel to Europe to perform/create/display your work? What about Africa or Latin America? If your art demands that you travel to other countries, or if you just want to take your act overseas, you probably should have representation in other markets. Make sure that your domestic (United States) manager/agent/etc. knows should your plan to have foreign representation outside your domestic representation. Be sure you know what you're getting into in all cases, particularly if you're asked to sign a deal that forbids from seeking representation in other markets. Also, make sure you are aware of the territories to which each of your contracts applies. For instance, if you are licensing your work in Europe only, make sure you are aware of that, so that you can warrant to another licensor in another territory that your work is safe from third party claims in that territory.

NON-COMPETE CLAUSE

Managers and agents typically want to ensure that if they spend their time and resources working to make money for you, they will not get dropped the instant you begin earning big bucks. They do this usually by making sure your contract with them is for a certain period of time, but they also use other contractual elements, like the non-compete clause.

Here is what a typical non-compete clause will look like:

"Manager and (Artist) shall, at no time *during the Term or for (12) months thereafter*, use, or allow or permit anyone to use, (your music/art/etc.)"

Notice the bold-type. This statement means that the artist who signs this contract will not be able to seek representation from another manager for a whole year after they end their contract with the first manager. If you sign a contract with a non-compete clause, be aware of what you are getting into. There is a chance that the agent or manager will turn out to be terrible at what they do, and you will be stuck with them or no one at all.

What percentage of your earnings is the other party is asking?

The industry standard for agents is between 5% and 10%. Agents should only be paid from the revenue that *they help generate for you*. Most unions for performers and creative artists cap agent's earnings at 10%. Never agree to more than 10%.

The industry standard for commissions paid to personal managers is 15% of your GROSS. Never agree to more than 20%. Remember that GROSS is all of your earnings before costs are deducted. Costs will further reduce your share of earnings.

The industry standard for commissions paid to business managers is 5%, but sometimes they will charge a flat fee. Choose a business manager wisely, because they always know more about money than you do, which puts them in a great position to take too much of your money.

Record labels and distributors typically recoup the greatest costs. Industry standard for record label earnings is based on units sold (units typically being mp3s or CDs). Basically, labels control the greatest amount of money earned from sales of your albums, and pay you royalties. To understand how labels pay artists, read the article on this site entitled "Masters, Royalties, and Record Labels."

What is the service that the other party is offering to you?

Is it a service that you need to advance your career? If so, is the percentage the other party requires greater than the benefit you are getting from their services? For example, say you sign a non-exclusive contract with a booking agent. They take 10% of your net for every show they book for you. If you make about \$200 per gig and subtract \$50 in costs, you will owe them \$15 for every gig they book for you. This is a good deal when you consider the time and effort in can take for you to book these gigs for yourself. Also, assuming the agreement is non-exclusive and includes appropriate terms, you could be able to book your own gigs and owe them nothing.

What if you sign an exclusive agreement and agree to fork over a large percentage? For example, say you have a modest income from regular live gigs that you book for yourself or your band. In addition, you sign an exclusive agreement with a manager who wants to only license your songs for films. The manager's contract is for 15% of your total earnings. While the other party may be providing the connections and know-how to get your songs out to more listeners, you are in a bad position financially. Why? Because the agreement you signed is *exclusive* and only for certain services. Not only does it prevent other managers from helping, you, it could entitle your film-licensing manager to future earnings from business relationships that you had before this manager ever entered the picture. With an exclusive deal, this new manager can take a cut of your album sales, live gigs, merchandise, and any other earnings you generate. Why should this film-licensing guy get paid when you were the one working to develop relationships with bars, clubs and festivals long before you signed the contract with him? Easy answer; he shouldn't.

5. Conclusion

Contracts are tricky, and they are the most important documents you will encounter in your creative career. Make sure you never sign a contract without having a lawyer read over it first. It is always better to turn down a bad deal than suffer the consequences for years to come. When anyone gives you something to sign, explain (nicely) that your lawyer needs to look over it and ask how much time they will give you before you return the signed document. You will not be sorry if you take the precautions suggested in this article.*

* Author: Holmes Rackleff. "Before You Sign a Contract" created November 9, 2007.