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[Nuts and Bolts of a Deal Memo Between a Music Artist and Recording Company](#)

Friday, March 2, 2012 by [Doron F. Eghbali](#)

Deal Memos might precede an Exclusive Recording Artist Agreement. Deal Memos are primarily intended to eschew protracted, costly and often futile negotiations and instead establish contractual relationships between artist and recording company. Deal Memo might further the interests of both parties. If the recording studio longs to take advantage of the artist, the Deal Memo would provide a vehicle. If the artist longs to ascertain if and when they will be paid, the Deal Memo might provide for such mechanism. This article seeks to explore, to some extent, SOME of the salient provisions of such Deal Memo.

1. TERRITORIES

Generally, the territory of recording agreements is the entire world. Nonetheless, artists with some appreciable stature could negotiate separate territories. In the latter scenario, the world is split into US and Canada, as one world, and the rest of the world. Undoubtedly, the artist should aspire to negotiate for "two worlds" as such split would entitle the artist to negotiate with two disparate recording companies, perhaps, each conversant in that particular territory AND for the artist to receive disparate advances from each recording company. The latter division would also mean the advance from one territory is not subject to royalty recoupment from another territory.

2. TERM

Generally, the term of the recording agreement is comprised of an initial period with multiple option periods. During the initial period, for 1 year or so, the artist is often obligated to deliver at least 1 album satisfactory or acceptable to the recording company. Then, if the recording company determines the first album was acceptable, then the recording company has about 4-6 option periods. Such option periods permit the recording company to prudently assess each album to



ascertain whether committing to another option period would be advisable since the recording company by exercising each option period would often be obligated to pay an advance to the artist. Undoubtedly, the artist seeks to limit number of option periods to a minimum. The artist, if successful, by limiting the number of option periods, would be able to renegotiate the contract and hopefully secures more advantageous provisions. In addition, by renegotiating a new contract, the artist would be able to avoid cross-collateralization, i.e. the advances from the prior contract would not be subject to royalty payments of the new deal. Consequently, given the disadvantages from the recording company's perspective, it is not surprising why a recording company seeks to secure the maximum of number of option periods and vigorously fights limiting it.

3. CONTROL OF CREATIVE RIGHTS

An artist is, often, rightly concerned about who will control the songs to be recorded and performed. Despite the fact most "new" artists would not have "creative control", the recording company cannot and often won't go to court to make an artist perform a song the artist has "legitimate" problems with. In fact, the recording company, often, understands litigating over performance of a song an artist reasonably finds offensive or self deprecating, would not only tarnish the recording company's image, but also might ruin the artist and the recording company's professional relationship.

4. ADVANCE OF RECORD COSTS

Generally, there are two mechanisms for the recording company to pay for recording costs of artist's album. The recording company may opt to allocate a fixed budget or allocate an album or recording fund. Nonetheless, such advanced costs are subject to recoupment by the recording company from royalty records payable artist fro record sales.

A) FIXED BUDGET

Recording company often decides to control the costs advanced. To this end, recording company may allocate a designated budget. In such scenario, the recording company pays for such costs on an invoice basis. As importantly, the recording company may hold liable the artist for any costs exceeding the designated fixed budget. Such fixed-budget mechanism is often employed by small or mid-size recording companies with "finite" resources to reasonably limit their risk exposure, to the reasonable prudent extent possible.

B) "RECORDING FUND" OR "ALBUM FUND"

Recording company may opt to create a recording fund or album fund. This fund is an aggregate amount given to artist to spend on recording costs. Such expenditure might still be subject to recording company's approval. The artist can pocket what is left of the fund. The latter serves as an incentive for the artist to reduce costs. Nonetheless, in such arrangement, the artist does not receive a personal advance, mainly because the money it can pocket. For this reason, the artist should



vigorously and prudently negotiate the amount and latitude in such fund. As importantly, there is no guaranty the costs incurred would not exceed the fund created and negotiated by the parties involved.

C) SALIENT NOTES ON AMOUNT OF FUNDS

As with any other entertainment transaction, the amount of such funds depend upon largely on the stature of the artist, the size and prominence of the recording company, the genre of music and the facilities or equipment being used for recording. For instance, some genres by their nature warrant relatively more funds since there are often additional single mixes for the purpose of playing the record in different formats.

Major labels often consider for a new artist, recording costs in the range of \$125,00 to \$250,000 per album for pop, rock and rhythm and blues genres. Albums containing country music tend to be lower, in the range of \$100,00 to \$150,000 because the lower cost of living in country music hubs such as Nashville and Austin.

5. ADVANCE TO THE ARTIST

Undoubtedly, a new artist could negotiate a far lower advance for the first album than a relatively more "established" "successful" artist. Such advance could range from thousands of dollars to millions of dollars depending upon the stature of the artist and the confidence exuded by the recording company to monetize the artist's records.

DISCLAIMER

This article neither supplants nor supplements the breadth or depth of such esoteric topic. In fact, this article ONLY provides a rudimentary synopsis of such esoteric expansive subject matter.

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