

SXSW CLE 2014

Hardcore Legal Issues for Artist-Owned Labels OR The Perils, Pitfalls, Ups and Downs of Self-Releasing Records

1. Pro's and Con's of Self-Releasing/Self Distributing Albums:

a. Traditional Record Company:

i. PROS:

- On a recoupable but not reimbursable basis, company funds recording sessions and artwork, manufactures, distributes and markets product, including advancing funds for touring, videos and websites).
- Label provides artistic direction and counsel
- Label handles accountings as an accommodation to the artist

ii. CONS:

- Limited control (creative, financial, timing)
- Smaller Back End/Royalty Based
- Exclusive recording services
- Changes in label team if larger company
- Participation in other streams of income (Touring/ Merch)
- Lack of accountability

b. Self-Distribution

i. PROS:

- Artist retains the lions' share of income from sales and exploitation of albums and other assets.
- Creative control over all aspects of the project from recording to artwork production to marketing and sales of records and release
- Flexibility in releasing outside projects
- Control over team/team accountability

ii. CONS:

- Artist must independently secure all label services (marketing, video production; press, distribution, etc.) and pay for these services.
- Personal investment / Risk
- Often more difficult and takes longer to get traction on a broad basis
- Radio airplay is more difficult to obtain as an independent artist

2. Start Up Issues

Artist as Business

a. Incorporation:

i. Why Incorporate?

- Corporate shield – protection of personal assets

ii. When is a good time to incorporate?

iii. What does it cost to Incorporate?

b. Tax and Insurance Issues

i. Choice of corporate entity?

ii. Employees, liability

c. Label Name/Logo - Trademark Issues:

i. Why Trademark or conduct search?

- Federal protection
- Reveal potential competitors or possible liability

ii. When is it a good time to trademark your band and/or your label?

iii. What does it cost to trademark?

3. Independent Record Distribution:

a. How to get your music distributed?

i. Physical

- **Who to engage?** (Majors, indies, regional)
- **Where to sell** (Big Box, Independent Retailers, Artist Website?)
- **What to manufacture?** (Configuration Concerns: Vinyl, CD, Both)

ii. Digital (if granted independent of physical)

- **Individualized**
 - I. Streaming Services – Pandora, Sirius XM, Rhapsody, Spotify, YouTube
 - II. Download Services – Amazon.com, iTunes, eMusic
- **Aggregator:**
 - I. Tunecore / CD Baby / The Orchard / Ingrooves

iii. Synchronization Representation Agreement

iv. Direct to Consumer

- Live Performances
- Website
- “Insta” Live (e.g., Nuggs, USB)

b. What types of terms are negotiated in distribution agreements?

i. Territory

ii. Product: All titles/Specific Titles/videos

iii. Exclusivity/Reserved Rights

iv. Distributor’s Services

v. Owner’s Obligations

vi. Distribution Fee

vii. Security Interest

viii. Termination Issues: inventory, unrecouped balance, returns

4. Independent Radio Promotion, Press and Publicity: How to get your music heard?

a. Radio Promotion – Indie Promo Issues/Costs

b. Press/Publicity - How to obtain press (online and offline) / Cost Issues

c. Indie Marketing - How to obtain (online and offline) / Cost Issues

5. Business & Legal Issues:

a. Clearances / Agreements/ Accounting (guest artists, musicians, producers, mixers, etc)

b. Copyright Registration

- i. Song
- ii. Master
- iii. Artwork, compilation.

c. Performing Rights

- i. Song: ASCAP/BMI/SESAC
- ii. Master: SoundExchange/PPL-VPL

d. Mechanical Royalties

- i. US: Harry Fox: statutory. Voluntary: medleys/audio-visual uses
- ii. UK: 8.5% PPD (MCPS)

e. Royalty accounting obligations and statements

- i. Mechanicals/Producers/Record 1
- ii. Cross-collateralization
- iii. Semi Annual

f. Codes/Numbering:

- i. UPC/Barcodes: Unique numerical markers to track record sales

- ii. ISRC Codes (International Standard Recording Codes): unique song recording code. Issued by RIAA in the US.
- iii. Selection Number: Optional; Record label internal catalog codes
- iv. Metadata: all album information, including artist name, album and song titles, timing, genre, UPC and ISRCs. Producer information.
- v. RIAA parental advisory “explicit content” labelling

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