

Signing a Record Deal

Signing with a record label may have many benefits for your career. But we should also consider the downsides of signing with a label. This is what we will see when we discuss the content of every agreement. The kind of deals that record labels may offer you do greatly vary. There are about 8 or 10 standard types of contracts. So it is too far-fetched to discuss all of them. So let's focus on the primary definition in all those deals.

The record label might offer you two different types of deals, a title agreement just for one or maybe two tracks or an exclusive artist agreement for a certain period or a certain number of ways.

Title agreement

You sign a deal for this one track only in a title agreement. And after you have finished this track and released it, you are free to go to any other record label. So there is no exclusivity.

Exclusive artist agreement

They want you to stick with the label in the exclusive artist agreement. You cannot release your music elsewhere with any other record label or do it yourself. So with the exclusive artist agreement, you are signed for a couple of years exclusively.

What is a good record deal?

No one parameter defines a good record deal. You have to check the combination of all clusters together. You might have a low royalty rate but an excellent promotion opportunity with a particular record label. You might have a low royalty rate but signed exclusively for a short period, so you are not stuck for many years. One of the significant dangers at a record label is that it could be very frustrating; for example, if they refuse to release your next track, but you signed exclusively with them, you have no other place to go. This can sometimes mean the end of your career.

It is hard to say what is the best record deal for you. It depends on what you are looking for. If you are looking for a very active record label that is very good at promoting your track, focus on that part of the deal. If you want the highest royalties, then take that into account. Of course, you always look at the royalty rate. But if you are a starting artist, we advise you to look more at the deal's terms and what actions the labels promise to do for you.

An advance of the royalties a record label might pay you is not very common these days. Do not expect the record label to pass the royalties if you sign your first record deal. When a record label pays you an advance of the royalties, make sure it is not returnable, so you never have to pay it back and can do with it whatever you want. Keep in mind that the amount given to you in advance is recoupable from your later earned royalties. *Example:* You get an advance in royalties for €5.000 and later make €10.000 in royalties from streaming and exploitation. The label only gives you €5.000 since they have already paid you the other €5.000 in advance. So remember, an advance is not a gift. It is good to receive an advance in royalties since you will have some money on your bank account, but also the label makes an investment in you and will have some pressure to work on your release so they can get their money back.

Underneath is an example of how an advance payment on royalties would look in your contract.

Artist is entitled to receive a **royalty through all Exploitation methods** and formats now or hereafter known, which royalty shall be calculated as follows:

40% (Forty percent) of Net Income (including synchronization and Video income) embodying the Masters. For avoidance of doubt the royalty is payable **after recoupment of all recoupable costs** as agreed in this Agreement.

Label shall pay Artist a **recoupable fee against all income** in the sum of EUR XXXXX.

What should be your royalty?

It depends on how much work you have putten in work. Most modern record labels work with revenue share. So that means you get a percentage of the revenue that comes in at the label's side. It depends on your position if you get 5% of the net income or 50% of it. It is all possible, but it depends on your status as an artist. Here is an example of a royalty clause in a contract.

As the **sole and exclusive payment** for the rights transferred to it pursuant to this agreement Label will owe to Artist **royalty payments**, calculated as follows:

all payments will be calculated over the **Net Received Revenue** that is actually received by Label for each form of Exploitation, or for unreturned Reproductions;

- a) **25%** over the Reproductions in the form of inter alia vinyl, CDs, DVD's sold by Label;
- b) **30%** over digital sales of, for example, downloads, streamings and ringtones;
- c) **40%** over (sub) licences to third parties as well as over all other Exploitation in the form of syncs, samples, flat fees, premiums and suchlike nationally and abroad;
- d) **30%** over each Reproduction of an "in-house" initiated Compilation.
- e) if Label or one of its (sub) licensees decides to promote the sale of a single or album by means of advertising on the radio and/or TV or a comparable marketing campaign, the payment to Artist as referred to above will be, for a period of 12 months from the start of such a campaign, reduced by 50%;

As you can see, there are a lot of different variables in this clause, which you need to check one by one to see if they are reasonable. Perhaps you can get a higher royalty for a few of them.

This depends on the weight of your current profile and discussion about other topics of the agreement; for instance: are you willing to sign a long-term deal? Will the label be the master-owner? Did you invest in all the recording costs yourself? Perhaps the title is ready to offer you a 'sliding scale of royalties (for example, an escalation of royalty percentages when you hit several streams)? Maybe they do when you are willing to accept a longer-term duration?

In sub c), you see that the Label has the right to allow others ('third parties') to sample your master for a fee. Then, that fee will be split with you for 40%. The same applies to 'syncs,' short for "synchronization rights," which means your music is used together with images or video from a third party -- like in a commercial, movie, or advertisement. The label tries to find syncs for you, and you will receive 40% of the fee in this example. Please make sure you've asked for your prior written approval for any syncs, or your music might end up promoting products you hate.

The sub e) clause always leads to many questions from artists. Here you see the artist gets only 50% of the royalty of any exploitation form when the label does what it is supposed to do: advertise and market your music. However, this may be hard to skip, depending (again) on your bargaining power. Beware of what a "comparable" campaign in this clause might be: Is that the case for a cheap online advertisement as well? Try to define a minimum investment for such a campaign. Try to limit the duration of the 50% royalty cut to six instead of 12 months.

Let's look at this simple revenue share clause, where both parties share 50/50 of all income after deducting the shared costs as defined in this clause. This means the artist pays 50% of all charges but certainly gets a more significant piece of the income pie. It is a sort of 'joint venture deal, but the Artist does not have any risk as to the Label's pre-finances of all of the shared costs, and Artist is not obliged to pay 50% to the Label if these are not 'recouped' (compensated with income). Not a very common clause, but some labels are willing to work like this. Please take care that you control the number of costs, as these will influence your income big time.

Label shall pay **Artist (the "Artist's Share")** a sum equal to **fifty percent (50%) of Label's Net Income**. "Net Income" shall mean a sum equal to Gross Income minus Shared Costs (as defined below).

"Gross Income" shall mean any and all revenue, income and sums that are actually received by or credited to Label.

"Shared Costs" shall mean any and all costs paid and/or incurred by Label in connection with the manufacture, distribution, exploitation, marketing, advertising and promotion of albums and masters delivered hereunder.

NRA's

In most modern record deals, the artist has demanded a part of performance income, and that's what we call non-recording activities or NRA. So the situation is that the record label

does not have a significant income from the streaming of music like back in the days with selling CDs. SO what they demand from you is a part of your income from the gigs or your sponsorship deals or merchandise deals to be paid back to them. So you should send them a statement and pay them a percentage of that income. This is especially important with your live performances because this will be your most significant source of income. So if you are a successful DJ or artist and do concerts on stage, you will have to pay a sort of royalty back to the NRA record label. So please be aware of this and try to negotiate this percentage down as far as possible. And try to make a deal this NRA percentage that it will only start after the first releases of your track because it could take a long time for them to release the first track on the label after you have signed the agreement. There will be a six-month difference, maybe in time, and it would be a waste if you should pay them 10% of your live performance income.

360 Deals

So a record label may earn money from you from the NRA clause, and it could be money from live performances, merchandise deals, or sponsorship deals. Another word or term that you hear often is a 360 deal. Well, that's a little bit different, and it's very complex. Why is it called a 360 deal? Well, it's a full circle of rights in which the artist and record label each have a share. So full circle is 360, but you can also have a 180 deal or a 240 deal. The idea behind this metaphor is that you share many rights; that is not part of what a record label is doing. So, for instance, the record label also gets a share of the publishing income from exploiting the composition. They also get a share from merchandise deals, and they all have a share in that full circle of rights.

So the difference between the NRA clause and the 360 deal is relatively small. And it's also a matter of definition of what is what. We believe that the idea behind a 360 deal is that the label also manages all those rights within the full circle. And that is not the case with the NRA clause. In such a clause, it's said: 'We have a share in all your other income that had nothing to do with the recordings you had to do under this agreement.' We can imagine that NRA does not sound very sympathetic to you as a starting artist from the record label. But please be aware that nowadays, it's tough to earn much income with music streaming. So the record label depends on the success of your records and can sell streams or downloads to the public via Spotify, Apple Music, Etc. But actually, they are investing in your career, and they need to have some financial basis for the success of your career. So nowadays the live performance is paid very well to artists like events and festivals. So it is logical that they want to share in the success of your tours and gigs. So this is what the modern record label deal is all about. And there is a new balance between the sale of streaming and the success of your live performances. Therefore the NRA clause is not as crazy as it might seem.

Be careful

It would help if you were careful about a few things when signing an NRA or 360 deal. First of all, what percentage will you sign away? Primarily, this is important for your income out of gigs. Most record labels will demand around 10%-15% of your gross income from non-recording activities (NRA). You need to be aware that you first may deduct certain costs for your live performances. This is a bit complicated, but if you do much touring, let's say, you do a tour in the United States, you may also have to pay many costs like hotels, flights, and that sort of stuff. Now, if you have to pay the record label on the gross income you earn from your live performances, but you still have to pay all those costs, you may lose money. Or you have to pay a big chunk to the record label, while you still have to pay the expenses. So be aware of this. Therefore, we must speak of your live performances. We will do so in other chapters as well. But here, the record label takes a share of your performance income. But other people take a share of your performance income. Think about a booking agency and think about a manager. If you have both in place, you are already paying three parties out of the payment of your stage performances. Let's have a look at the following example of an NRA clause.

Artist **hereby assigns** to Company **ten percent (10%)** of Artist's "**net income**" received from activities in the **entertainment industry** commencing on the date which is three months after the first release under this agreement.

'Net Income' is the good news here.

You never want to commit to an NRA Deal over your Gross Income! Imagine having to pay your label before all the costs you've made on tour were deducted? If you add the money you also owe your manager, booker, and tour manager, you'll be dirt poor again when you get home...

Please be aware, such an NRA clause not only means you pay a percentage of your gig fees but also of sponsoring, endorsement, and merchandise income.

Another example

Artist will pay Label thirty percent (20%) (the "Label Share") of all **gross revenues** otherwise payable to Artist during the Term ("Proceeds") in connection with the **following activities**:

- (a) services rendered by Artist, or each of them, as an **actor or performer** (in any and all media, including, without limitation film and television,
- (b) the use of **Artist's name**, likeness and/or logos in connection with merchandise,
- (c) endorsement, **sponsorships**, clothing lines and strategic partnerships,
- (d) touring and other **live performance** engagements.

As you can see, a deal like this can extend to all kinds of activities. By the way, this example is based on gross revenues, so you have to pay this percentage to the label but still are paying for all the costs you are making too, which is very risky! Imagine that you first pay a booking agency and your manager a percentage from this same revenue. Oh, and 20% is quite steep; please try to bring that down.

Again, always try to have such NRA payment only start after the first release by the label. Otherwise, you are paying from 'day one after signing the agreement. Link the freedom and the uplift in performance fee after that if you can. You certainly need to negotiate about this one; it depends on your popularity as an artist.

Creative Approvals

You could focus on one thing in a deal with a record label, maybe not in your first deal, but your second or third deal is 'creative approvals.' This is very important for you as an artist to decide what fits your career. What are creative approvals? Well, it is straightforward. So what does the artwork look like when you release a track. That's for the label to decide. But you want to give your creative approval and your veto right to say no to a particular artwork they come up with. A creative blessing you might also have is about the remix. So they suggest that another remix is made from your track, and you could veto this other remix because you may not like its quality. Other creative approvals might be given for video clips or the budget for a video clip or anything else creatively released out there about your track.

Master Owner

Another vital subject in a record deal is the master owner. So why is master ownership so important? Well, that also has to do with collective royalties for the public performance of your track. When your song is played on the radio, television, or in the supermarket or club, royalties are collected by a specific organization (learn more about this in the finance course in the chapter royalties.) So your record is played on the radio, and money is collected for that performance as it is a public performance. Any by-law the funds collected are shared between the master owner, the artist, and the session musicians. So there is a 50/50 deal in most laws of many countries that share this 50/50. Therefore it is important who is the master owner. This subject was also part of a famous court case between Martin Garrix and Spinnin' Records. Because Martin Garrix claimed that he was the original master owner, he was also entitled to all the public performance royalties that Spinnin' Records already received. This was an amount of €600.000. As you probably know, Martin Garrix won this court case.

Why did Martin Garrix win that case? Why was he considered to be the master owner? The answer is straightforward. Martin Garrix made the first recording of 'Animals' in his home studio, and Spinnin' Records only improved at master. So it became of better quality. The Dutch court decided that Martin Garrix was the first master owner because of that first recording, whatever Spinnin' Records did after this with that recording.

Artist versus label

What any record label wants is master ownership. So if they pay for all the recording costs and all the musicians in your studio, they will be the master owner by law, by definition of the law. If you as a producer or an artist are the master owner, the original master owner because you made it in your studio, the record label wants you to transfer the rights to them so that they can become the master owner, and they can receive the public performance royalties of the organizations.

Who is the master owner of a particular track? Well, this varies per country and copyright law. In most EU countries, there is a law that says the party that organizes and invests in the recording of a master is by definition the master owner. That master owner has a right to 50% of all the public performance royalty income. The situation in the United States is very different because when music is played on digital sites, they use SoundExchange and pay to the artists and record labels. But if your music is played on terrestrial radio, there is no royalty for the artist and record labels. That is very different from the EU countries and many other countries.

Assignment Rights

Master Ownership is a fundamental matter to agree on. If you transfer all the rights to the record label, you will 'lose your baby' forever ('in perpetuity,' as the lawyers like to

say). The master doesn't belong to you anymore, and the label can do with it as they please for all of the many years to come.

This has happened to many artists in the past and is something you need to be particularly careful about. It could make you miserable not to have any authority over your music after you have built your career over many years.

Here is an example clause for the master ownership.

Artist hereby **transfers** in advance to Label the **full, exclusive, worldwide ownership**, Exploitation and user rights with regard to the **Masters**.

This transfer means that Label, as **full owner** is exclusively entitled to Exploit the Masters (including remixes thereof).

This transfer also comprises of **all rights** of performing artists, vocalists and all others who have cooperated with the making of the Recordings or remixes.

Following this transfer of rights Label is **phonogram producer** within the meaning of the **Neighboring Rights Act** with regard to all Masters that (will) fall under this agreement.

This is an excellent example of a very common clause you will have to sign at the start of your career. It will be pretty hard to change this one into either a license (you remain the owner) or a deal in which the master rights revert to you after a certain period. But please always try to negotiate on the latter option. It is becoming widely accepted that rights ownership revert (go back) to the original owner, in our case the artist, after 15, 20, or 25 years. However, sometimes you really can't get around a clause like this...

Here is another example.

Yes, that's right! 'Throughout the universe' ...Even if humankind ever moves to Mars, your song

You agree that the **Master Recordings, from the inception** of the recording thereof, and all records and other reproductions made therefrom, together with Artist's performances embodied therein and all copyrights therein and thereto throughout the universe **are and shall be entirely Company's property** throughout the world.

still belongs to the record company. Harsh terms. In this clause, it is typical that the Label pays for all of the recording costs and organizes the recording session in their appointed studio. In

that sense, it is understandable that they are the master owner from the start, as many copyright laws in the world will also state.

License Agreement

The Artist should license the tracks you have recorded in your studio to the Label. Preferably you also have the artwork and a finished mastered product to offer to the Label then. The 'license' means the Label gets written permission 'to use and exploit the track – a bit like a rental agreement - for a set period (Term), after which the usage rights return to the Artist.

The Artist has much more control over the rights. The artist may terminate the license and will always be the owner. If the label fails or goes bankrupt, a permit is safer for the artist. Smaller labels tend to accept a license nowadays, but this differs from label to label. Prominent shot artists can pull this off more easily.

A clause like this looks more like the following.

Exclusive License Term: Artist hereby grants to Label the **exclusive right**, throughout the Territory, **to exploit the Master** and any other materials created by Artist or Label in connection with the **Master** (including the Artist Remix and any other remixes) in any and all media for a period of **seven (7) years** following Label initial commercial release of the Master (the "Term").

Minimum Commitment

Also, what you can see in a record deal is a minimum commitment. That's an obligation for the artist set by the record label to produce and deliver a minimum of tracks per period. This could be dangerous for you as an artist when you do not reach that threshold. So let's assume that you have to deliver six new songs in six months. If you don't meet a requirement of that minimum commitment, those tracks will be accumulated to the next period. So that's quite dangerous for you. So if you don't meet the requirement, you have to deliver many songs at the end of the term. If you don't meet the need, the released commitments, you still have to provide many tracks. And so your agreement will be extended for several years. In theory, this could mean that you would get stuck in a deal with your record label. You don't feel inspired anymore, but you still have to deliver those tracks. That was part of the deal. You can also demand the label to put minimum work in for you. This will then also be included in this clause.

Royalties, Revenue Share & Other Exploitations

What kind of exploitation will the record label do with your recording? Well, first of all, they will, of course, put it on online digital platforms such as Spotify, Apple Music, Beatport, and so on. And those could be hundreds of different platforms. And those websites pay the record label a royalty. And then the record label pays you like the artist a share or a royalty. So you have two types of deals: either you get a royalty from all the income or you get a revenue share.

What other forms of exploitation can be done by the record label? Well, they could do 'syncs' This stands for synchronization. It means that your track is used with images, like moving images, like a movie, documentary, or TV commercial. This is a very commercial and interesting way of making money with your track. But of course, you need to give your approval for any of such commercial uses. Another form of exploitation is one that is rare is sampling. So somebody wants to sample your track and use a small part of it in their track. They need a license from the record label to do so. So the record label can exploit your track in a sample

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license. If you sign with a smaller label, not a major label that has affiliates worldwide, but with a smaller label, the chances are high that they will license your track with other labels in different countries. The royalty clause in your contract would probably say that you will get 50% of the income from the third-party license. If you sign with a major record company, a multinational record company with affiliates all over the world, you sign just with one company. The sister company licenses to the next sister company all over the world.