

2 Entertainment Lawyers Break Down Kanye West's Recording Contracts

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DJBooth



This past Wednesday, September 16, Kanye West, in an attempt to "change the music industry for good," shared his recording contracts with Roc-A-Fella, Def Jam Recordings, and Universal Music Group with the entire world on his Twitter.

It's obviously far too soon to know if Kanye's very public approach to conflict resolution will ultimately lead to sweeping changes in how record labels and music publishers do business with recording artists, or if his attempt at transparency will even mean the ability to renegotiate his own contract, but for the time being, we reached out to **Kevin Casini**, an entertainment lawyer and law professor at Quinnipiac University and the founder of Ecco Artists Services, and **Zach Scott Gainous**, an entertainment and sports attorney, talent manager, and founder at **The Fruitful Firm**, to break down the actual contracts, Kanye's decision to share them with the public, and the short- and long-term ramifications of the decision.

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Kevin Casini: To jump right in here, I don't see anything egregious across any of Kanye's recording contracts. Or at least nothing that would be out of bounds for a multi-project recording contract. Did I miss any horrifying details, Zach?

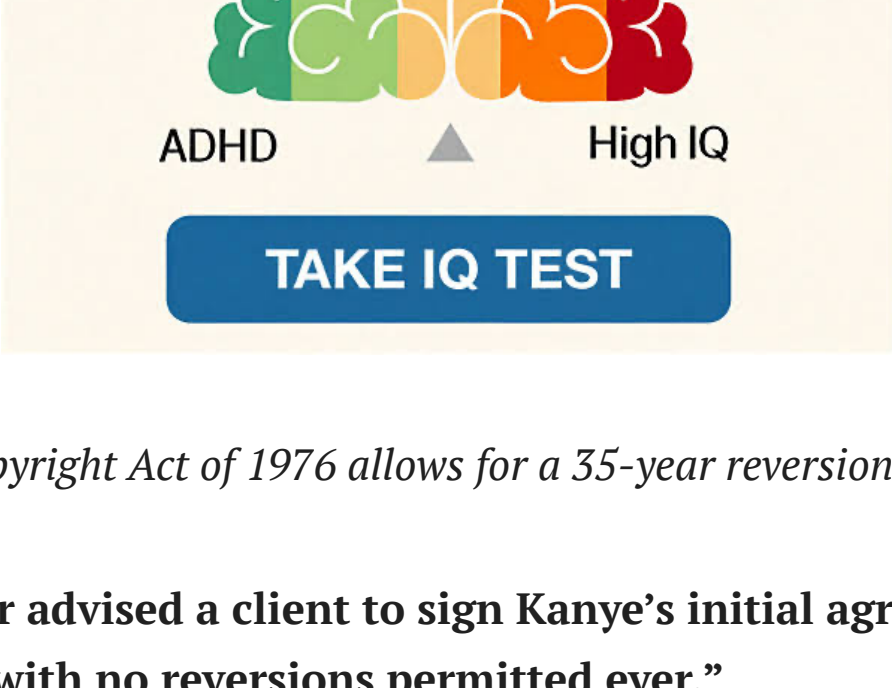
Zach Gainous: The first deal Kanye signed, with Roc-A-Fella, isn't that favorable for the artist, but the subsequent deals he signed with UMG are pretty favorable given the number of advances he received and that he regularly goes over budget. One thing I was unclear on in my initial reading was whether the reversion clause (for ownership of the works to revert back to the artist) applied to only albums six and seven or the first five albums, too. Twenty years for reversion is excessive but not the worst I've ever seen in a major-label recording contract. You have to wonder if the nine-album term extension Kanye signed was a great idea. That's a *long* time, regardless.

KC: It also looks like he's consistently over budget, and by a lot. The label eventually shifted recording costs to Kanye in exchange for a bigger piece of the pie. He's getting pretty big (recoupable) advances, so it will take Kanye longer to recoup based on sales and streams. But a 20 year reversion period? You'd think at this point he'd be able to negotiate a better duration instead of just asking for more money. I have to wonder if the costs of each project are what gave the labels pause.

ZG: Yes, I'd imagine he could renegotiate that 20 years down at this point, at least on an album by album basis. It seems like he's gone over budget on every project to some degree, including the film. I have to think the excessive length of the 20-year reversion clause is likely because of the size of Kanye's advances and recording budgets plus the fact that he's pretty regularly going over budget. The other reversion terms themselves, though, aren't unreasonable at all. If an album's advances and costs are recouped, it reverts, and if not, he can pay back the remaining amount of the advance and costs, and then it reverts.

KC: It's important also to note Kanye is running a sub-label, with A&R, etc., and has to deliver new artists to the parent label. Is he exploiting these artists the same way he claims he's being exploited? It looks to me like the deal he made with Roc-A-Fella was egregious: no reversion under any circumstance. Does he undermine his credibility by having deals under the G.O.O.D. Music banner where he owns masters?

ZG: It's likely the terms of the sub-label deals wouldn't be much different than the subsequent deals with UMG, though in some cases, it's possible they may be even worse, I suppose. The Roc-A-Fella deal is heavy with favorable terms for Roc-A-Fella. I would have never advised a client to sign Kanye's initial agreement with Roc-A-Fella, especially with no reversions permitted ever.



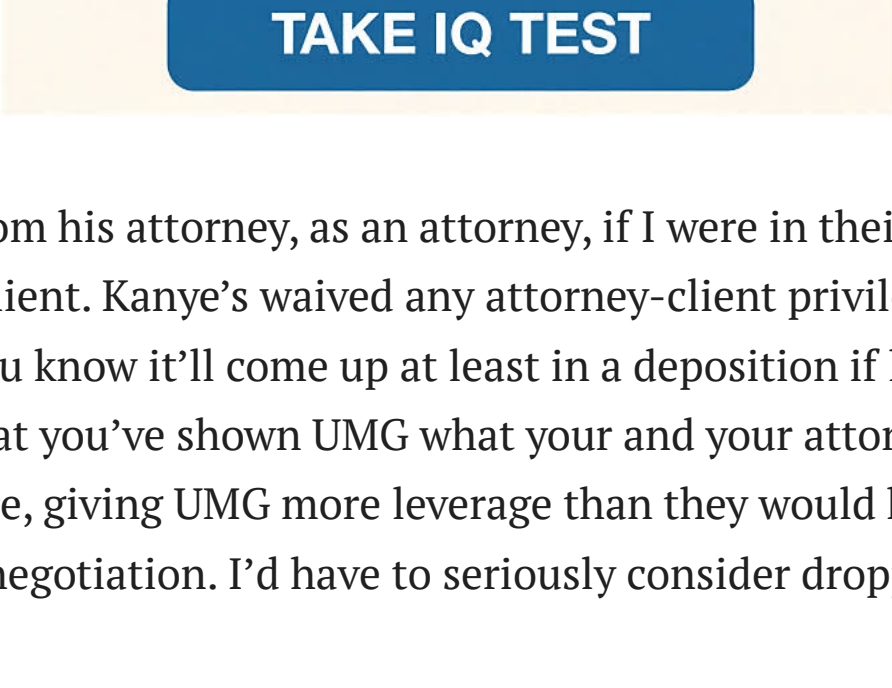
Editors Note: *The Copyright Act of 1976 allows for a 35-year reversion of assigned rights.*

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KC: Very few recording artists receive what I would consider to be MASSIVE advances and budgets. Simply put: If Kanye didn't go over budget, he got to pocket the money. That may be where a manager needed to step in rather than an attorney.

ZG: With advances of \$8,000,000 for album six and \$3,000,000 for album seven, among others, I have to wonder how much influence any manager would even have in these cases. A manager is earning (presumably) 10%-15% of these advances. With some of these advance amounts, it's potentially enough to make even the most stubborn manager become a "yes" person for their client.

KC: Kanye has fired multiple managers throughout his career, at one point tweeting, "I can't be managed." To what degree he appreciates that irony remains unknown. As for his attorney, what do you make of Kanye's tweet that showed a communication from who I presume to be a lawyer?

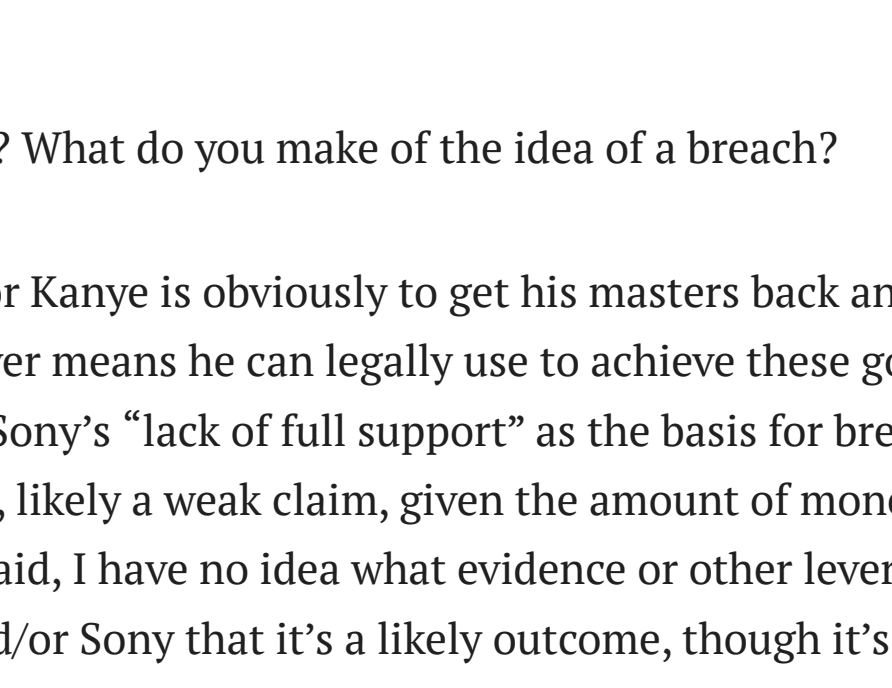


ZG: Assuming it's from his attorney, as an attorney, if I were in their shoes, I'd be pretty frustrated with my client. Kanye's waived any attorney-client privilege to, at least, that conversation, and you know it'll come up at least in a deposition if litigation were to occur. Nevermind that you've shown UMG what your and your attorney's ultimate strategy and goals are, giving UMG more leverage than they would have otherwise had in any attempt at renegotiation. I'd have to seriously consider dropping the client at this point.

KC: If Kanye's waived that privilege (which only the client can do), that entire text string can come up in deposition, discovery, and could lead to emails as well. That would undermine their legal strategy for sure.

ZG: Exactly. This entire situation opens up a whole can of worms and could cause future issues for Kanye if they do end up litigating in the future.

KC: Let's break down that text, because I think it's our biggest clue as to what the actual demand is here. Again, we don't know for sure to whom he is talking, but I suspect its a lawyer and likely *his* lawyer. It certainly reads like one of us wrote it.



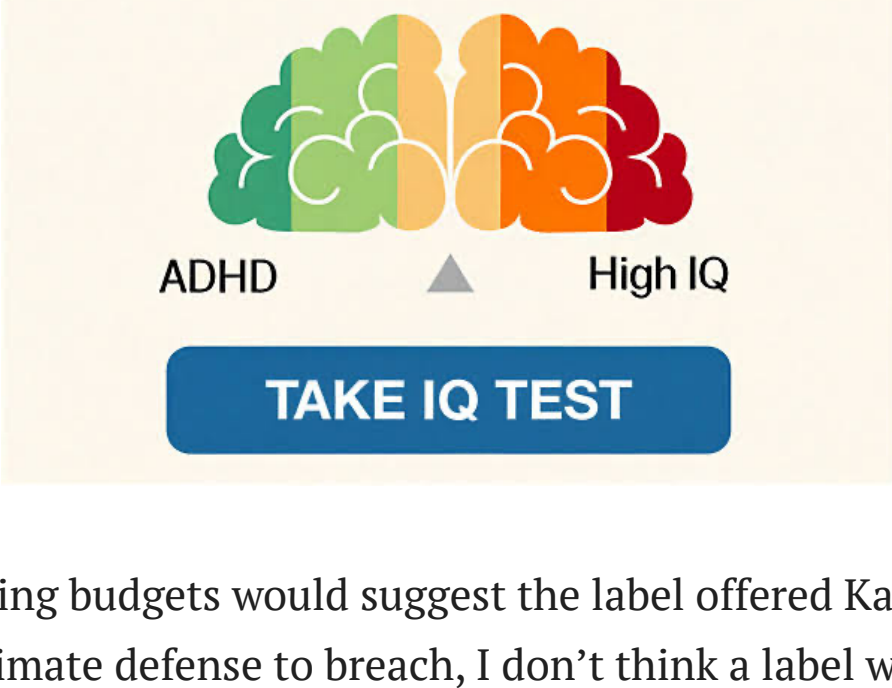
Here's the text:

Is this the end game? What do you make of the idea of a breach?

ZG: The end game for Kanye is obviously to get his masters back and get out of the current deal. Whatever means he can legally use to achieve these goals is probably fine by Kanye. UMG and Sony's "lack of full support" as the basis for breach is excellent in theory, but in reality, likely a weak claim, given the amount of money they put into his projects. With that said, I have no idea what evidence or other leverage they might have to convince UMG and/or Sony that it's a likely outcome, though it's always possible and a gamble on both sides.

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There's always the court of public opinion, too, and with more acts getting more favorable and/or different types of recording contracts now more than ever, including the public push for artists to own their masters, I think the original plan was to simply to go public and try to force a settlement. I don't think his attorney likely thought he'd share that text message with the public, though. He was probably merely advising his client as to what his legal options and likely potential outcomes were.

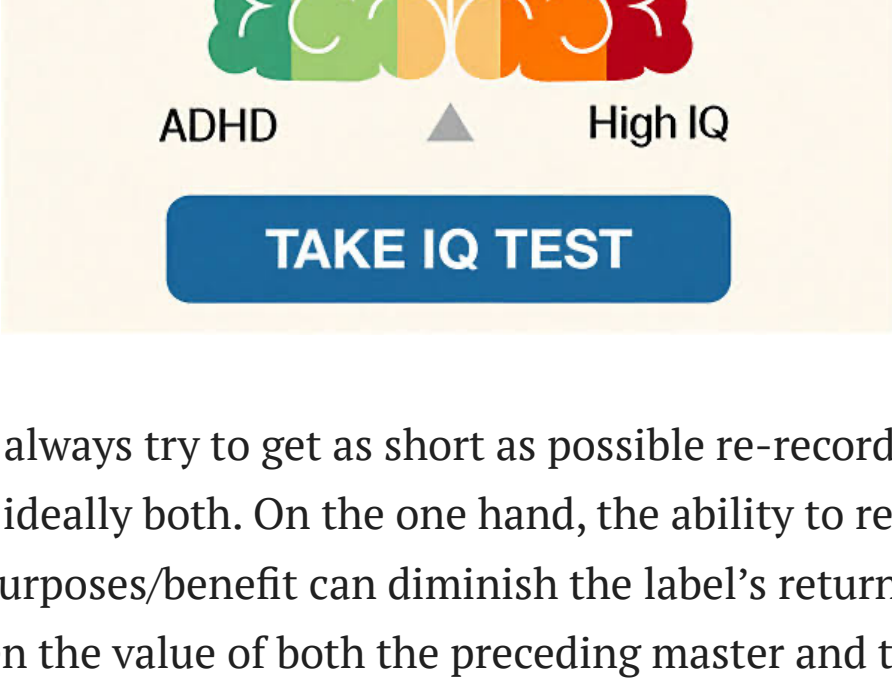


KC: The huge recording budgets would suggest the label offered Kanye a lot of support, but even with a legitimate defense to breach, I don't think a label wants a suit. It's always a risk. But that being said, I also don't know that they can let word get out that Kanye's approach to this matter is an acceptable and effective practice.

As an aside, the push to always own masters begs the question: now what are you going to do with them? Ownership of masters is a creative-control issue, while ownership of the right to enforce the license of the masters is an economic issue. If it's just about money, the label can always give him more.

ZG: Once you own the masters, you now have to administer and protect them. That can bring on a whole new set of challenges, expenses, hassles, etc. Many artists don't appreciate or understand that until they're forced to deal with it themselves.

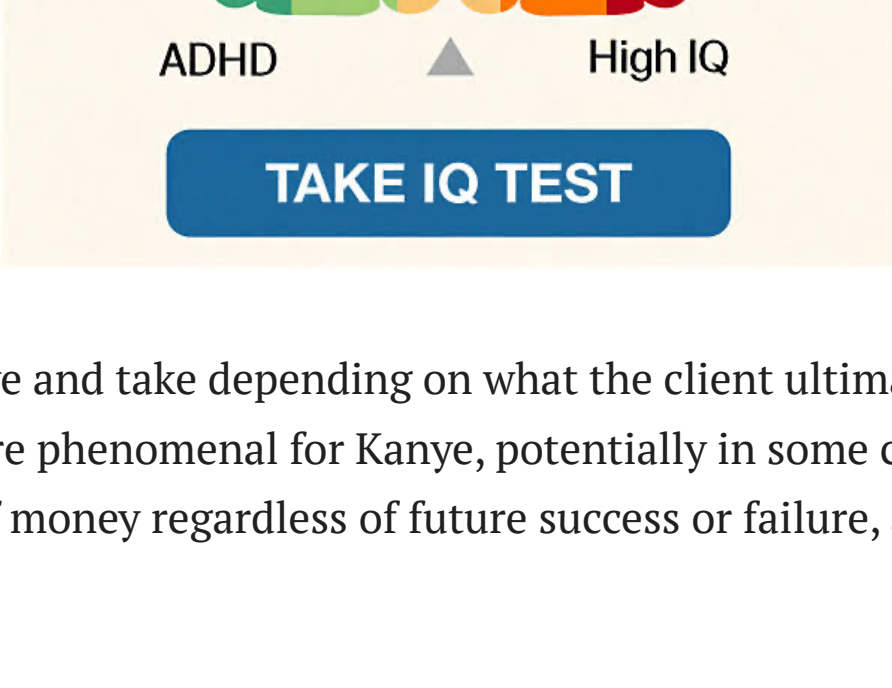
KC: Agreed. Not unlike having your own sub-label—it starts great, and then the artist is back to their stuff, they leave the sub to be run by the junior execs of the parent, and it turns into the same thing all over again. Kanye could also re-record his material, and then own his new masters. What's your view on the ability of an artist to re-record and create "new masters"?



ZG: For my clients, I always try to get as short as possible re-recording restrictions or reversion clauses, or ideally both. On the one hand, the ability to re-record for another label or the artist's purposes/benefit can diminish the label's return on the prior master. Still, it also can lessen the value of both the preceding master and the newly re-recorded master for the artist. I'm always curious to know from my clients, outside of the control, and the potential financial benefits (which can also be minimal), what's the purpose or goal in re-recording or having the ability to re-record? I want my clients to have the right to both get back their masters and re-record in as short amount of time as possible. Still, they also need to evaluate and figure out what's more important: ownership of the original master or the ability to re-record.

There are certainly many different ways to establish a new kind of relationship with UMG. Joint ventures are becoming more common, as are licensing deals like Taylor Swift's with Universal and Republic. I think Kanye and UMG can come to some type of new arrangement that would still be highly beneficial to everyone, provided Kanye is interested in doing so. So far, it seems like he's saying he wants nothing to do with the label going forward.

KC: I guess it depends on if Kanye's approach is all a leverage play or if he is as fed up with the arrangement and the parties as he's stated. My conclusion? He some cases could've been more favorable, especially in more recent years. Would I advise a client to sign Kanye's current deal? Yes. They're for a megaton of money, the recording budgets are great, and as long as you can deliver music and artists, you're good.



ZG: Agreed. It's a give and take depending on what the client ultimately wants. In this case, the advances are phenomenal for Kanye, potentially in some cases "never have to work again" levels of money regardless of future success or failure, at least if he doesn't overspend.

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