WE SUPPORT UNSIGNED, UNDISCOVERED AND UNDER THE RADAR MUSIC.

ADVICE | YOUR MONEY AND YOUR RIGHTS

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YOUR MONEY AND YOUR RIGHTS

GETTING GOOD ADVICE
The music industry can be a legal minefield, so it always pays to get good advice before walking into any deal that could have financial implications.

If you don’t know what you’re doing you could potentially be putting your livelihood and the music you love at risk, so it’s important to seek legal advice whenever you deal with record labels, agents or publishers.

“My experience of getting signed was very weird because I didn’t have a manager so was doing all the meetings by myself. I had a lawyer to help me. You usually get a lawyer before you start dealing with labels and the lawyers are usually on it more than the labels are scouting wise - I got contacted by lawyers before labels. When it comes to signing a deal you have to go with your instincts and you have to do as much research as you possibly can - your lawyer can help you a lot with that. I just asked as many people as I could in the industry about anything I wanted to know” — Marina Diamond

The Law Society should be able to put you in touch with a lawyer with previous experience in the industry, while the BPI, Prince’s Trust, and Association for Independent Music can all be contacted for career advice.

The simplest bit of advice we can give you is to never sign anything you’re unsure about or that could leave you in a tricky situation later on.

CONTRACTS
In your recording career you’re likely to deal with a number of contracts with a number of people including ones with your band, record company and your publisher. Every contract is different. It should be drawn up by a team of solicitors specifically for you and the company with whom you’re entering into an agreement.

Contracts are invariably cause for compromise in some areas, but by knowing where your priorities lie and what you want out of the agreement, you should be able to avoid being taken advantage of.

You don’t really need to sort out a contract with your band mates until you’ve decided to start selling your music or signed a publishing deal. As soon as you do though, it’s vital you put the personal aside and do it properly. Sorting this out at the start of your career will help to ensure that, in the long run, everyone is happy and knows where they stand when certain issues raise their head (which they inevitably will).
Remember too that signing on the dotted line doesn’t mean a smooth ride from then on, no matter how strong your contract may be. Plenty of artists have happily signed a record deal, only for things to get a bit rocky later on. Wiley recently got into a dispute with his record label over money and his musical direction, and artists as big as Prince have fallen out with their labels over the terms of their deals.

Just because you’ve released records and had some success there’s no guarantee you’ll stay signed either. Established acts like The Futureheads, Kelly Rowland and The Zutons have parted company with their labels despite having a fanbase and decent sales behind them. A good debut record and plenty of hype doesn’t guarantee a label will hold on to you either.

While recording contracts are considered the Holy Grail for an act (see our ‘A&R’ section for more), equally important and, in some cases more so, is a publishing contract.

**PUBLISHING**

**WHY DO YOU NEED A PUBLISHER?**

Publishers are companies who look after music rights and provide a number of services for songwriters and composers. Because they deal with songs rather than recordings of them, they have a different view of the world from record companies.

This means they can afford to take a longer-term approach to an artist’s career because they don’t have recording, manufacturing and marketing costs to recover. They may be more willing to help a writer develop creatively which can be as simple as giving you advice, but can extend to anything from putting you together with co-writers to paying for studio time.

A publisher will also help you with copyright, which is useful because that’s where the real money in the music business lies. Plays on the radio and in clubs, gigs, ringtones and jukeboxes in pubs all generate money for songwriters. Even after a group has fallen apart and the limousines have gone off to pick up the Next Big Thing, the songs don’t go away. A share in a song that becomes a classic and is always around on compilation albums and the radio can set up a writer with a healthy income for life - making it all the more important to find the right publisher for you.

**FINDING A PUBLISHER**

As an unsigned artist or writer, approaching a publisher is the same as approaching any other professional in the business.

You can save yourself an awful lot of time and increase your chances of success by doing your homework. Identify the companies you want to approach and the people there you need to deal with. Then make a direct, focused approach to that person.

There are several sources of information out there to help you work out which publishing company you want to go for. You can have a look through your record collection - all the songs will have the name of the publishing company listed somewhere on the sleeve. Look up some companies that publish music that you like. A music directory like The Unsigned Guide or CMU will give you the company’s contact details so you can call them up to find out who looks after the artists you like. You
probably won’t be able to speak to them directly but at least you’ll have a name. The Music Publishers Association website gives information on approaching publishers and lists contact details.

It’s also worth bearing in mind that with several types of publishing deals out there (including ‘Single Song’ and ‘Singer-Songwriter’ deals) it’s essential to have a decent manager and/or lawyer on your side when negotiating one.

**BENEFITS OF PUBLISHERS**

If you’re an unsigned artist a publisher may also help with your development. Major publishers (and several of the smaller ones) have their own studios and will give artists time in them to prepare a better quality demo than they’d probably be able to afford on their own. Larger publishers may also offer a limited number of artists full ‘development deals’ where they will help with building their profile. Helping you create more of a buzz will up your bargaining power, so your final record deal may give you more control of your career or more favourable terms when it comes to dividing up the money.

If you’ve already got a record deal you’ll be looking for a publisher who’ll be able to make the most of the commercial potential of your songs. They’ll be able to sell them for other uses and keep track of the royalties that you’re owed. You’ll almost certainly be able to secure better terms for your deal than an unsigned artist would.

A publisher will also work to sell your songs. If you’re a songwriter that means they’ll work to get your songs used by major recording artists - something that’s very hard to do on your own. If you’re a writer who also performs, they’ll work to place your songs in adverts, films, computer games and TV programmes. That brings in a bit of extra cash, but more importantly it gets your music known to a much wider audience. Publishing companies will also collect mechanical and performance royalties when their acts’ songs are recorded or performed. It’s called ‘royalty tracking’. For this service they take a share of the money, according to the terms of the writer’s contract with them.

**WRITING FOR AND WITH OTHERS**

If you’re a songwriter, but you don’t plan to perform your material and want to write songs for other artists, a publishing deal is more or less a necessity, especially if you’re looking to write for major artists. A good publishing company will get frequent approaches from producers and record labels looking for material for their artists to perform and this is where you can start making some serious money.

As a writer, your publisher will probably encourage you to collaborate with the other writers they have on their books. Most writers find this a refreshing and productive experience. It’s a great way to develop your confidence, ability and helps you avoid the dreaded ‘writer’s block’.

Publishers are slightly different from record companies in that they’re principally interested in the quality of the songs. Although there are people at record companies with great ears, song writing is what pays the bills for publishers so they’re more likely to spot a great song through a poor quality performance or recording.

You can’t send in any old tat but you may well find that a publisher will be interested enough to bring you in and record a better quality version to see if their hunch is right. Try sending in a demo of three or four of your very best songs and be sure to limit yourself to that. In terms of the recording, keep it
simple. Publishers want to hear the bare bones of a song. A common mistake people make is to over-produce their track in a particular style - this can close more doors than it opens.

**SAMPLING**

**CLEARING SAMPLES**
If you include a sample of someone else’s music in your own work, then you need to get permission to use it. There are two bits of copyright that you need to clear and, in many cases, neither of these will be owned by the artist who performed the track.

The first is the copyright in the actual recording, which will usually be owned by the record company who originally released the track. The second is the copyright in the song. This will be owned by the writer of the original tune or, more likely, their publisher. In order to use a sample legally, you need to have clearance from the owners of both copyrights. It might sound like a headache, but if you approach the owner of the copyright and they think they might be able to make some money out of it, they’ll probably be on board.

When you find a sample you want to use, the first thing to decide is whether you’re going to clear it yourself or get someone else to do it for you. If you’re signed to a record label or publishing company they may take care of it. If you don’t have that luxury, you could use a specialist sample clearance company.

If you’re planning on clearing a sample yourself, then you’ll need to get in touch with the record label and publisher involved. You should be able to find a contact from somewhere like The CMU Directory or get in touch with MCPS (Mechanical-Copyright Protection Society) - they look after copyright for virtually every record label and publisher you can think of. If a record has been released in the UK, MCPS will have up-to-date information about who owns what and how to get in contact with them.

The cost of a sample will vary massively, depending on the scale of the release, how popular the original track is and how well established an artist you are. Some record companies will want a flat-fee, known as a 'buy-out'. Others will negotiate a percentage of the profits, though they may also insist on an advance. The longer the sample, the more you may have to shell out.

**RE-RECORDING A SAMPLE**
Unfortunately, on the publishing rights side of things, if someone says ‘no’ and refuses consent it’s pretty much ‘game over’ for your sample clearance. Legally speaking you won’t be able to proceed even if the people who have the recording rights have said ‘yes’. However, if you get a ‘yes’ from the publishing rights owner but a ‘no’ from the recording rights owner (or they’re asking for too much money), there is one thing you can do.

You can re-create the sample by playing it yourself or getting someone else to perform it for you (there are companies who specialise in this). That way, you’re not using the actual recording and so you’re not infringing the record company’s copyright. This doesn’t get you out of the need to do a deal with the publishers, but it frees you from needing the record company’s permission. Publishing companies will also want a royalty but not normally an advance.
**SAMPLING SPEECH**

Using a sample of dialogue from a film or television programme will also require clearance. This is very hard to get, especially with films. Hollywood is very protective of its product, so a film company may simply refuse outright or demand such a high fee that it’s not feasible to release the song. It’s a similar case with TV.

As with music, there are two copyrights to clear, one for the script and one for the recording of it in the film. So getting a friend to re-read the dialogue won’t get you round the problem completely. To make things even more complicated actors often have clauses in their contracts which give them the right to be consulted for uses like this. That means more time and expense when trying to get things cleared!

In short, the whole business is pretty tricky. That’s reflected in the extremely small number of records that you hear using samples of film and TV dialogue. If it were easy, a lot more people would be doing it.

**RECORDING COVERS**

If you’re starting out as a new band, the chances are you will spend time learning and playing other people’s songs. This may result in recording and releasing this cover. But, before you proceed you will need to get permission from the copyright owner, which will either be the person who wrote the song or the person/company who the rights were assigned to. The easiest way to find out who owns the copyright is to search on databases like the BMI, ASAP, SESAC or the looking on the PRS For Music website.

You need to get in touch with owner of the copyright to let them know when you plan to release the song, how many copies of the recording you will make, the name of your band and any other details about your plans. As with samples how much you’ll have to pay will vary. You may have to pay a one-off fee or a percentage of any sales.

**GLOSSARY**

Here’s a handy guide to some of the terms that may crop up when it come to signing those all important contracts.

**DEVELOPMENT DEAL**

A deal between an artist and a big publisher where they will assist in building the profile of the act to a wider audience and record companies. They might help find a promotion or plugging agency or fund things like buying equipment and touring. By creating more of a buzz, they’ll up an artist’s bargaining power so the final record deal might give you more control of your career or more favourable terms when it comes to dividing up the money.

**EXCLUSIVITY (OF PUBLISHING CONTRACT)**

A clause in your contract which states that you can’t write songs for anyone else without their express permission. The only exception to this rule is if you were able to be commissioned to write a film score or a theme for a TV show, then the companies that create these productions will want the rights to the music you make for the project. For that reason it’s worth asking for a clause to be added to your
contract that would allow you to do this kind of work without breaching the exclusivity rights of the publisher.

**MINIMUM COMMITMENT**
This is the amount of music you deliver in each contract period.

**ROYALTY TRACKING**
A process where publishers make sure musicians have been paid everything they are due. You don’t need a publisher to be able to query payments with the collection societies but you may need some help keeping track of usage. If you can’t spot potential errors, then you can’t query them. That goes double if your songs are being used heavily abroad. A collection society will simply pass on the money collected on your behalf abroad.

**SUB PUBLISHER**
A smaller publisher who has an agreement with a company abroad who checks that the money matches the likely usage of a song and chase it up. This company is a ‘sub publisher’.

**SYNCHRONISATION**
This is a clause in a recording contract which states that the record company, not the artist, will get all the royalties when their song is ‘synchronised’ to be used in a music video, film or TV show. It would not be in an artist’s best interest to sign a contract of this nature, as they would want the royalties from ‘synchronised’ plays of their songs.

**THE TERM (OF PUBLISHING CONTRACT)**
This is the length of time you are committed to working with your publisher. It’s probably divided into a series of contract periods. At the end of each of these, the publisher will have the option to end the contract or not. For a singer-songwriter the term is normally between four and six albums. A writer, however, will typically be in contract for four to eight compositions. If the publisher takes one of the options to end your contract they’ll still own the rights to anything you’ve written during the time you’ve been with them. Until, that is, the retention or rights period ends. Say you’re dropped after your ‘difficult’ second album. When you’re still in this retention period but released from your contract, you’ll be able to seek a publisher for new material that will end up on your third album. But the original publisher will still own the rights to the songs on your first two albums.

**TERRITORY (OF PUBLISHING CONTRACT)**
This refers to the area that the contract relates to. A publisher will normally ask for this area to be the World - so wherever you run, you’ll still be tied to them. However, some artists have separate deals covering Europe, America and Japan specifically. Your chances of negotiating the territory stated in the contract will depend on how successful you are. If you are a real catch you might be in a position to bargain.