

EXAMPLE OF A LONG-FORM ARTIST MANAGEMENT AGREEMENT WITH EXPLANATORY NOTES

(Taken from the WIPO Publication 'How to Make a Living from Music' by David Stopps)

Every situation is different and will present its own unique set of circumstances. Some countries follow different industry practices which may not be the same as the following example. It is therefore intended to be a guide to understanding long-form artist management contracts, hopefully assisting in arriving at a fair agreement for both parties.

This example is in two parts: the contract and the schedule. Example clauses are shown in italics with notes on the clauses in normal type.

THE CONTRACT

1. *The Artist hereby appoints the Manager who agrees to carry out the Manager's duties in relation to the Artist's career throughout the Territory during the Term.*
2. *The Artist shall pay commission to the Manager at the Commission Rate during the Commission Term on all commissionable income earned by the Artist from the Artist's career.*
3. *The Manager shall pay the Manager's Expenses as defined in the Schedule.*
4. *The Artist shall pay the Artist's Expenses as defined in the Schedule.*
5. *The Artist and the Manager shall each have the right to audit the other's accounts, although not more than once in any (____) month period. Such audit shall require 30 days written notice and must take place within normal office hours. If no objection is raised to an accounting statement rendered by either party within (____) years of its date, such statement will be deemed correct and binding.*

With audit rights, it is common to agree that if the party being audited is shown to have underpaid by more than 10 percent, then in addition to reimbursing the shortfall (plus interest) that party is also obliged to pay the cost of the audit. The right to audit is usually limited to no more than once in any 6 or 12 month period. The period when an objection may be raised is typically 2-3 years.

Then either:

6. *The Manager shall, during the Term, collect all income on behalf of the Artist and shall pay it into a bank account exclusively dedicated to the Artist. The Manager shall only use funds deposited in such account for purposes directly connected to the Artist's career.*

OR:

6. *The Artist shall be responsible for all accounting concerning the Artist's career including all book keeping, tax returns, invoicing, receipts and payments etc. From time to time the Manager will invoice the Artist for Commission which shall be paid within (____) days of receipt.*

If adopting the second approach, ignore sections 8, 9.4 and 9.5 of the Schedule.

It is important that the Manager keeps a separate bank account for each artist. The period by which the invoice should be paid could be anything from 10-30 days.

7. *After the expiry of the Term the Artist shall every (____) months produce statements to the Manager showing all income and Commission due, and shall on receipt of an invoice from the Manager pay the Commission due within (____) days of receipt of the invoice.*

It is normal for the Artist to be obliged to produce statements every three months. The period by which the invoice should be paid could be anything from 10-30 days.

8.1 *The Artist and the Manager shall each have the right to terminate the Term by written notice if the other:*

8.1.1 is declared bankrupt, or enters into a composition or agreement with his or her creditors; or

8.1.2 is convicted of an offence involving dishonesty; or

8.1.3 is in material breach of this agreement and shall not have remedied that breach within 30 days of written notice requiring him/her to do so; or

8.1.4 is incapacitated due to illness or accident for a period exceeding (____) days.

The normal period of incapacity is 3-4 months but it could be anything from six weeks to 12 months. A contract might also provide for a temporary replacement manager in such circumstances. Anyone can have an accident or fall ill and it seems unreasonable that managers, having suffered one

misfortune, then have to suffer another by losing their artists. A period of at least three months would therefore seem reasonable.

8.2. If either party terminates the Term this shall not affect either party's rights or obligations that are intended to continue in force beyond the Term.

9. No variation of this agreement shall be binding unless made in writing and signed by both parties.

10. Any notice or consent to be given under this agreement shall be effective if sent by registered post or recorded delivery to the other party at the address given in the Schedule. Service shall be deemed to take place on the day after the postmark.

11. Nothing herein shall constitute a partnership between the Artist and the Manager.

12. The Artist and the Manager hereby acknowledge that they are advised to seek independent specialist legal advice from a qualified music business lawyer before signing this agreement.

13. The Manager has the right and authority to negotiate with third parties on the Artist's behalf.

14. This agreement shall be governed by (_____) law and both parties agree to submit to the jurisdiction of the courts in (_____)

A manager dealing with an artist who is based in another country and who insists on dealing according to the law of that country must be very careful to research the laws concerning contracts. For example, in California contracts for personal services are restricted to seven years.

15. Terms used in this Agreement shall have the meanings described in the Schedule which is incorporated into this Agreement.

THE SCHEDULE

1. The Artist: (_____)

The artist could be an individual, a partnership or a corporation/limited company. The artist's real name should appear here together with his/her stage name (if any) and current address. If the artist is a band each member's real name together with their stage name (if any) and their current addresses and the current name of the band should be shown. If the artist is a band there could be provision here for changes in the band's personnel with an obligation for new members to be party to this agreement, or this provision could be included in a separate band agreement as described on page ??.

If the artist is contracted as a limited company it will be necessary to prepare an inducement letter in which the artist is held personally responsible for the provisions of the agreement.

2. *The Manager:* (_____)

The manager could be an individual, a partnership or a corporation/limited company. If contracted as the latter, the artist may wish to have a 'key man' clause inserted in the agreement obliging the manager's personal services to be available, failure of which would be a breach.

3. *Territory:* (_____)

If a manager is not managing the artist worldwide he/she would need to ensure that it is clear who the other managers in other territories are and their roles in the international context. If the manager is the principal manager then he/she should have the right to appoint third-party managers in foreign territories. In this case it is important for the manager to ensure that the commission arrangements are clear and that the artists are not paying double commission. Sometimes the principal manager will take half the commission rate in those territories where there is a separate manager, e.g. if the commission rate were 20 percent, the principal manager would take 10 percent and the foreign manager would take 10 percent.

4. *Term* (_____) *years/months commencing* (_____). *Thereafter the Term continues until either party gives* (_____) *months' notice of termination.*

The term could be anything from six months to seven years. Some managers prefer to opt for a comparatively short term, perhaps 12 months, and to have a three-month notice of termination from either side after that period so that, for example, the term continues indefinitely after 12 months until one party gives notice to the other that it will end in three months. The advantage of this is that the manager is in a stronger negotiating position in regard to the other terms of the contract. Artists are also reassured that, if things don't work out, they are not tied to the manager for a long period of time.

On the other hand, some managers feel they will need to invest a great deal of hard work in an artist's career in the early stages, probably with very little commission and that they therefore need a longer term in order to feel secure about making an investment of time and effort.

Another common arrangement is to have a term of perhaps two or three years with options for a further one or two years. The options can only be taken up by the manager if certain income levels for the artist have been achieved.

Yet another approach is to define the term in albums rather than in years. In the 1970s an artist would typically release one or more albums per year. For example, David Bowie released three of his best albums, *Man Who Sold The World*, *Hunky Dory* and *The Rise and Fall of Ziggy Stardust* within a 12-month period from July 1971 to June 1972. These days, however, an artist may be lucky to get two albums released in the first four years. For example, Peter Gabriel releases only one album every eight years or so. It may therefore be a much better approach to define the term as two or three albums in the same way that it is defined in recording and publishing contracts. If this approach is adopted it is essential that a long-stop term be included as a contract cannot be open-ended. For example, two years from a certain date or until six months after the release of the third album, whichever is the longer, provided that in no circumstances will the basic term exceed five years.

In some cases the manager may reach an arrangement with the artist whereby, if the manager is unsuccessful in obtaining a recording or publishing agreement within, say, 12-18 months, then the agreement has an earlier termination date.

5. *Commission Rate: (_____) %*

Notwithstanding anything to the contrary in this Agreement, the Commission payable to the Manager by the Artist in respect of touring and live performance income shall be (_____) % of the gross fees in respect of touring and live performances or (_____) % of the net profit from touring and live performances whichever is the greater.

The generally accepted commission rate for managers in the music industry is 15-20 percent. In practice, however, this can range from 10 percent to 50 percent. Let us take the example of a manager investing a lot of money in a new band and expending a tremendous amount of time and energy. In such a situation it might be reasonable for the manager to take 25 percent or more. It may also be appropriate for a manager to take 25 percent if he or she agrees to manage the artist exclusively. In such a situation it is common to agree that the commission rate reduces to 20 percent if the manager manages more than one or two other artists.

When a very well-established artist seeks a new manager, the latter will know that there is very little or no risk involved and that the artist already enjoys a high level of income. In such a case the manager might be willing to agree a commission of 10-15 percent or even operate on a flat fee basis.

At the other extreme there has been a new phenomenon in recent years whereby a high-level manager has created a band by holding auditions or by taking a band on via a TV talent competition such as *Pop Idol* or *The X Factor*. With the manager virtually guaranteeing massive TV exposure, or in the case of the manager creating the band and investing very large sums of money, commissions as high as 50 percent have been agreed. Whether a court would find this level of commission acceptable in such circumstances

remains to be tested but in such a case it may be better to enter into some kind of joint venture with the band or artist as will be briefly discussed later in this section.

TOURING INCOME

In practice there are many different arrangements in place for touring income varying from a straight 20 percent of the gross to 20 percent of the net profits only. Many tours lose money or break even, often with record company tour support. If the manager only receives 20 percent of the net profits this means he or she cannot take any commission on the tour. Furthermore, the manager has had to pay all of the management staff and office costs etc. connected with the tour. In such a case the manager has done a tremendous amount of work (usually much more than the booking agent) and ends up with a considerable financial loss. Also if there is tour support from a record company, this represents a further loss to the manager as it is usually fully recoupable from royalties which would otherwise have been commissionable. It is therefore clear that 20 percent of the net profits only is unreasonable from the manager's perspective unless the tour is making a substantial profit. A good compromise would be for the manager to take 10-15 percent of the gross touring income (less VAT/other taxes) or 20-30 percent of the net profits, whichever is the greater.

Another approach is for the manager to take a fixed fee for managing the tour or for an arrangement to be worked out on a tour by tour basis by reference to the budgeted costs and income. Yet another basis is that the manager is paid at least the same as the highest-paid person on the tour. The level of an appropriate touring commission rate can be influenced by several other factors: is the manager also the tour manager or the booking agent or both? Is the artist a solo performer or a band? Who is in charge of touring costs? For example, if the manager also provides and pays for the services of a tour manager it would be quite reasonable to fix an all-in touring commission rate of 17.5 percent of the gross.

If an agreement is reached for a percentage of the gross and the artist is unable to pay the manager due to cash flow difficulties, then the amount should be put aside, with interest, and paid when the artist is in a position to do so. This process also applies to commission generally.

Merchandising and sponsorship income associated with a tour or a retail merchandising agreement should be treated separately and should be commissioned at the normal rate rather than included in the calculation of touring losses and profits. However, some phonogram producers may insist that merchandising income forms a part of the overall tour budget and will only pay tour support after such income is included.

When negotiating tour support with a phonogram producer, the manager should insist that management commission is an acceptable tour cost. It is

also important to clarify that merchandising income is not included as tour income in the tour accounts. Some phonogram producers accept booking agency commission as a *bona fide* expense but refuse to accept management commission. Apart from being illogical this is also unfair to managers and artists. It is important to raise these issues with the phonogram producer as early as possible and preferably when the recording agreement is first negotiated. That is the only point at which the manager may have leverage over the phonogram producer. It may also be possible to negotiate with the phonogram producer for the record company to pay the manager a fixed weekly fee when on tour, and international airfares in the early stages of the artist's career when touring will need support.

A 'tour' might be defined as a series of more than six dates in any three-week period. If several 'one-off' dates occur in a month then these can be grouped and the commission calculated on a monthly basis.

As physical record sales are decreasing due to such factors as illegal CD burning and downloading, an artist's income is in many cases shifting from recording and publishing income towards touring income. For artists who have ceased to produce hit albums and hit singles, touring income represents their main income stream so it is very important to consider the above carefully and arrive at fair and workable percentages for both parties.

6. *Commission Term:* (_____)

An accepted principle of artist management agreements is that the manager should continue to receive commission after the term has expired for achievements during the term. In many countries this is known as 'post term commission'. In the US it is known as the 'sunset clause'.

Many managers believe strongly that commission should be payable in perpetuity on income resulting from work carried out during the term. If an album is successful it is generally so because of the combined efforts of the artist, the manager and the phonogram producer. Many recording contracts are for the life of the related rights protection which for sound recordings is currently 50 years from first release in most countries although in some countries it is longer. In the US it is 95 years, Mexico 100 years, and Japan 70 years. Therefore the artist and the phonogram producer will receive income in perpetuity (or for the life of the related rights protection) so why shouldn't the manager? The Manager is usually a key component in the success of an album, and that expertise and hard work deserve to be rewarded if quality managers are to be attracted to the industry. Similarly, the life of copyright for authors currently often lasts for 70 years after the death of the last person who participated in the work, which in practice could be 150 years if the song was written when the author was 15 and he/she died at the age of 95. Post-term commission in perpetuity is something that is likely to be

challenged by artists' lawyers but if it applies to the phonogram producer why should it not apply to managers?

It may be the case that a compromise is reached by which the manager's commission is payable at full rate for a period after the term, which is then followed by one or two periods in which the commission reduces, the last of these being in perpetuity. For example, full rate for the first two or three years following the end of the term of the management agreement and half rate in perpetuity (or until copyright or the related right expires by law) thereafter.

If commission does reduce, a second manager may be able to negotiate with the artist for the difference between the commission being paid to the first manager and the commission rate. If the previous works and/or recordings were commissionable at the full rate in perpetuity by the first manager, it may be a good idea to approach the original manager (with the approval of the artist) to negotiate a commission split on previous works and/or recordings. If a new manager invests a tremendous amount of effort on current and future works, and the work is successful, this could well stimulate back catalogue sales, which would benefit the original manager. It may therefore be in the original manager's interest to encourage the new manager to try very hard in this respect by agreeing to a split commission which would provide a further incentive.

In any case, except in unusual circumstances, the aggregate of the commissions of the old manager and the new would not normally exceed the commission rate. It is also important to define which works will be commissionable on a post-term basis. It could be any of the following:

- (a) Anything created during the term (writing or recording)
- (b) Anything recorded during the term (either demos or masters)
- (c) Anything released during the term.

7. *Artist's Career: All activities in the (_____) industry including without limitation the creation of Works or Recordings as defined in 11 below.*

Either 'music' or 'entertainment' should be inserted here. 'Entertainment' has broader scope and would include such things as literary and dramatic works if appropriate.

8. *Artist's Account: Bank Address: (_____)
Bank Account No: (_____)
Signatories: (_____)(_____)
Interest if either party owes money to the other: (_____) % over the (_____)
base rate.*

This clause allows either the manager or the artist to charge interest if the other party owes them money beyond the normal trading term arrangements.

An invoice is usually payable within 30 days. If a payment of income or corporation tax is late the tax authority will normally automatically charge interest and the situation should be exactly the same in the music industry.

9. Manager's Duties:

9.1 To use the Manager's reasonable endeavours to advance and promote the Artist's career.

9.2 To advise and consult with the Artist regarding collection of income and the incurring of expenditure and to use the Manager's reasonable endeavours to ensure that the Artist receives payment.

It is important that the manager and the artist regularly consult and discuss the development of the artist's career both in terms of assessing its past and present success and its future direction.

9.3 To consult regularly with the Artist and keep the Artist informed of all substantial activity undertaken by the Manager on the Artist's behalf, and to discuss the Artist's career development generally and to periodically offer constructive criticism.

9.4 To maintain records of all transactions affecting the Artist's career and to send the Artist a statement within (_____) days of the end of each calendar quarter disclosing all income, the source of income, expenses, commission and other debts and liabilities arising during the preceding three months.

The period between the end of the quarter and the statement can be anything from 30 to 120 days. It can often take a considerable time to document and account the financial activity of a particular quarter, especially if the artist is on a world tour. If the accounts are late for any reason, an artist may feel he/she has a reasonable claim for breach of contract. Supplying the accounts 120 days after the quarter end is not unreasonable, and for those cases where a tour straddles two accounting periods it may be necessary to have a one-off agreement signed to the effect that the accounting will be deferred to the end of the period following the end of the tour. In such a case it is important to have a clear written agreement signed to this effect before the start of the tour.

9.5 To obtain the Artist's approval for any expenditure over (_____) for a single cheque or (_____) over a period of one calendar month.

This is sometimes seen in artist management agreements, and provides the artist with some protection against the manager misusing his or her money. In practice it is vital that there is trust between the artist and the manager. This limitation can also be a practical problem if, for example, the manager is in South Africa and the artist is in Australia and funds are needed quickly.

9.6 To advise the Artist on appointing booking agents, accountants, lawyers, sponsors, merchandisers and other agents with due consideration to the Artist's moral views.

It is important that both the artist and the manager feel comfortable and are able to work with third-party professionals. It is also important that the manager is aware of the artist's political and moral views and does not commit the artist to anything inappropriate.

10. Artist's Duties:

10.1 To carry out to the best of his/her ability and in punctual and sober fashion all reasonable agreements, engagements, performances and promotional activities obtained or approved by the Manager.

10.2 To attend punctually all appointments and to keep the Manager reasonably informed of the Artist's whereabouts and availability at all times.

10.3 To reveal to the Manager all income including but not limited to public performance income, touring overages and radio and television appearance monies paid directly to the Artist.

10.4 To refer promptly all approaches and offers from third parties concerning the Artist's career to the Manager.

10.5 Not to engage any other person to act as the Artist's manager or representative in connection with any aspect of the Artist's career during the Term.

10.6 To consult regularly with the Manager concerning the development of the Artist's career and to accept that it is part of the Manager's job to offer constructive criticism from time to time.

10.7 To keep the Manager fully informed and to consult regularly concerning all anticipated expenditure to be incurred by the Artist, and to obtain the Manager's approval in regard to recording costs, video costs, equipment costs and touring costs.

11. Works and Recordings shall include:

11.1 Sound recordings (including demos)

11.2 Visual recordings including film and video

11.3 Literary, dramatic and musical works

11.4 Merchandising, sponsorship of any name, logo, artwork or trade mark owned by or associated with the Artist.

11.5 Performances and appearances by the Artist in concert, on radio, television or film.

11.6 Recordings of other artists produced, engineered, programmed or arranged by the Artist.

In each case (11.1 – 11.6) created or substantially created during the Term.

12. *Income shall mean both 12.1 and 12.2:*

12.1 Commissionable Income:

All gross fees and sums of money payable and accruing to the Artist in respect of exploitation of the Works and Recordings or otherwise arising from activities in the Artist's career excluding Non-Commissionable Income.

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12.2 Non-Commissionable Income:

12.2.1 Sums paid by or on behalf of the Artist as budgeted, recoupable recording costs or budgeted recoupable video costs.

12.2.2 Royalties, advances or fees paid or credited by or on behalf of the Artist to any third party producers, mixers, programmers or engineers to an agreed budget.

12.2.3 Monies paid or credited to the Artist as tour support to an agreed budget.

12.2.4 In the event that the Artist enters into a separate production and/or publishing agreement with the Manager then income from such agreements shall be non-commissionable income.

The word 'budgeted' has been included in the above to allow for the commissionable income to be calculated in a fair and reasonable way. The responsibility for budgeting should rest jointly between the artist and the manager, but if, for example, the recording costs for an album go heavily over budget, it may be necessary for them to come to an agreement as to how much commission should be taken.

The modern tendency is for recording contract advances (sometimes called 'recording funds') to be inclusive of recording costs and if this is the case, the manager and the artist are faced with the problem of deciding how much of the advance should be set aside for recording (which is non-commissionable income) and how much should be regarded as commissionable income. It is a good idea to come to a separate written agreement with the artist every time a

new album recording advance is received so that an agreed level of the advance is deemed to be commissionable income. For instance, it could be the case that the entire advance is spent on recording costs, in which case the manager would earn absolutely nothing.

It may also be possible to insert a re-assessment clause whereby both parties agree on an adjusted level of commissionable income when the recording of the album has been finished. Also, if the artist buys recording or other equipment with the advance this should be regarded as commissionable income as the artist is acquiring an asset. Alternatively, an agreement could be reached for the cost of this equipment to be regarded as non-commissionable income at the time of purchase but that if and when it is sold the manager is entitled to the commission rate applied on the sale price. If the management term expires and the artist wishes to retain the equipment, the artist should pay the manager the commission rate on the value of the equipment on the date of expiry of the management term.

13. *Manager's Expenses:*

See the previous example in Annexe B of a typical list of Manager's Expenses.

14. *Artist's Expenses:*

See the previous example in Annexe B of a typical list of Artist's Expenses

End of Schedule and example of a long-form contract.

Taken from the book 'How to Make a Living From Music' by David Stopps
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