



The Music-Preneur Mindset Podcast

EP14: Don't Get Screwed!



You're listening to Episode 14 of the Music-Preneur Mindset Podcast.

Hey there! You're listening to Episode 14 - Don't Get Screwed!

I'm your host, Suz - a mindset coach to help freelancers and DIY musicians become full-fledged music-preneurs by building sustainable careers in music.

Last week, in Episode 13, we spotlighted our very first music-preneurs - Sub-Radio. If you haven't had a chance to listen, I highly recommend it!

Each month, from here on out, I'll be highlighting 1 music-preneur in an interview-style episode, so be sure to subscribe if you don't want to miss the next one!

But enough about the past and the future. TODAY I want to discuss the legalities of being a music-preneur.

As a paralegal for over 5 years, I saw so many people walk into my bosses' shop to find protection from a lawsuit that didn't have to be there if they had just protected themselves from the beginning.

It's hard enough to get most musicians excited about learning the business side of the music industry. But for many, including a good number of the business-minded folks, the legal side of things continues to elude them.

Many hear "contract" and immediately think of endless paperwork and paragraph upon paragraph saying something that most could convey in 5 seconds with 2 sentences.

You ever feel that way?

While effective contracts can be as little as one page, depending on the situation, the verbosity used in most contracts is there for your benefit. Think of it this way - the more vagueness or ambiguity that exists, the more room there will be for a good lawyer to find a loophole or argue a different interpretation of what's written to win a case in favor of their client.

The more crystal clear a situation is the less of a chance there is for someone to screw you over. But, if you don't read the contract and familiarize yourself with what that situation truly entails, the more likely you are to either violate the contract {which could lead to additional legal fees and fines} and/or be taken advantage of without ever knowing it.

Lawyers aren't just there to dig us out of holes, they're there to help make sure we never fall into one in the first place. Yet time and time again well-meaning people find themselves in legal nightmares because they avoided doing their due diligence either out of fear that they'd never understand it or because they didn't want to spend the money it would take to do so from the start.

We call that penny wise, pound foolish.

Here's the thing - when we sign our name to something we commit ourselves to an agreement with another party, one that is either impossible, expensive, or messy to get out of should the need arise.

Think about it this way: In most states, in order to drive a car you need to pass a test and have insurance; it's set up that way to protect you and everyone else around you on the road. But when it comes to signing an agreement, there's no test; there's no course you have to take before you're able to sign your name.

Your only insurance is educating yourself on what you're signing.

In the music industry musicians face even tougher situations when money is scarce and hunger is high. We are quicker to sign our names to something if we feel intimidated by people we think know more than we do, and if we think we *need* them to get where we're going.

The best way to ensure that doesn't happen is to educate ourselves so we enter into agreements with confidence, believing that we are not below anyone else and have the right to question what they are offering.

So first, identify you're hang ups. Is it the legal jargon? Is it the rush to get somewhere? Is it the fear of not having enough money to feel protected? Is it feeling invincible?

Sometimes it also may be the feeling of not wanting to cause waves. When we feel as though the other side is the "expert" we think, "Well, who am I to question them? They must know more than me." We sign what's in front of us, thinking if we take time to read it over we'll be seen as if we don't trust them or if we're questioning them.

Can you relate to that?

As someone who works with contracts on an almost-daily basis, I am constantly encouraging clients to take their time with what I send them, making sure they read it over carefully and contact me with any questions or concerns.

As someone who wants a thriving collaboration, I want to make sure the other party I'm working with knows what they're getting into and is ready to show up in the way we've agreed upon.

Reading contracts thoroughly helps not only you, but those you're going into contract with - so don't feel the need to rush the process.

If someone is rushing you or making you feel as if they would be offended if you looked it over bells & whistles should be going off in your head and you should really reconsider doing business with them.

And let's be clear - it is ALWAYS important to have a contract. It's not always about protecting yourself from a lawsuit. Contracts set the standard for what a certain collaboration will be, and *won't* be.

Even something as basic as a Split Sheet Agreement, which is a simple form that collaborating songwriters fill out to delineate who's contributed what to a song in terms of ownership percentages, can not only protect you if someone tries to steal your music, but it also keeps everyone on the same page regarding Copyright ownership.

I sell copies of a Split Sheet Agreement on my site, but I've provided a link for you to download for free in the show notes. Simply go to www.therockstaradvocate.com/ep14 to access it.

As uncomfortable as it may feel to be the one to suggest all parties get this stuff down on paper, remind yourself you're not being paranoid, but rather providing clarity for everyone who is working together on a project.

Getting the paperwork out of the way in the beginning can allow for a much smoother working relationship moving forward, as everyone can be clear on expectations, roles, and responsibilities.

Now that I've explained the importance of having a contract, and why some avoid it, I want to discuss the importance of understanding what is *in* that contract you are signing.

So many artists make it their goal to get a record deal. Based on what they see and hear, nothing is more "legit" than an artist who is signed to a label.

It is important to know, however, that in this day and age it is not and *should not* be the end-all-be-all as far as goals go.

A musician's focus should be on building an authentic, engaged fanbase. However, in the chance that a label deal is in your future, it's important that you be on the lookout for common clauses many record deals include.

While many of these clauses are non-negotiable for artists with little to no leverage, being aware of what you're signing will at the very least help you make intelligent decisions moving forward, such as how you spend your advance and/or how you manage your other streams of income.

The Future of Music Coalition has a breakdown of many of these clauses with thorough explanations as to what they mean. I've put together a shortened rundown of the ones I think are most important for you to know and I'm going to go through them in a moment.

I want to first let you know about this week's free download. As you may know, each week I provide a free checklist or worksheet to help you take action on what we've discussed.

This week, I'm including a free download of my Contracts eBook, which is for sale on my website. Inside you will find all the things we discuss here today, including these clauses and links to additional resources, including the Future of Music Coalition's more indepth look at contracts.

So stay with me, but don't worry about taking notes. It can all be found in the eBook that you can access in the show notes after our time here together is over. Ok, let's begin.

I must first protect both of us by saying I am not a lawyer and anything contained in this episode should not be construed as legal advice. Always consult a lawyer before entering into an agreement.

What I'm about to go over is for educational purposes only. Now that that's out of the way...

The first clause you should know about is the **Transference of Ownership** clause.

Unless otherwise decided by a court of law, you own 0% of any *sound recording* copyright created during the term of the contract. Now remember, there are 2 copyrights to every song - the underlying composition {controlled by the publisher} and the sound recording.

You don't make *any* money off of your recordings if and until you sell enough to make back {aka recoup} all the money spent by the label on manufacturing, distributing, and advertising your record.

Transferring your rights mean that you no longer have the power to license the music to a 3rd party {such as a TV show, film, video game, commercial, etc.} to exploit your music. This is one of the 6 exclusive rights of the copyright owner - and under your contract that copyright owner is the label, not you.

Even though you may remain the copyright owner of the underlying work {the lyrics & melody} the contract will most likely include a clause that says no re-recordings will be allowed until all monies are recouped and/or a

specified amount of time has passed after your term is up under the contract.

Which brings us to **Length of Term & Perpetuity**.

There is the term of the contract and then there is the term of ownership of your copyrights. While the "Contract Period" may end in eighteen months, or once an album is delivered, there are usually other clauses in the contract that affect your career and your ability to make money off of your music for a great deal longer. So make sure you are clear on all of the deadlines and expiration dates laid out in the agreement.

The **Key Man Clause** is another matter you'll want to be familiar with and understand.

The music industry often involves key relationships - as they say, it's a who you know business. However, while you may get a record deal with or due to someone you know, the industry is also a fickle bitch and that person who worked so tirelessly for you may no longer be there and replaced by someone who sees you as just another notch on their roster.

If, in the rarest of cases, the Key Man Clause is included in your contract, you would have the ability to get out of your contract if a certain person responsible for getting you the deal is severed or transferred from the label or agreement.

So, before you go promising your ride-or-die team that you're all in this together, understand that you may have to ensure they are taken care of

all on your own - the label may very well decide to only do business with *you* and use their team moving forward.

Next is understanding **Delivery vs. Acceptance**.

Your contract may very well have a delivery clause that demands you produce an album by a certain date. However, what it also may say is that the label has the authority of final "acceptance" meaning they can deem whether or not material is considered "commercially satisfactory" or "technically satisfactory." If you fail to deliver an acceptable album to the label within the given time frame you may be liable for certain cures & remedies aka fines or termination.

The **Controlled Composition Clause** deals with royalties.

There are a number of royalties connected to a sound recording - mechanical royalties, sync royalties, performance royalties, and so on. Aside from advances, labels pay mechanical royalties to a songwriter for copies made of the sound recording {not counting promotional copies which usually account for approximately 15% of copies made}.

However, while the U. S. Copyright Office determines the statutory rate for royalties {or the amount of money you're paid per copy}, and increases it every two years to keep up with the costs of living, this clause allows labels to create a loophole and limit the costs of mechanical royalties paid to the artist.

This is where points come in - they assign artists points on a recording - which count as a *percentage* of the statutory rate AND they lock in the rate based on the date the contract is signed {regardless of when the album is delivered or sold}.

So if they shelve your album for 2 years, and the statutory rate has increased during that time, according to your contract, this clause will make it possible for the label to pay you a percentage of the rate that existed when you entered into the contract.

In addition, while the Copyright Office increases the rates paid for songs over 5 minutes, this clause makes it possible for labels to pay the same rate for a 2 minute song as they would a 10 minute anthem.

The clause also often puts a cap on the amount an artist can earn, paying only up to a 10-song album, while the Copyright Office allows for higher royalty payments on an album with 12 songs or more.

Additionally, royalties owed to other copyright owners {for samples or covers or producer's exclusive tracks} that go beyond this cap must be paid out by the artist.

If I lost you anywhere, to catch you up - the Controlled Composition Clause basically fucks you if you plan to make any money from your songs.

But let's keep going! The **Cross-Collateralization Clause** is even more fun!

It states that if you sign a new contract with the label, say after the term of your first contract is up, or you go onto sign another contract with an affiliate company, this clause is commonly in there to make sure any future royalties you make under the new contract can be used to recoup any and all monies not recouped under prior contracts. Consider it “the song that never ends. Yes, it goes on and on my friend.”

The **Reserve Limits, Accounting, & Audits Clause** is a little kinder... but not by much.

In case an artist feels that there is a discrepancy in the royalty payments they’ve received, the label has most likely already placed a clause in the contract that limits the amount of time the artist has to secure an audit of the label’s financial records, the conditions under which they may request an audit, *and* the form in which the audit is paid for {hint: usually by the artist}.

The cost of an audit out of pocket often exceeds the amount by which any discrepancy in royalties may exist. In other words, by the time you hire someone to perform an audit, you’ve already lost more money than the amount you may feel you are owed.

It’s purposely made very difficult for an artist to audit their label. It is suggested that this be a talking point before signing a contract in order to get a feel for the transparency and good-faith that exists at the label.

Have I bummed you out enough yet? I’m not saying labels are the devil, but they are out to protect themselves and their investment.

As much as you'd like them to pay for all your shit, it's important to realize the actual costs of doing so, which is why I believe it's foolish to build a career in music for the sole purpose of being signed.

It doesn't mean you shouldn't take a deal, it simply means you should focus on making the best deal for your situation, whatever that may be, and educating yourself on these points is the best way to know what that deal looks like for you.

Even though it's important to rely on a professional, it's important that you familiarize yourself with terms you will commonly find in legal documents.

Knowing the language allows you to be able to ask the right questions and catch something that may be "off."

Consider this your little audio-pocket cheat-sheet, and remember these terms are also found in the eBook that's available for download in the show notes at www.therockstaradvocate.com/ep14.

Advance - Money given to artist to cover expenses of album, recoupable by lender from sales.

Assignment -Transferring terms/rights/obligations of a Contract from one party to a third party.

Copyright v. Trademark - (c) protects literary/dramatic/artistic work. ™ protects word/phrase/symbol such as your logo.

Cure - The ways in which a party can amend/make acceptable something to the other party in a specified amount of time before they are found in violation of the terms of the Contract.

Delivery - The terms/date in which an artist is expected to produce a (acceptable) product to the label.

Exclusive Rights - Rights afforded to copyright owners with the ability to license their work to others. You can find these rights listed out in the eBook.

Force Majeure - Clause that frees all parties from liability/obligation to uphold the Contract due to “acts of God” or forces beyond their control, like a tornado or hurricane or anything similar.

Licensor v. Licensee - The party granting permission is the licensor and the party obtaining the license is the licensee.

Master Use - Permission needed from the owner of a master recording {in most cases the label} in order to use a sound recording.

Option - The irrevocable right of a label to extend the Contract at the end of the Term. Basically, whether you want to or not, they have the power to extend the term of your contract.

Recoupment - Money earned from sales used to payoff advances by lender, such as the record label.

Renewal - The right of one/both of the parties to continue to the term of the Contract for a specified amount of time.

Royalty - Money paid to copyright owner(s) for use of their music.

Severability - Explains each of the clauses of a Contract are to be treated separately, in case one clause is deemed invalid or unlawful, the other clauses will still hold as enforceable, ensuring that finding an issue with one clause will not sever the entire agreement.

Synchronization - Combining, or synching, music with visual arts such as film, ads, video games, and so on.

Term - Refers to either a length of time or number of albums in which the Contract is in play, or active.

Territory - The geographical area in which a label is granted permission to sell an artist's music, usually it is listed as global.

Those are the most common ones you'll want to familiarize yourself with so you are able to ask the right questions.

Speaking of questions, the last thing I wanted to touch upon in today's episode are questions you'll want to ask when hiring a lawyer.

And yes, these questions are also in the eBook.

When you are paying someone to look after your best interests you shouldn't just hand that responsibility to anyone. The client-lawyer relationship is a sacred one so make sure you take the time to properly vet the attorney you decide to work with.

Donald S. Passman, author of *All You Need To Know About the Music Business*, aka the bible of the music industry, provides guidelines in his book for properly interviewing your attorney.

The following are examples of questions much like the ones found in his book that you can use to make sure you've found your match.

Should you have other questions you want to make sure to ask, there is space in the eBook to jot those down.

#1 is: What is your experience with the music industry & entertainment law specifically? How many years have you practiced? This is important because being a lawyer doesn't mean they know the law of your particular industry.

Don't ask Uncle Ted, a divorce attorney, to negotiate a record contract for you. He will most likely be unfamiliar with current rates, fees, advances, and so on.

#2 is: What charges can I expect beyond legal fees? What costs of labor are charged to the client? This is important because many musicians don't realize that every time they call their attorney or the attorney calls

them, or makes photocopies, or covers meals, or postage, it's usually on the client's dime.

#3 is: May I take a copy of your retainer or fee agreement home with me to review? Can you also walk me through it? This is important because, just like any other contract, you want to know how transparent the person you're working with is willing to be. If they charge you for going over the terms of working with them, you may want to think twice about this fit.

#4 is always good to ask: What other musicians have you worked with and what level of their career were they at when they started with you? Anyone that would cause a conflict of interest?

I'll be honest, I usually hate the question "who have you worked with?" because it shouldn't matter to you who has hired me, but rather the results I've gotten for my clients. I'm not in charge of the deals they sign or who they do business with.

Beyond how much time I spend with them, the type of work I do with someone who may be signed to a label is not any different than the work I would do with an independent.

When it comes to hiring a lawyer, however, it's important to know who they have worked with because you want to know the types of deals they've negotiated, as you don't want to be paying top dollar for an attorney who is used to cutting major label deals if you are just starting out.

In addition, knowing who their actual clients are is important in order to know if a conflict of interest may exist.

#5 is: How accessible are you in case of an emergency? Just like interviewing a doctor, it's important to know what the protocols are should an emergency arise. Will you be able to reach them directly or will one of their underlings be assigned to help you?

#6 is an important one: In what states are you able to practice law?

Much like not relying on a divorce attorney to negotiate your deal, an attorney who practices law in CA may not be familiar with certain state laws that exist in NY and not legally allowed to practice in your state.

And lastly, you'll want to ask: Have you ever taken suits to court? If so, how many? Again, it's important to know their level of experience, not to say you shouldn't work with a lawyer who hasn't been to court, but you should want to know that up front.

Is your head spinning yet?

If you're still with me I applaud your tenacity and I encourage you to go to the show notes and download the free eBook, as it will walk you through everything we discussed here today PLUS what you'll need to know in regards to copyrights, and so much more.

Everything we discussed can be found at www.therockstaradvocate.com/ep14.

Thanks so much for listening, Rockstar! I hope you've found this information helpful and empowering.

Never run away from something simply because it's new information. When you're faced with a legal task, take the time to educate yourself so you don't get screwed!

If you enjoyed what you learned today, you can access all current episodes using your podcast platform of choice, including iTunes & Spotify, or by visiting www.therockstaradvocate.com/podcast.

In the meantime, if there is any way that I can help you overcome certain business hurdles, breakdown new information, or get some clarity on whatever it is you're going through, I'd be more than happy to!

Feel free to email me at any time: suz@therockstaradvocate.com.

Until next time, Rockstar! Have a wonderful week and I hope to see you back here next Wednesday so we can get grounded to get rising! Take care.