Artist/Management Contracts, pt. 1: How Long is Long? by Richard P. Dieguez
Posted: Monday, August 28th, 2006 by Will Dayble

Next to a record label deal, the artist management contract is the most exciting agreement an artist will sign. As with any legal document, a contract shouldn?t be signed without the advice of a music attorney. In addition to being your legal counselor, your attorney is also your advocate because his is especially needed to play the role of the ?bad guy.?
What I mean is that there are many aspects of the contract that will have to be negotiated. It can be somewhat awkward if you and the manager were to try negotiating these points on your own because you may end up putting a strain on the close working relationship you?re supposed to have with each other.
The attorneys for each side, however, are disinterested third parties who have the objectivity and professional training to vigorously fight for their client?s interest without (hopefully!) coming to blows or shouting matches. So let your lawyer take the blame for ?asking too much? or for being such a ?tough negotiator? ? that?s what he is being paid to do.

There are at least three big questions in artist management contracts that you and your lawyer have to ask: how long will the agreement be in effect; how much will the manager get paid during the agreement; and how much will the manager get paid after the agreement has ended.
How you ultimately answer these questions is the result of what can be some heavy negotiation. Why? Because these questions cover areas where your interests are not going to coincide with those of your manager. The goal of the negotiating process is to produce a deal that will be fair to both sides.

Consider the first big question. You and your manager are each likely to have a legitimate difference of opinion as to the amount of time for which the contract will be binding. From your point of view, you would generally want a short-term contract. If it turns out, for any number of reasons, that you?re not happy with your manager, you want the assurance of being freed from the contract within a short period of time.
After the initial excitement wears off, for example, you may come to feel that you and your manager don?t really get along well. Or perhaps it turns out that he or she isn?t as experienced or doesn?t have all the contacts and ?pull? that he said he did. Maybe he?s simply not doing his job effectively. Whatever the reason, you don?t want to get locked in with a loser for the next seven years.

But now put yourself in the manager?s shoes. Generally, he will want the contract to be as long as possible because his compensation is based on a percentage of whatever money you make. Not every artist out there is going to be an overnight success. Chances are that your manager?s early efforts will not result in financial success for you until much later. So that manager will want a contract that will last long enough for her to enjoy the rewards she toiled for in the beginning. Nothing can be more frustrating for a manager than to have her budding artists go to another manager, where they then make it to the big time.

So depending on the particular circumstances of the parties, the negotiation will center on a contract term ranging from as short as six months to as long as several years. What length of time is fair really depends on what you and your manager are each bringing to the relationship you wish to form.

For example, let?s say that neither of you has too much experience in the music business. In this situation, you?re both probably better off with a short-term contract, like six months or one year,

so that you can check each other out without getting locked in to a big commitment. You can always enter into another agreement if it turns out, at the end of the contract, that you have a future together.

This ends part 1 of the article. The other two sections are available in the main articles section of the site.

This entry was posted by Will Dayble on Monday, August 28th, 2006 at 10:04 pm and is filed under Articles. You can follow any responses to this entry through the RSS 2.0 feed. You can leave a response, or trackback from your own site.
2 Responses to “Artist/Management Contracts, pt. 1: How Long is Long? by Richard P. Dieguez”

1. ralph m. Says:
   October 18th, 2006 at 9:57 am

   I know that i may sound really cheap asking this question but:
   is there any site that i can go to, to download a managers contract for free?
   please email me with any info, or if you know the cheapest price i can get it for.
   thanks.
2. Will Says:
   October 18th, 2006 at 2:06 pm

   Hate to say I’ve got no idea… I’d guess as each contract is different depending on what you want the agreement to be like, you couldn’t really do it ‘from the box’ as it were…

Artist/Management Contracts, pt. 2: Time and Money by Richard P. Dieguez Posted: Monday, August 28th, 2006 by Will Dayble

We finished the last installment of this article looking at the artist-manager relationship on the more inexperienced end of the spectrum.
Now let’s take the other extreme and assume that both you and your manager are established veterans of the music business. Under these facts, it may be more practical to enter into a long-term contract, since you will each presumably have some track record of success. In this situation, the risks involved are not as great as they are when you?re both newcomers to the business. Perhaps you and your manager will fall somewhere between these two extremes.
What happens if you can?t agree to a fixed amount of time?
Well, to satisfy both parties, the attorneys can always try to hammer out a compromise: a short-term contract with the potential of being converted into a long-term contract. For example, the parties could agree to a one-year contract. Part of the agreement, however, would be that the manager must meet certain conditions during this one-year period ? such as getting you a record deal, a publishing deal or even guaranteeing that you earn a minimum amount of income. If the manager fails to meet the conditions, then the contract ends when the year is up. If, however, the manager is successful in meeting the conditions, then he has the right to automatically extend the contract for an additional period of time, say for another year. Under this kind of an arrangement, the best interests of both you and your manager are met.
Guess what the next subject of negotiation will be? That?s right. Money. The custom is for the manager to work on a commission. In other words, the manager gets compensated for his efforts by taking a percentage of whatever income you earn as an artist. Obviously, your attorney is going to try to negotiate for as small a percentage as possible. Your position will be that ultimately it?s your guitar virtuosity that will make you a success. You?ll argue that the manager simply manages, and without your talent, there is nothing to sell to the labels or to the publishers. Therefore, you?ll confidently conclude, the manager?s commission should be negotiated toward

the low side since you are entitled to keep as much of the money your talents have earned as possible.

But, as you should soon be appreciating, there are two sides to every coin. The manager?s attorney is going to negotiate for as high a commission as possible. Their position will be that there is a lot of talent out there ? especially in the major music centers like California and New York ? and that the difference between those who make it and those who don?t is the quality of their management. Without the manager, your career development may slow down to a crawl. Why? Because instead of honing your talents, you?ll be too busy running around doing all the things that a manager is supposed to be doing. Talent is important, but without a manager exposing you to the people who can make a difference, you?re just another unknown basement band.
Money:

The custom is for the manager to work on a commission. In other words, the manager gets compensated for his efforts by taking a percentage of whatever income you earn as an artist. Obviously, your attorney is going to try to negotiate for as small a percentage as possible. Your position will be that ultimately it?s your musical virtuosity that will make you a success. You?ll argue that the manager simply manages, and without your talent, there is nothing to sell to the labels or to the publishers. Therefore, you?ll confidently conclude, the manager?s commission should be negotiated toward the low side since you are entitled to keep as much of the money your talents have earned as possible.

But, as you should soon be appreciating, there are two sides to every coin. The manager?s attorney is going to negotiate for as high a commission as possible. Their position will be that there is a lot of talent out there ? especially in the major music centers like New York, Los Angeles, Nashville and London ? and that the difference between those who make it and those who don?t is the quality of their management.

They will also point out that without the manager, your career will slow down to a crawl. Why? Because instead of honing your performance, songwriting and recording skills, you?ll be too busy running around doing all the things that a manager is supposed to be doing. Talent is important, but without a manager exposing you to the people who can make a difference, you?re just another unknown artist. So what?s the range of the amount of the commission? It can generally be anywhere from 10% to 25% of your gross income. But as I have stressed before, the amount that is settled on may very well depend on the circumstances. Again, the art of compromise may bring new life to a negotiation that is at a deadlock on the issue of the commission amount.
Money - Negotiation Ideas:

The amount of the commission can be anywhere from 10% to 25% of your gross income. But as I have stressed before, the amount that is settled on may very well depend on the circumstances. Again, the art of compromise may bring new life to a negotiation that is at a deadlock on the issue of the commission amount. The attorneys can suggest that the commission percentage be staggered. In other words, your attorney can suggest, for example, that the first $25,000.00 of gross income will be commissioned at 10% and the next $25,000.00 of gross income will be commissioned at 15%. The manager?s attorney may rearrange these numbers and offer a counterproposal. Some further give and take may be necessary before something is finally agreed upon.

Regardless of the particulars, the concept here is that the lower percentage rate should be satisfactory to you, while the manager is also given an incentive to make a bigger percentage if

he can get you to earn in excess of a certain amount of gross income. And, of course, getting you over that amount, whether it?s $25,000.00 or whatever, will be to your benefit as well. As you can see, the concept of staggered commissions is an alternative compensation plan that can be suggested during negotiation, but, even so, the actual percentage rates and the income levels when these rates kick in must still be negotiated. Another factor in this negotiation is determining which of your income-earning activities will be subject to the commission.
The manager will try to have his commission apply to every conceivable entertainment-related activity from which you could possibly earn an income. Examples of such money-making activities would be live performances, record sales and the sale of promotional merchandise such as T-shirts, posters, buttons, programs and pictures. So if you feel that the commission rate the manager is asking for is too high, you can try to compromise by proposing that you?ll accept the commission rate, but only if certain activities are excluded from the commission.
Your attorney may want to suggest, for example, that the commission not apply to any publishing income you earn from your songwriting activities. If you are multi-talented and occasionally earn extra money as a model or actor, your attorney may argue that these activities be excluded from the manager?s commission as well. However, if the manager insists that all your activities be commissionable, then you may want to agree, but only if the commission rate is lowered.

Artist/Management Contracts, pt. 3: After the Contract Ends by Richard P. Dieguez
Posted: Monday, August 28th, 2006 by Will Dayble

So far we’ve discussed the issues involved in negotiating the manager?s compensation during the life of the contract. Another touchy subject that is especially close to the manager?s heart, is whether he will continue to get a commission on gross income earned by the artist after the contract has ended. Your response will probably be ?of course not!? After all, once the contract is over, neither party has any further obligation to the other. The manager shouldn?t continue to get paid when his isn?t even the manager anymore. He got paid enough when he was the manager. Besides, you may feel that despite the manager?s efforts, there comes a point when the band becomes somewhat established enough to sell itself with little help from the manager. So once the contract is over, there should be a clean break. No more ties.

Well, maybe not. During the course of the contract, and through the manager?s efforts, you may be fortunate enough to have signed some money-making deals. For the life of the contract, you earn money from these deals. As agreed, the manager gets his percentage and you keep the rest. But it may be that your money-making contracts will still be in effect for quite some time after your management contract has ended. Since you will continue to profit from a deal he helped you obtain, the manager may feel that he should also continue to profit even after the artist-manager relationship legally ends.

Consider another scenario. During the course of the contract, and through the manager?s efforts, you are fortunate enough to take part in negations for some money- making deals. But the final handshake on these deals may not take place until after the contract with your manager has ended. As a result, the money earned from these deals doesn?t start pouring in until after the contract has ended. Again, the manager will want to enjoy his percentage of the profits you are earning from a deal that had its genesis with the artist-manager relationship ? even after the relationship has legally ended. But before you agree to compensating your manager after the contract ends (after all, you?ve learned by now that there are two sides to every coin), consider yet another twist. If you enter into a contract with a new manager, that new manager will probably be no different from your former manager on the question of compensation. The new manager?s attorney will probably demand that the commission apply to every conceivable entertainment-related activity from which you could possibly earn an income. And this would include the money

pouring in from deals your former manager obtained! You don?t need me to tell you that you wouldn?t want to be stuck paying two commissions on the same money.

Well, skillful lawyering can help straighten out this mess too. Remember the staggered commissions we discussed? A special schedule can be set up whereby the manager continues to get compensated after the contract has ended, but with the commission rates adjusting downward as certain income levels are reached. You may even want to try something like limiting this compensation to say three years after the contract has ended. If you can get your new manager to accept a staggered commission schedule on the moneymaking deals of your former manager, you can greatly alleviate the financial drain of paying two full commissions on the same income.
Conclusion:

If you?ve read this entire article, you?ll begin to appreciate how the negotiations can go around and around until everyone settles on a deal they can live with. Of course, there are many other aspects of the artist management contract that will be subject to negotiation. An issue may be made of as to who collects the income: the manager, you or maybe a third party like a business manager or accountant. Another traditional sticky point is the extent of the manager?s authority to sign contracts on your behalf.

There may even be some negotiating points that to you and the manager don?t seem crucial, but to the attorneys seem to mean everything. For instance, the attorneys may wrangle over whether all or some breaches of contract must be brought to arbitration rather than litigated in court. You may even find the attorneys considering which law applies to disputes arising from the contract. Will California law, New York law or some other state?s law apply? Perhaps it?s even a question of whether the contract is governed by American law or English law.

In fact, the personal circumstances surrounding any given artist management contract can be so unique, that I suppose the three big questions covered by this article may actually end up being among the easier things to negotiate for some artists and managers. A point that can be agreed upon in five minutes between an artist and a manager on one deal, may bring about a deadlock for another artist and manager in a different deal.

The point is that, unlike your musical instrument, studio or promotional plans, a contract is not something you should try playing solo or doing on your own. But with the professional help of an attorney, there is much room for creativity in the negotiation process to try protecting everyone?s best interests, especially on the difficult points like the time, the money or whatever it happens to be in your case. As you can see, the art of compromise expands the parameters of the socalled ?standard? contract.

About the Author:
An NYU Law graduate, Richard P. Dieguez has over 16 years experience in entertainment law. He has represented hundreds of clients across the U.S. and several nations in music, film, television, publishing and other legal matters. Mr. Dieguez is also the founder of The Circle, a monthly music industry seminar held in New York City. More info on Mr. Dieguez and The Circle is available at RPDieguez.com

Management Contract contents (a few basics)

Q. What should be in a management contract?

A. Artist management contracts--also known as management agreements, personal

management contacts, or personal management agreements--vary tremendously due to the many different types of management deals that exist in today's music industry, so specific deal points would be too extensive to get into here. Regardless of the type of deal, there are some basic elements that should be in any management agreement. Keeping in mind that I'm not an entertainment attorney and that you should definitely consult with one, some of the basic elements every management agreement should contain are:

1. Length of term, including options, the date the contract goes into effect, how much notice is required to pick up the option or terminate the contract, and the procedure for doing so ("in writing").

2. Who the artist's manager is (as opposed to just the name of the management company) and what happens if that person leaves the management company, as well as what happens in the event of incapacitation or death of the manager during the term of the contract.

3. How much the manager is to be paid (the commission rate or if the manager is on retainer, the dollar amount), how often, from what sources of the artist's income, and for how long after the manager ceases to work with the artist. If the manager is waiving fees until the artist gets a deal, the repayment schedule and dollar amount should be included, as well as what expenses are recoupable.

4. What expenses the artist is responsible for, a dollar limit at which the manager must get approval from artist (if the artist tours, to get things done it's impractical for the manager not to have approval up to a certain dollar amount), the manner in which the expenses are to be paid the manager, the frequency and manner expense statements are to be submitted to the artist ("submitted to Artist in writing on the 1st of each month"), and what expenses the manager is responsible for.

5. A mutual indemnification clause. This is essentially a statement that neither of you will do anything to cause harm to the reputation of the other, cause that person to be sued, etc. An example of the wording would be something like:

"Indemnification: XYZ Artist Management, Mr. XYZ, their affiliated companies and/or organizations shall not be held liable for any actions or statements by Artist in the course of the fulfillment of this agreement. Artist further agrees not to take actions that could bring potential legal action or harm to the image or reputation of XYZ Management, Mr. XYZ, and their affiliated companies and organizations."

6. Limited Power of Attorney for the manager. This is a statement that allows the manager to sign contracts and agreements on the artist's behalf when the artist is not available and is often a necessity to get things done when the artist is on tour or in the studio. The clause should give limited power of attorney only; you don't want a power of attorney clause that gives your manager control of all your personal finances.

7. A travel accommodations clause which states that the manager not have better accommodations than the artist and names a dollar limit for the manager's daily travel accommodations for local, domestic, and foreign travel. The local travel clause should state something to the effect of "no overnight accommodations within a ____mile radius of ____(the city where your manager is located)." Don't forget to state who pays the manager's travel expenses.

There will be much, much more. Even a simple management agreement can run more than 10

pages. A few things to look out for:

“in perpetuity” You usually don’t want to see this. It means forever and ever.

Anything more than a limited power of attorney.

No key-man clause (see #2 above).

Anything you don’t understand. Have your attorney explain it to you thoroughly in laymen’s terms until you get it.

Consult an entertainment attorney (your own, not the manager’s; you each need an entertainment attorney) for specifics. Have your attorney explain the confusing parts to you in laymen’s terms, and make sure you understand what you’re signing.

One final note: because it’s sometimes so easy due to the colorful personalities involved, the media have made caricatures out of managers, and they’re usually portrayed in a very bad light. Don’t fall for that cliché. The good ones are boring, so you never hear about them, and contrary to popular belief, there are even some great ones who are loved by their clients (although the industry climate of the past fifteen years has bred fewer of them). Artists who take time to learn about the business, as you are, attract a lot more of the good ones.