

# Getting Paid in the Digital Age: *Record Labels* *By Holmes Rackleff*

As a musician, you probably spend a lot of time thinking about the best way to get your music out to your audience. The right record label can help you distribute and publicize your music, expand your fan base, book successful tours and take on the task of managing the business portion of your band or solo act. Unfortunately, the wrong label might demand ownership of your music, take heavy cuts of your profits without providing any promotional support, or even leave your finished album on a dusty shelf and never release it. Before you agree to sign to a record label, it's *extremely* important to understand what labels do best, and negotiate your deal so that your label can support, not hinder, your success.

Many bands and solo artists sign contracts with labels without reading or understanding what the contract will mean to the artist. Some people view record labels as their saving grace from ramen noodles, open-mic nights, and day jobs. Signing a record deal is a one-way-ticket to heavy play on MTV, right? If a label finally comes calling, you sign whatever deal they put in front of you, right? Labels are the experts, and their A&R representative has your best interest at heart, right? Um, well, maybe?

You don't have to give away the rights to your music. The digital revolution has cost major labels some of their bargaining power. Labels no longer own the only means for production and mass distribution. High quality sound recording can be cheap these days and you probably don't need a

label to front you the money. You can distribute your music online all by yourself. You can use a publisher to help shop your songs for radio play and synchronization licensing. There are a variety of alternatives to record deals for you to explore.

In the past, labels used their front-money and access to distribution as a means to justify label ownership of the artist's Masters. But while recording full-length albums used to cost a small fortune, you can now record your own songs for the cost of software and equipment or even for free if you use a musician's co-op. It's important to understand that the recent drop in recording cost, together with the increased ease with which you can now distribute your music online, reduces the bargaining power of large record labels.

ELLA is not advocating that you should go it alone rather than sign a recording deal. Good recording deals give artists wonderful opportunities to grow creatively and gain new fans. You can sign with a label, just be clear about what they really have to offer.

You generally have three main label options; (1) no label, (2) indie label or (3) major label. Many companies may spread themselves over two of these categories, but the distinction can help you get started in understanding your options. To help you decide what's best for you and your music career, ELLA created a chart of pros and cons. The chart on the next page includes the services you can expect from the option you choose, based on industry standards and educated observations.

## Label Options: Pros and Cons

Features	Do It yourself	Indie Label	Major Label
<u>Recording studio</u>	<p>Pro: Total creative control, you own your masters.</p> <p>Con: Requires knowledge of technology and access to equipment.</p>	<p>Pro: Their tight budget means less costs recouped from your revenue.</p> <p>Con: They may not be set up to record the way you want. Some don't record at all. May still require some technical skill on your part. NOT free!</p>	<p>Pro: Fancy equipment and experienced producers.</p> <p>Con: Recording costs added to your advance, recouped from your later earnings. Expensive.</p>
<u>Promotions</u>	<p>Pro: Easier than ever with online peer communities, blogs and websites. Total artist control.</p> <p>Con: Time consuming, requires some computer knowledge and a lot of effort on your part.</p>	<p>Pro: Street teams, CD inserts, access to media and other contacts. Low or no cost to you.</p> <p>Con: Less focus on you unless you are a proven money-maker. Less influence than major labels. What they spend, they recoup.</p>	<p>Pro: Resource capital, excellent contacts and experience.</p> <p>Con: What they spend, they recoup. Also, declining record sales means fewer employees for this type of work; more focus on big acts.</p>
<u>Touring</u>	<p>Pro: Booking your own tours gets you great experience, contacts, and an increased fan base based on where you want to go.</p> <p>Con: Very time consuming and you will hear "no" at least ten times more than you hear "yes."</p>	<p>Pro: May be in-house or shopped out to an indie promoter, but they will work to book you if they can because it increases album sales.</p> <p>Con: They may take a cut of your earnings. You have less control over where you go and when.</p>	<p>Pro: Access to large professional tour organizers and festivals. Established professional connections. Greater access to televised appearances.</p> <p>Con: They will try to take a large cut of your earnings, whether or not they actually provide any tour support.</p>
<u>Radio play</u>	<p>Pro: college/indie stations and internet broadcasters will play anything they like.</p> <p>Con: Time consuming. May depend on who you know. No</p>	<p>Pro: Good relationships with college radio and smaller, independent broadcasters.</p> <p>Con: Less personal interest and persistence in getting</p>	<p>Pro: Access to heavy airtime on monster networks like Clear Channel.</p> <p>Con: Access restricted to established artists; hard to break into.</p>

guarantees your promo copies will get even a listen.

you played unless you've got a hard-working label. Shared royalties means less money for you.

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Making a list of pros and cons may seem silly, but sometimes it's the best way to figure out your smartest business decisions. In this case, there are some broad conclusions to draw from the chart above, namely:

- If you do it yourself, you will need time, resources and expertise.
- If you go with an indie label, it's best to pick one that thinks like an indie; they serve a niche that fits you and they're staffed with knowledgeable music lovers who will work hard to promote your music.
- If a major label ever comes knocking, it's best to remember that it's not your only option.

No matter who you sign with, always *read everything* they give you to sign and *show it to a lawyer* before you sign it!

## What Should Your Recording Contract Do for You?

It's important to understand that record labels are profit-making entities and that they are ultimately in it for the money. Having said that, it's possible that record company greed can serve you well; provided that you avoid the pitfalls of bad contracts. There are many unfair elements embedded into industry contracts. While it's impossible to predict what a label's contract will look like, here are few things to which you should pay close attention:

### 360 Deals

Essentially these agreements give record companies a share in all the profits generated by you and your music. To put it another way, "360 deals are 'artist brand' deals."<sup>1</sup> When you sign a 360 deal, you usually agree to share

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<sup>1</sup> Tony Berman, "Music Biz: 360 Deals Pt. 1," retrieved on August 14, 2008 from <http://beatblog.typepad.com/melon/2008/03/music-biz-360-d.html>

revenues from touring, merchandise and *any* use of your image whatsoever. You are a label's product, and the label owns your "brand." They profit from your image no matter what effort they put forth to promote you.

Some 360 deals work well for artists and some are terrible. If you have any bargaining power at all, it might be worthwhile to ask for a more tailored deal. Ask your label to limit their profit-sharing to the revenue streams they support. If they are setting up your tour, they should have a cut of the ticket sales. If they front all the costs for your merch, of course they should recoup. If they get you in front of a filmmaker and you get a song in the movie soundtrack, let them profit from the synch license. It's only fair.

Unfortunately, most major labels and plenty of indies will put a 360 deal in front of you with no support services to rationalize their cut of your earnings. The industry justifies this discrepancy with the notion that "labels invest the most in the risky and expensive process of developing talent, so why shouldn't they get a bigger share of the talent's success?"<sup>2</sup> If they explain their large take of your earning by telling you that they are taking a financial risk, find out how much they're investing and where that money will go.

### **Generic Recoupment\***

Recoupment basically means the label gives you money up front that it will later take out of your earnings. If your label offers you an advance, be very careful about the language their contract uses to describe recoupable costs. Sometimes labels use catch-all phrasing to recoup costs for promotion, distribution, etc. They might end up recouping much more than your advance, leaving you with far less money. It's best to ask your label to include a specific list of recoupable costs in your contract. This is often referred to as a recording budget, in addition to other budgetary items. The more detailed the list, the better for you.

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<sup>2</sup> Leeds, Jeff. "The New Deal: Band as Brand," retrieved on August 16, 2008 from [http://www.nytimes.com/2007/11/11/arts/music/11leed.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/11/11/arts/music/11leed.html?_r=1&oref=slogin).

## **Exclusivity\***

An exclusive deal with a label mostly prevents you from signing with more than one label at a time, which seems fair when you consider the fact that labels compete directly with each other. In many cases this is unavoidable. However, some exclusive deals may prevent you from collaborating with other artists or earning money through relationships not associated with your label. It's important to ask for your label to be as flexible as possible. If you have an exclusive record deal, you might have to get your label's permission to do guest artist appearances on your friends' songs, work-for-hire studio sessions, appearances in concert, etc. Of course when we say "permission," we mean they give you the green light (or not) and you give them a chunk of your earnings from the gig.

## **Non-Compete Clause\***

A non-compete clause usually prevents you from signing a deal with another label or similar service during the term you are with your current label, or immediately after. To be fair, a non-compete clause is a label's way of protecting their investment in you. Your loyalties to your label are not guaranteed, and they want to share in the profits you generate. However, it is not in your best interest to sign a deal that prevents you from "competing" with your label for a long period of time. If your label relationship goes south and you have agreed not to compete for one or two years, no other label will deal with you during that period of time and you will be royally screwed.

## **Term of contract: Opting Out**

What happens when you sign a five year deal with a label and then discover that your label wants to force you to make huge creative changes, or they aren't promoting you, or they decide not to release your albums at all?

What if you get no support? No matter how long the term of your contract, it's important to ask for a "misery" clause so that you can opt out of an unsatisfactory label relationship.

If you have a five year contract you can still ask for a one-year option to cancel the contract. This misery clause should be based on specific benchmarks in your relationship with the label. For example, if they haven't promoted or taken steps to release your album within a certain time-frame, your contract should specify that you can exit the deal after that time. Be careful, however, because no matter how long your agreement lasts with the record company, you will still have to pay back any money they advance to you at the beginning of your deal.

### **Compulsory Options**

This is a non-mutual agreement where you, the artist, agree to let the label extend their contract with you over a number of years. You will not be legally allowed to negotiate a compulsory option, hence the word "compulsory." Labels often present contracts with agreements written into them that obligate the artist to extend their contract with the label for 2 – 5 additional "terms." So, if you sign a two-year contract, and the term of the contract is renewable five time, you have essentially signed away twelve years of your recording career to your record label, at the label's total discretion.

### **Gross v. Net \***

Essentially, your gross profits represent all the money generated by you and your music before the label recoups its costs, while the net profits represent that same pot of dollars *after* the label recoups its costs. If you sign a deal with generic recoupment, you could be at the mercy of your label's decision to recoup whatever costs it wants before you get paid. In some cases, you could end up with no profits or even owing money to your label.

Having hashed out all the bad elements of label deals, it may be important to remind you at this point that labels may offer good deals, too. Established labels have relationships with everybody else in the business that can add to an artist's success, including tour promoters, merchandisers, concert venues, music video companies, radio stations, regional promoters, advertisers, etc. The music business is all about who you know, and good labels have excellent contacts. If you sign the right deal with a label, the label's team of professionals is supposed to make it their job to promote your band so that the label can make money from your success. Hopefully, you will show your contract to an attorney before you sign it, and you will make some money, too.

*\*For more information on recoupment, exclusivity, non-compete clauses and gross v. net, please refer to the ELLA article "Before You Sign a Contract," available to read online at:*

[http://www.artscouncilofneworleans.org/filemgmt\\_data/files/Before%20You%20Sign%20a%20Contract%205.pdf](http://www.artscouncilofneworleans.org/filemgmt_data/files/Before%20You%20Sign%20a%20Contract%205.pdf)

## **The Changing Face of the Music Business**

The major record labels tell everyone they are still on top, but the traditional record label model is on the way out according to the rest of the music industry. In recent years, record sales have decreased every year by 10 or 20 percent from the year before.<sup>3</sup> Historically, labels made most of their money from technology that is increasingly obsolete. They owned or employed expensive studios which were the only means of creating high-quality recordings. They controlled the music market by holding on to master recordings and selling people their own music collections over and over again. First it was vinyl records, then 8-tracks, then cassettes, then CDs. The Internet, of course, ushered in the era of downloading and changed the way listeners consume music forever.

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<sup>3</sup> Tony Berman, "Music Biz: 360 Deals Pt. 1,"

Today, people are using music as a service, not just a product. Music consumers read blogs, join communities, download songs and ringtones, and enjoy portable tunes wherever they go with their mp3 players, laptops, and cell phones. Any music business professional worth their salt will tell you that listeners under 30 want inexpensive downloads and portable tunes, and that a growing number of listeners *over* 30 are taking advantage of technology-based music services. Music consumers enjoy an increasingly large buffet of songs to choose from on the Internet, while labels try harder and harder to enforce a “no-sharing” policy. Over the past decade, the industry has been fighting change so hard that it set itself back in terms of technology and innovation. Major labels are still struggling to push physical units on consumers in the form of CDs. If you go to the Recording Industry Association of America (RIAA) website, you can read an August 2007 report on how CDs are a better value today than they ever were before.<sup>4</sup> However, on the same website you can see the steep, steady decline of CD sales from 1997 to 2007.<sup>5</sup> From 2006 to 2007 alone CD distribution dropped by 17.5% while album downloads grew by 54%<sup>6</sup> CDs may be a “better value” today but that’s because nobody wants to buy them.

If you ask the major labels, they’re fine, they’re still on the cutting edge, they’re adapting. If you ask ANYBODY else, record labels are dinosaurs on the verge of extinction, desperately grasping at their ever-decreasing stream of profits, trying to force consumers to pay for CDs they don’t need and punishing them for downloading the mp3s they really want. Before you sign with a label, or anyone else who promises to help your music career, find out about their digital sales strategies. It’s always best to have a business team that looks towards the

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<sup>4</sup> “The CD: A Better Value Than Ever,” retrieved on August 14, 2008 from <http://76.74.24.142/F3A24BF9-9711-7F8A-F1D3-1100C49D8418.pdf>.

<sup>5</sup> RIAA Year End Reports from 1997 – 2007, retrieved on August 14, 2008 from [http://www.riaa.com/keystatistics.php?content\\_selector=keystats\\_yearend\\_report](http://www.riaa.com/keystatistics.php?content_selector=keystats_yearend_report)

<sup>6</sup> 2007 Year End Shipment Statistics, retrieved on August 14, 2008 from <http://76.74.24.142/81128FFD-028F-282E-1CE5-FDBF16A46388.pdf>.

future, and the future is digital downloads, portable music, streaming audio, and the death of the CD.

## Do You Really Need a Label?

If you want to earn money as a musician, you obviously need fans. What does it take to build a fan base? Many music professionals will tell you it's touring. Others will tell you that you must develop your songwriting skills and that your best music needs exposure through the internet, advertising, television, video game, and film synchronization licensing. Another pursuable avenue for revenue is radio play; be it traditional radio, satellite radio, or Internet streaming audio. Word-of-mouth through a dedicated on-line and live music scene is a great way to publicize your music all by yourself with a computer and a social networking site. Whatever path you choose for your music career, it's really important to understand that today's music business relies on multiple streams of revenue. With the right knowledge, the right team and the right music you can earn money in a host of different ways.

### 1,000 Fans

Kevin Kelly, co-founder of the magazine *Wired*, writes that all a musician needs to earn a living are "1,000 true fans."<sup>7</sup> He defines a true fan as "someone who will purchase anything and everything you produce."<sup>8</sup> Depending on how often you record, tour, and release merchandise, selling to a modest fan base can finance your career. If you are persistent, hard-working, and you create music that really speaks to people, then you already have everything you need to grow your career into a full-time gig.

To read more about Kevin Kelley's 1,000 fan theory, visit:

[http://www.kk.org/thetechnium/archives/2008/03/1000\\_true\\_fans.php](http://www.kk.org/thetechnium/archives/2008/03/1000_true_fans.php)

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<sup>7</sup> Kelly, Kevin, *1,000 True Fans*. Retrieved on September 5, 2008 from [http://www.kk.org/thetechnium/archives/2008/03/1000\\_true\\_fans.php](http://www.kk.org/thetechnium/archives/2008/03/1000_true_fans.php).

<sup>8</sup> Id.

## Record at the Co-op!

The Tipitina's Music Office Co-ops provide musicians with access to technology for sound recording, help with learning and using technology, and support for musicians who want to record, promote, and grow by their own efforts. . The Tipitina's Music Office Co-op has locations in New Orleans, Shreveport, Alexandria and Baton Rouge. Their website address is <http://tipitinasfoundation.org/co-op/>.

## Use ELLA

For qualified applicants, Entertainment Law Legal Assistance can assist you in choosing a label, understanding your label agreement, and tailoring your record deal to maximize its usefulness to you. Make an appointment to see us on Friday morning from 9:00 am to 12:00 pm at the Arts Council of New Orleans, or Friday afternoon from 1:30 pm to 4:30 pm at Tipitina's Music Office Co-Op.

**To Schedule an Appointment:** Contact Gene Meneray at the Arts Council of New Orleans by phone, 504-523-1465, or by email,

[gmeneray@artscouncilofneworleans.org](mailto:gmeneray@artscouncilofneworleans.org).

### Locations:

Arts Council of New Orleans  
818 Howard Avenue, Suite 300  
New Orleans, Louisiana 70113

Tipitina's Music Office Co-Op  
4040 Tulane Avenue  
New Orleans, Louisiana 70119

ELLA legal services are available to low and middle income artists and professionals working in visual arts, music, theater, dance, etc.

## So What's Your Plan?

Now that you have more information on your options, do you feel ready to negotiate with a record label? Do you still want to sign a recording deal? Or do you want to be the one in charge of your recording? There is really no best way to pursue a career as a recording artist, it all depends on you. The most important thing you should take away from this article is *be informed*. Read up on the music business. If you want to sign to a label, do some research to locate the right label for you. Read every contract someone gives you to sign, and show it to a lawyer whenever possible. Don't sign *anything* you don't understand.

Being a recording musician means making business decisions. Getting your music out to a wide audience, growing your fan base, finding ways to earn money through your music; these are all basic concerns of artists like you. Choosing the right approach to recording is the keystone to your success. Whatever decision you make, remember that ELLA is available to you as a resource.