

**7 ARTS PRESS**

**ENTERTAINMENT INDUSTRY SERIES**

**THE**



**RECORD**

**INDUSTRY**

**BOOK**

**REVISED EDITION**

**BY**

**WALTER E. HURST**

**ATTORNEY AT LAW**

## **INTRODUCTION.**

The workings of the record industry are a mystery to most people. Even many workers within the industry understand little more than their current and past jobs. In the Record Industry Book, 7th edition, wholly rewritten, Attorney Walter E. Hurst reveals the occupations within the industry and the webs which tie them together. With sardonic humor, Hurst, who has taught for the University of California, Columbia College, College for Recording Arts and elsewhere, reveals the traps for the unwary on their paths to seek instant wealth.

It is amazing how quickly trends change in music and people in the industry have to take new paths. Sometimes, this is the equivalent to changing boats in mid-stream and often paddles.

Such an instance is the 'disco' craze, which has given birth to disco charts, disco labels and radio stations that specialize in disco. The craze has also given birth to disco's throughout the United States, many of which test records for radio stations throughout the country before the records get air play.

Another instance of trends is the return of the multi-million dollar musical, which is capable of making an instant star of an entertainer.

**Sharon Marshall**  
**Editor**

**Hollywood, California**

## **OTHER BOOKS BY THE AUTHOR(S):**

1. The Record Industry Book.
2. The Music Industry Book.
3. The Publisher's Office Manual.
4. The U.S. Master Producers and British Music Scene Book.
5. The Movie Industry Book.
6. The Managers, Entertainers and Agents Book.
7. Film/TV Law (Your Introduction to Film/TV Copyrights, Contracts Other Law).
8. Film Superlist: 20,000 Motion Pictures In The United States Public Domain.
9. Music/Record Business Law (Your Introduction to Music/Record Copyright, Contracts Other Business Law).
10. Motion Picture Distribution (Business /or Racket?).
11. How To Be A Music Publisher.
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13. How To start A Record Company or Independent Production Company.
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# Overture

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## THE RECORDING INDUSTRY

By **Rene J. Hall**

In my over thirty years as sideman, leader, arranger, recording consultant, independent master producer, and now member of the Board of Directors of Local 47, I have often wished that our field had a reference book which could answer our questions—just as electricians and engineers and various mechanics have reference books in their fields to supply answers to their professional problems.

Quite recently, I was presented with a copy of such a book, written by an attorney friend of mine who is an expert in the field of recordings. He knows what makes it tick, and quotes book, chapter and verse in one big volume.

Having found this book to be of invaluable assistance to me in the field of independent master producing, I would like to take this opportunity to recommend it to the many musicians, who, like myself, are either already in or are desirous of entering this particular field of endeavor.

Although the cost of this book is less than one-half of a record date, it will both make and save a lot of money for anyone armed with its vast store of business knowledge. A musician may suggest to the owners of the clubs in which he plays or to his regular employers, that they finance master producing sessions at scale for playing and arranging, and thus have a chance at record exposure and royalties.

In my honest opinion this book is a real must for anyone engaged in or thinking of entering the business, a book that you will not only read with interest but that you will keep for research and answers that come up.

In the course of conduct of my daily business, I'm asked many questions by both beginners and professionals of many years standing, the answers to which were to be found within the pages of his highly informative book.

I wish that I could have had this book thirty years ago. Now, I have one copy of the book at home for reading and one available at my office for reference.

Walter E. Hurst writes with scholarly knowledge; with compassion for people in the industry, with wit and good humor and sugar-coats the lessons that we must all learn.

There are many of us in the business who would have saved much work, money, and heartbreak if they had had, "THE RECORD INDUSTRY" (How to Make Money In the Record Industry)

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## CHAPTER ONE-BASICS.

Scene: A University Extension class on 'The Music Industry- its structure and economy at U.C.L.A.'

Sharon Sheeley spoke about the music industry from the point of view of a hit songwriter.

Jimmy O'Neill spoke about the radio industry from the point of view of one of the highest rated disc jockeys in the country.

Each had spoken to the class about simple basics for approximately an hour.

At the end of the evening the hit songwriter and top disc jockey said to each other (misquote) 'Darling, I did not know all that you spoke about. I learned a lot.'

Please spend a couple of hours with my brainchild. I will try to be very basic, I hope you will learn a lot.

I hope that you will be entertained.

We are dealing with an industry that is like a jellyfish. It keeps changing its shape but the core is the same.

There are no given rules for success. In the music business, a new road can lead to success.

The music business is a business that is even larger than the motion picture industry.

However, the motion picture industry influences the music business more than the music business influences the motion picture industry.

Money may be the root of all evil, but it is also the barometer of success.

An artist with a hit record can get amphitheatre, night club gigs, concerts and college tours. These, in turn, make the records sell more and help the next record.

In reverse, a hit career in the music business can ignite a motion picture career like Peter Frampton's or John Denver's.

The music industry monitors the movie industry and the motion picture industry monitors the music industry.

There is a connection between both industries, but it is like an umbilical cord. It is taut and thin.

## **CHAPTER TWO - WORDS AND MUSIC.**

We can start with the factory, the mental manufacturer of words and music.

Words are also called lyrics; the songwriter who writes lyrics is a lyricist.

Music is sometimes called a composition. The songwriter who writes music is called a composer.

Sometimes lawyers write letters to each other about songs and songwriters. A letter may call a song a 'musical composition'.

In various forms and contracts, you may see the words, 'composer', including the writers of both words and music.

You have to adjust to each form and contract.

The most important thing is to protect your work. There are forms, that you can get which will do this.

A songwriter may communicate a song with a package consisting of:

ONE- A lyric sheet.

TWO- A lead sheet.

THREE- A tape.

Another avenue for the songwriter is the singing commercial or commercials like the ones sung by known singing stars such as Lou Rawls and Arthur Prysock.

These bring residuals, which are like royalties.

## **CHAPTER THREE - THE SONGWRITER.**

The songwriter is a factory, which turns out songs.

A songwriter may keep a song to himself.

A songwriter may communicate his songs to others.

Communication may consist of producing sounds: **WORDS, MUSIC, SOUND EFFECTS.**

The sound may be live; a songwriter may sing and play a song in front of one or more people.

The sound may be recorded (on disc or tape).

A songwriter may communicate a song with a package consisting of:

**One: A LYRIC SHEET.**

**Two: A LEAD SHEET.**

**Three: A TAPE.**

## CHAPTER FOUR - A PUBLISHER.

A publisher is in the business of acquiring rights in songs and in commercially exploiting rights in songs.

It is easy to be a music publisher.

All you have to do is say to yourself 'I am now a music publisher'.

You may not be a money making music publisher by simply talking to yourself.

But, you are a music publisher.

As a publisher, you need to acquire songs. Legally speaking, I should say that you need to acquire **RIGHTS IN SONGS**.

You can acquire songs from two sources:

Source One - you.

Source Two - other people.

You, as a songwriter, can decide to give the songs you write to yourself as a publisher.

You as a publisher, can acquire song from songwriters, who assign their rights to you.

You can get songs from others by:

(a) word of mouth.

(b) publicity.

(c) correspondence.

(d) talking to other songwriters in person.

## **CHAPTER FIVE - PERFORMING RIGHTS SOCIETIES.**

The two leading performing rights societies in the United States are called ASCAP and BMI.

**ASCAP - American Society of Composers, Authors and Publishers.**

**BMI - Broadcast Music, Inc.**

Songwriters want to receive money from users of songs. Radio stations use (play) songs. Songwriters want to collect money from radio stations. TV stations also use songs.

Music publishers want to receive money from users of songs. Radio stations use (play) songs. Music publishers want to collect money from radio stations and TV stations.

There are tens of thousands of songwriters and publishers. There are tens of thousands of users of music, who use those rights in music known as 'small performance rights'; such users include radio stations, television stations, concert halls, auditoriums, arenas, stadiums, night clubs, and business places using background music, etc.

ASCAP songwriters and publishers assign their small performance rights.

ASCAP; ASCAP then licenses many users the play rights.

BMI songwriters and publishers assign their small performance rights to BMI; BMI then licenses many users.

To join BMI or ASCAP, you have to be an active publisher.

## CHAPTER SIX - COMPANIES.

Record companies use songs on records.

Record companies want to receive rights to use songs on records from publishers.

The contract between a publisher (as owner of a song) and a record company (as user of the song) is called 'a mechanical license'.

The contracts, which transfer rights of songs may be:

ONE: Assignments.

TWO: Licenses.

Licenses may be:

ONE: Exclusive.

TWO: Non-exclusive.

A publisher gives a record company a non-exclusive license to press records and pre-recorded tapes using a song.

A publisher may give a second, third, fourth, etc. record company respective non-exclusive mechanical license to use the same song.

Most record companies prefer exclusive records, which eliminates another record company putting out a record of the same song.

## **CHAPTER SEVEN - PRODUCERS.**

Separate in your mind two different rights, which the record company collects.

One right is the right to use a song.

A completely different right is the right to use a particular recording of a song.

For example, a publisher, Room Seven Music, may own a song called 'Smiling Sharon'.

A producer may spend \$5,000.00 of his own money to produce a sound recording of 'Smiling Sharon'. This first producer may assign all of his rights to reproduce his sound recording to RCA Records.

Second producer may decide to produce a jazz version of the musical composition 'Smiling Sharon'. This second producer may assign all of his rights to reproduce his sound recording to Warner Bros. Records.

RCA Records would:

1. Obtain a mechanical license from publisher Room Seven Music to use the song 'Smiling Sharon'. This would be a non-exclusive license.
2. Obtain exclusive rights to use the first sound recording from the first producer.

Warner Bros. Records would:

1. Obtain a non-exclusive mechanical license from Room Seven Music.
2. Obtain exclusive rights to use the second sound recording from the second producer.

## **CHAPTER EIGHT - RECORDING SESSION.**

Producers produce sound recordings at recording sessions.

Record sessions may be held in the open air, in night clubs, in semi-soundproofed rooms, in professional recording studios or amphitheatres.

Equipment is supposed to pick up sound and place sound on tape or disc.

The technical and artistic genius, which is useful in the various steps between the sound makers (the artist, musicians, background vocalists) and the final master sound recordings is provided by various talented technical and artistic persons.

The talented producer in charge of a project performs functions before, during and after the recording session.

Before the session: the producer selects the songs, the arranger, the sound makers, the recording location.

During the session: the producer governs everyone, including the conductor, engineer, and, the performer.

After the session: the producer oversees the combining of the recorded sound tracks and the various takes into one finished master sound recording.

## **CHAPTER NINE - THE ARTIST.**

It is quite possible for an **ARTIST** to receive millions of dollars of recording royalties as an **ARTIST**.

It is not likely. The odds are against the artist. He plays career roulette, hoping to get the lucky musical number.

There are excellent reasons for artists to record in addition to the dream of receiving millions of dollars:

1. The artist may be paid well for the sessions.
2. The artist may be entitled to royalties if he also writes songs, publishes songs, produces masters.
3. The artist may gross more money as a live performer, if he has a current record out or a past record success than if he has neither or is not appearing at clubs or concerts.
4. Each released record serves as a promotion for the following record.
5. The artist, because he is known due to his records, may earn money in other aspects of the entertainment industry and elsewhere. (For example, endorsing products, licensing the use of his/her name or likeness, selling real estate, etc).

A featured artist is usually under long-term exclusive contract with the producer and/or the record company or both.

A featured artist may be one person or may be more than one person, such as a group.

## CHAPTER TEN - A SINGLE.

The usual 45 r.p.m. single record has one song on the 'A' side and one song on the 'B' side.

The record company initially decides, which side shall be treated as the A side (the side to be promoted and played on the air) and which side shall be treated as the B side.

'A' single is shipped by the record company and by others to radio stations (professional programmers, program directors, record librarians, disc jockey's) and reviewing media (the trades, consumer publications, disco's, etc.).

It is possible, that the side initially favored as the A side will lose favor, and the B side will be promoted.

The credits on the A side of a single may show:

1. The record company: Clone Records.
- 2 The producer: William Storm Hale.
3. The production company: Storm/Tax Productions.  
(NOTE: A credit line may appear: 'Produced by William Storm Hale for Storm/Tax Productions').
4. The publisher: Room Seven Music.
5. The performing rights society: BMI.
6. The time of the sound recording: 2:20 p.m.
7. The number of the master: 1001.
8. The number of the single: 80-001A.
9. The artist: the Walloquois Indians.
10. The song: 'Smiling Sharon'.
11. The songwriter: Les Taxes.

## CHAPTER ELEVEN - AN LP

Credits on an LP are slightly more complicated than are credits on a single record.

A single usually has two songs.

An LP usually has more than two songs.

Each song has:

1. A title.
2. One or more publishers.
- 3 One or more songwriters.

Sometimes an LP may have lyrics of the songs printed on the back cover or on a sheet of paper inserted in the album. Permission to reproduce such printed lyrics are contained in a license, issued by the publisher (as licensor) to the record company (as licensee).

A single gives credit to the sound maker known as the artist. Usually, no credit is given to the studio musicians and background vocalists.

Sometimes, a single gives credit in smaller print to the supporting band.

Frequently, LP liner notes list the musicians and respective instruments (often the listing may first state the instruments and then the musicians).

LP liner notes may also list individual background singers, and the group name such singers may use.

LP liner notes may give credits to photographers and visual artists, who designed the cover:

Credits may be given to recording studios, engineers, and a variety of other persons, who are instrumental.

The 'credits clearer', who clears credits must be careful to not violate existing contracts between a supporting musician or voc-

alist and a record company for whom this supporting musician or vocalist works as exclusive recording artist.

## **CHAPTER TWELVE - PRESSING PLANT.**

Pressing plants may be owned by the gigantic record companies or may be independent.

The function of the pressing plant is to receive a tape or disc, containing the master sound recording, to receive label information, to arrange for the printing of the labels, to stamp plastic into records with grooves and with labels, to slip the records into envelopes, (sleeves, album jackets, plastic wraps), to provide the ready to ship merchandise. The pressing plant stores the records.

The record company instructs the pressing plant, where to ship the merchandise; the pressing plant then ships it.

The pressing plant bills the record company for the goods and services furnished.

The record company should pay for the goods and services, whether or not the record company has a hit or a flop.

The record album cover is very important visually and sales-wise to an album, especially one by a new artist.

## **CHAPTER THIRTEEN - TRANSPORTATION.**

The record company may ship thousands of records through the United States and Canada, mail to radio stations, potential reviewers and VIP's (very important persons).

These promotion records may be sent by first class mail or in accordance with technical requirements, other classes of mail. The promotion records may be sent by United Parcel or other method.

The record company may send cartons of records by plane, truck, rail, or other method of transportation.

Masters on tapes, which traveled in luggage of planes, have arrived at their destination as blank tapes.

Record company executives and promotion personnel, artists and their entourage, travel by plane, limousine, bus, van, car, etc. Since careful comparison shipping can save many transportation dollars, record companies may save a lot of money by motivating their 'Transportation Manager'.

In cases of booking an artist or a group, transportation fees are a big factor in salary negotiations.

## **CHAPTER FOURTEEN - RADIO STATIONS.**

There are thousands of AM and FM stations in the United States. Most of these stations play records containing a variety of different music. Some companies may own a station that plays pop, and one that plays country. Record companies should keep lists of stations and the kind of music each station plays.

If a station plays only country music, then the record company need not send such station non-country music records.

Imagine yourself a librarian of a radio station. You receive hundreds of records each week. Which records would you call to the attention of whoever programs the station or individual shows?

Possible answers; records containing current hits in area; records containing current hits in other areas; records containing the latest releases of superstars; records containing the follow-up release of an artist, whose top records is now descending in popularity. And after all these statistically pleasing records, you might also recommend a record to which you have listened and which you like.

## **CHAPTER FIFTEEN - AREA DISTRIBUTORS.**

Record companies send:

1. promotion records.
2. for sale and,
3. freebie records to area distributors.

Areas of area distributors surround key cities. One distributor may service the New York area; another distributor may service Washington/Baltimore area. The United States is divided in approximately thirty areas.

Area distributors usually receive **PROMOTION** records without charge; these records are supposed to be used for promotion purposes (radio stations, disc jockeys, reviewers).

**FOR SALE** records are sent by record companies to distributors on consignment, usually. The distributor is supposed to pay for them or return them.

**FREEBIES** records are sent by record companies to distributors to 'sweeten the deal'. A record company may have trouble persuading a distributor to take 1000 records on consignment. The record company may 'sweeten the deal' by giving 300 freebies to the distributor. Since the distributors gross profit on selling 300 freebies may exceed his gross profit selling 1000 **FOR SALE** records, the distributor can double his profit.

## **CHAPTER SIXTEEN - RETAILERS.**

Retail stores can not possibly and adequately display all new records. Retail stores have learned that they often make more money by carrying and selling the 100 best selling singles and LP's, than they make by carrying the next 1000 singles and LP's.

Therefore, retail stores try to stock multiple copies of each of the best selling records, and only a single copy or a few copies of a slower selling product.

Stores don't want valuable and limited space taken up by merchandise that does not move out.

A store may have a return policy of 30, 60 or 90 days. Various records (singles, LP's, tapes) may be treated differently.

The job of a retailer is to carry records, which customers want. Every time a customer asks for a record, which the store does not have on hand at that very moment, the store may have lost a sale.

Retailers use radio station playlists, trade publications, other retailers, and area distributors as sources of information.

Sometimes artists ask fan club members to visit retail stores and to ask for the artists' recent or future releases.

## **CHAPTER SEVENTEEN - ADVERTISING.**

Record companies advertise in newsletters, trade publications (Billboard, Cash Box, Record World, Weekly Variety, Daily Variety, Hollywood Reporter, Back Stage, etc), consumer publications (Rolling Stone, Village Voice, Stereo, etc.), newspaper Sunday supplements, fan publications, billboards along the Sunset Strip (and elsewhere), radio stations, etc.

The advertising may promote a particular release or may be institutional ('We are proud to announce that our artists now include Able, Baker and Charlie').

Timing is important, especially of advertisements which are supposed to encourage:

**ONE:** Wholesalers to stock, promote and sell the record.

**TWO:** Retailers to stock, promote and sell the record.

**THREE:** Radio stations to play the record.

**FOUR:** Bandwagon riders to jump on the bandwagon.

**FIVE:** Consumers to go to their stores to buy records, and to buy records in the stores.

## CHAPTER EIGHTEEN - PROMOTION.

Record companies hire employees as national, regional and special promotion men to promote their records and albums.

Record company executives can give superior to subordinate orders to employees: 'Promote this certain record in this area in this manner'.

Record companies retain services of independent promotion companies for national, and special promotion. These companies may be paid flat fees for campaigns lasting two or four or more weeks, sometimes even months. Promotion companies may service many customers (record companies, publishers, artists, area distributors).

Artists promote records by making personal visits and by performing in the area, by giving radio interviews and making TV appearances.

Coordination between professional promotion men and visiting artists is a goal to be desired, and is often the duty of the artists personal manager. (He may do this indirectly, through the record company).

Promotion men try to promote records by encouraging disc jockeys to listen to records and to play them on the air.

The general procedure at stations is that a program director or a music director approves records to be played on the air by disc jockeys.

The record is sent out by a record company to program director or musical director. Leaving it time for arrival, the promotion person will call and ask if the p.d. or m.d. has played the record and if they are interested in airing the record. The reply: 'yes' or 'no' or 'I have not listened to the record yet'. Usually, if the record is good, but the artist is new, they will wait until other stations play the record. Or they will say they will 'watch it'.

'Watch it' means they will see if other stations play it. They will watch the music trade magazines to see what is said about the record.

There are 'music programmers', who 'program' stations. They have stations that buy their service and they pick the records that the station and its disc jockeys should play.

Programmers may have hundreds of stations as clients. So a smart promotion person sends records to 'programmers' hoping to make their list and thereby get airplay. Airplay is noted by record trade magazines, the Album Network, Arbitron, the Gavin Report, the Bobby Poc Report, and other playlist programmers.

Some stations report to Billboard, Record World, Cashbox, and other important periodicals which indicate their charts have great influence on stations, music directors and program directors.

## **CHAPTER NINETEEN - PUBLICITY.**

Publicity departments of record companies send out reams of publicity about artists and records.

Publicists may work alone, with a small staff, or as part of a large publicity factory.

One publicist, Richard Bernstein, works alone on some projects and with others on other projects. One way of publicizing an artist is to have the artist perform at a club frequented by reviewers and columnists.

Publicity may be aimed at specific columns and departments of specific publications, if the artist is unique or newsworthy.

For example, phoney letters to the editor may be written to fan publications, and others who publish letters to the editor.

Personnel changes and contracts may be publicized in the trade press.

Whole articles about the company, who reports to whom, philosophies of key personnel, etc. may be written by a paid publicist and then handed to a trade, consumer, or fan publication.

Some publicists, such as John Charnay, also have careers as writers.

Some publicists, such as Irwin Zucker, specialize in aspects of the entertainment industry, such as books.

## **CHAPTER TWENTY - MERCHANDISING.**

Tee shirts can publicize artists, records, tours.

Record companies may give away tee shirts to personnel, wholesalers, retailers, reviewers, radio station employees, and others tied in with the artists, publishers, etc.

Tee shirts may be sold in record retail stores, at concerts, and other places which sell tee shirts.

Similarly, posters and other products can be given away (publicity) or merchandised (to obtain income).

Some record companies treat singles as promotion items for albums, treat albums as promotion items for future of albums, treat road tours as promotion expenses to sell albums. One phase of the business tends to build the next phase.

Similarly, the record company may view it's own activities as the prime factor which makes merchandising worthwhile; and therefore it is entitled to share with the artist receipts which either may obtain from third parties who manufacture tee shirts, posters and other items.

## **CHAPTER TWENTY-ONE. CHARTS.**

Trade publications have a variety of charts of best-selling records; so do other publications; some radio stations also publicize their charts.

A single and an album for the same artist may be released at the same time. One or the other may appear in listings of:

1. Songs played at discos.
2. Songs played on radio stations.
3. Hit singles (or LP's) of the particular type of music (e.g., jazz).
4. National hit singles (or LP's).

The charts are based on surveys. Somebody, who collects information, telephones somebody, who has information.

A producer once collected information concerning which stores were called for surveys. (For example, a surveyor preparing information for a chart of best selling records in a particular city, may call the same three stores in that city week after week).

The producer backed his records by sending to those specific stores ample point-of-purchase material publicizing the records he produced (banners, balloons, tee shirts, a lot of free records to spread around the store, etc.).

The stores would inform surveyors that the promoted records were hot sellers; the records would appear on the charts.

## CHAPTER TWENTY-TWO. TRADE PAPERS.

Trade papers sell advertising.

Record companies advertise in trade papers to announce releases. Record companies also use trade papers as news conduit. Record companies advertise to impress artist and also impress stations as to their product.

A hit artist, whose current contract is expiring, may say: 'I am going to try to switch over to (what ever your choice is) records because they really back their artists.'

Some artists insist in their contracts that each single or album release must be accompanied with a full page advertisement in a trade paper.

Record company reaction possibilities:

1. Ok.
2. Ok, but the cost of the ad will be considered in advance against royalties.
3. No.

Trade papers thrive on news releases churned out by publicists, especially when the releases do contain news.

In contracts with producers, artists may try to limit the companies to whom producers may assign the artists contract to (1) the majors and (2) record companies which have had three or more records on the top 100 singles and/or LP national charts during the current and just preceding January-December calendar year.

## **CHAPTER TWENTY-THREE. PERSONAL MANAGER.**

A big corporation may have a president. He is responsible to the board of directors. The board of directors are responsible to share holders.

The president may supervise various vice presidents and other corporation officers; such as:

1. V.P. (in charge of ) sales.
2. V.P. (in charge of ) publicity, promotion and advertising.
3. V.P. (in charge of ) productions.
4. V.P. (in charge of ) personnel.
5. V.P. - legal.
6. Treasurer, comptroller.
7. Secretary.

The artist may not be big enough to have a lot of people working for him. But the artist can use someone to perform the functions of a president.

The functions are often fulfilled by someone known as a 'personal manager'.

Personal managers differ from presidents in several respects.

A corporation may employ a president, will set forth specific duties and may have the option to renew the agreement if the corporation is satisfied.

Ordinarily the paying party may exercise an option to bind the service rendering party during option periods.

Since the artist is the paying party, ordinarily the artist would be able to choose whether the artist wants to exercise his option to extend the contract with the personal manager during option periods.

But, personal managers have turned the right to exercise options around in the contracts they offer. In some of those contracts managers have options to extend durations of the contracts.

The artist may be very careful of anyone who can handle his funds and of anyone who can exercise his power of attorney.

An artist with an honest and efficient personal manager can count himself among the blessed of the universe.

Any artist, who is offered a contract by a personal manager should carefully check:

1. What duties does the personal manager promise to perform in the WRITTEN contract. What are the personal managers credentials and who are his other clients?
2. If the personal manager fails to perform, what can the artist do? (Write angry letters? Fire the manager?).
3. Does the management contract state that the manager has no duty to get work for the artist? If so, does the artist really want the manager.
4. Does the contract set forth the duties of the manager as merely 'advising and counseling' the artist? Does the artist want that 'advising and counseling'?

Once I asked a lawyer for a personal manager to set forth the duties of the manager in the contract offered to my client, the artist.

The opposition attorney refused to do so. You might try the same approach: ask anyone who offers you a contract to set forth the specific duties he promises to perform.

A wise client looks at the performance of the manager for his other clients before the wise artist joins the manager's stable.

It is easy to guide an established name act, but it is difficult to get concerts, exposure on TV and radio and news print for new acts.

## **CHAPTER TWENTY-FOUR. ARTISTS MANAGER. (now called Talent Agencies)**

California licenses artists managers.

The legislature determined that artists managers may not work out of their homes. (Reason given for this restriction - the manager may want to hanky panky).

Despite the legislative desire to license managers, and despite any written regulations authorizing the hurdles, the bureaucrats operating this Artists Management licensing program have thrown additional hurdles in the way of applicants for the license:

Hurdle One: Two artists managers may not share an office.

Hurdle Two: An artists manager who is also a publisher must have one (1) office for his business as artists manager and another office for his business as a publisher.

Hurdle Three: One person who represents two (2) licensed managers must work in one office for one manager and in another office for the second manager. People don't want to pay (and who often can't get a license because they can't afford to pay) for these money wasting requirements, hope that the bureaucrats will change their position, and by the time you read this book, they may no longer be in effect. Of course, trying to improve conduct of government agencies, by the citizenry inconvenienced by the bureaucrats, is standard operating procedure.

Licensed artists managers are allowed to 'advise and counsel' clients AND to obtain employment for clients.

Application kits are sent to interested parties by:

Department of Industrial Relations  
Division of Labor Standards Enforcement  
455 Golden Gate Avenue  
San Francisco, Ca. 94102  
(415)557-3200.

## CHAPTER TWENTY-FIVE. BOOKING AGENTS.

The booking agent is supposed to obtain work for the artist. A good booking agent can. A bad one may.

Numerous establishments hire artists regularly. Booking agents are supposed to know the desires of the establishment (does the club want one piano player, or three piece jazz groups, or seven piece ethnic groups, etc.).

The booking agent considers the amount that the establishment wants to pay and the amount the artist needs and wants for himself and his team.

The booking agent may have a contract with one or more unions, such as the American Federation of Musicians, the American Federation of Television and Radio Artists, the American Guild of Variety Artists, Actors Equity, the Screen Actors Guild, the Screen Extras Guild, etc.

A contract between a union and an agent limits the fees which the agent can charge.

Some booking agents work alone (such as Jack Hampton) and others work in large international organizations.

Some people confuse the top fee which an agent can charge pursuant to his union contract (possibly 10%, 15%, 20% depending on the booking) with the top fee the licensing state (such as California) authorizes (e.g. 25%).

A weak booking agent will 'feed' his clients to a strong booking agent, who can get work for them, then split his (10%, etc.) commission (50-50 with him, each getting 5%, etc.).

## **CHAPTER TWENTY-SIX. PROMOTERS.**

Some promoters work out of their hats, a coin telephone booth, and a car containing all their possessions.

Some promoters start small, become bigger, take big risks, lose everything, and turn to other fields.

Some promoters stay in their locality, know the local dance halls, auditoriums, arenas, stadiums, etc.

Other promoters spread their activities regionally and nationally.

A promoter rents a location, employs artists for specific dates, etc.; publicizes the event, sets up a system of ticket distribution, and hopes that customers will attend the event.

Booking agents frequently have a policy of demanding a deposit from a promoter of 50% of the amount guaranteed by the promoter to the artist.

The artist may instruct road manager to collect the other 50% sometime during the evening performance.

The artist may be promised a percentage of the gate receipts above a certain sum.

## **CHAPTER TWENTY-SEVEN. THE TOUR.**

An artist may make money by performing at night clubs, school gymnasiums, concerts, arenas, auditoriums, stadiums, and other places.

An artist may be booked into a location for one day, or two, or three, etc.

An artist may be booked in one location on one night, and in other locations on other nights during the same week (for example, a tour may visit 10 cities in 14 days).

Sometimes, a tour may gross more for the artist than it costs him.

Sometimes it may cost him more than he or she grosses.

The artist may need money to go on tour (for pre-tour rehearsal pay, rehearsal location rent, costumes, plane tickets, etc.).

The artist may have to pay commissions or percentage fees to his booking agent, his artists or personal manager, his business manager.

Thus, it may be cheaper to not go on tour.

But, touring is a way for the artist to build his career through exposure and to promote records.

Artists want record companies to provide pre-tour and tour support. Because tours sell records, record companies are often willing to support tours.

## CHAPTER TWENTY-EIGHT. BUSINESS MANAGER.

A business manager functions MAY include:

1. Bookkeeping.
2. Preparing tour budgets.
3. Encouraging clients to keep receipts.
4. Keeping tab of tax return deadlines.
5. Keeping tab of union dues, fees, requirements.
6. Scouting for investments for the artist.
7. Handling investments.
8. Preparing checks for the artist's signature.
9. Sometimes the business manager may write checks on a separate account with limited funds.
10. Preparing payrolls for the artist.
11. When a record company has promised to reimburse an artist for his loss on a tour, the business manager may prepare such request for reimbursement of loss after a tour.
12. See the Tax Return Preparer.

A business manager handles your money so be sure you learn about him or her BEFORE you trust him or her.

Some people who have taken people at face value as business manager have lived to regret it.

Honesty is the most important asset of a business manager. It is up to you to determine whether who ever you select is honest.

## **CHAPTER TWENTY-NINE. TAX RETURN PREPARER.**

The various businesses which employ employees have obligations as employers to:

1. Obtain an employer identification number from the United States Internal Revenue Service.
2. Obtain an employer identification number from the State.
3. Withhold appropriate U.S. and State taxes from employees.
  - (a) U.S. income tax.
  - (b) U.S. social security tax.
  - (c) State income tax.
  - (d) State disability or unemployment insurance in accordance with respective State requirements.
4. Make appropriate deposits on account.
5. File quarterly U.S. and State employer tax returns.
6. File annual form W-2 for each employee and form 1099 for each royalty recipient who received above a statute determined sum.
7. File appropriate transmittal forms.
8. File annual form 940 for U.S. FUTA taxes.

**Other business taxes include:**

- (a) Property taxes.
- (b) Sales taxes.
- (c) City or country business license taxes.
- (d) Corporation income taxes.

**Tax preparers prepare personal income tax returns.**

**Sometimes tax planning may consider:**

1. Starting a corporation.
2. Which may or may not be a 1244 corporation.
3. Which may or may not be a Sub-Chapter S corporation.

4. Which may or may not be a personal holding company.
5. Which may have a pension and/or profit sharing plan or both.
6. Delaying taxes by delaying income.
7. Delaying taxes by speeding up paper expense deductions.
8. Avoiding taxes by using tax credits.
9. Evading taxes and going to jail.
10. And other matters.
11. Who is an 'employee' and who is an independent contractor.

## **CHAPTER THIRTY. LAWYER.**

Lawyers may play roles in drafting contracts between:

1. Songwriter-Publisher.
2. Songwriter-Performing Rights Society.
3. Publisher-Performing Rights Society.
4. Publisher-Record Company.
5. Artist-Producer.?
6. Artist-Record Company.
7. Producer Record Company.
8. Artist-Business Manager.
9. Artist-Personal Manager.
10. Artist-Artists' Manager.
11. Artist-Booking Agent.
12. Artist-Employers, Promoters.
13. Artist-Employees.
14. Artist-Independent Contractors.
15. Publisher-TV and Movie Users of Music.
16. Publisher-Printed Music Publisher.
17. Publisher-Foreign Publishers.
18. Record Company-Foreign Publishers.
19. Record Company-Merchandising Rights Users.
20. Record Company-Pressing Plant.
21. Record Company-Independent Promotion Men.
22. Record Company-Key Employees (Employment Contracts).
23. Publishers-Key Employees (Employment Contracts).
24. Record Companies-Other Record Companies for clearances, uses of masters, etc.
25. And More.

Lawyers sometimes function:

1. In Business Affairs Departments of large agencies, publishers, record companies, television and motion picture production and distribution companies.
2. As managers (personal managers, artists managers, booking agents).
3. In tax return preparation and tax planning.
4. As executives.

Non-lawyers often function as lawyers:

1. Because non-lawyers may specialize in a field.
2. Because non-lawyers may work on percentages of their client's income (instead of hourly or other fees).
3. Because non-lawyers may be less expensive.
4. Because no lawyer knowledgeable in the subject matter is available.
5. Because the non-lawyers are not inhibited by the laws that forbid unauthorized practice of law by non-lawyers.

## CHAPTER THIRTY-ONE. GOPHER.

'Go for this' and 'Go for that'.

The indispensable man who GOES FOR coffee, forgotten sheet music, photographs from the photographer, checks from the business manager, and solves many problems by his ability to GO FOR items is called a 'gopher'.

Becoming a gopher may be a good idea for a newcomer to the business who wants to learn the business, a retired person who has ample patience, a friend of the artist who has no need for a personal ego trip, or a professional gopher of any age.

The efficient gopher may be the glue which keeps the whole organization functioning happily by bringing something from wherever it is to wherever it is wanted.

One must always keep the gopher aware of the fact that he or she is appreciated.

## **CHAPTER THIRTY-TWO. RACK JOBBER.**

Record racks, containing best sellers and/or budget records appear in many department stores, super-markets and other locations.

The concept that 'the best-selling records sell much faster than other records similarly priced' makes it desirable that a store gives valuable space to best-selling records and does not waste space on non-selling or slow-moving records.

But most stores can not afford to spend an executive level buyer's time to select records.

On the other hand, a rack jobber, who may have hundreds of racks in hundreds of stores, must and does spend executive time selecting the records most likely to sell quickly.

The rack jobber buys records from the record company or from the local area distributor.

The records are placed in a truck (or van); the driver makes the rounds of the racks.

The driver counts the records sold since the last visit, adjusts records in the rack, delivers new records, and takes back unsold slow-moving records. A store representative is supposed to double check the driver.

The store then pays the rack jobber for records which the store sold (or were stolen).

## CHAPTER THIRTY-THREE. REGULAR RETAIL PRICES.

The suggested retail price of LP's varies from time to time, as inflation steadily increases costs and prices.

LP's may sell for different prices at different locations: one store may sell at regular retail price; another store may sell at a discount.

The same LP may sell for different prices in the same location at different times: for regular retail price when the record is hot AND when the record is a regularly stocked item; however the price may be lowered to clear the LP out of the store when the store has too many LP's on hand.

A recording contract between an artist and a record company may provide that the artist's royalty will be ——% (a certain per cent) of suggested retail price of LP's. This ——% (certain per cent) is called the **BASIC ROYALTY RATE**.

Or, the contract may provide that the artist's royalty will be ——% (a certain per cent) of 90% of suggested retail price.

In the case of LP's, the contract may provide that the base on which the ——% (certain per cent) (or the ——% (certain percent) X 90% is computed to be:

Suggested retail price:

-10% (or 12.5% or 15%) for one record of LP's.

-15% for two record LP's.

-15% (or 20%) for tapes.

All percentages are negotiable.

## CHAPTER THIRTY-FOUR. BUDGET RECORDS.

Some 'Budget' LP's have a suggested retail price which is far below the suggested retail price of regular new releases.

The 'Budget' LP's are not \$7.98 reduced to \$3.98. The 'Budget' LP's are made to be sold for \$3.98.

The 'Budget' LP's may have much lower costs of recording; often there is no cost of re-recording; the 'Budget' LP uses old masters recorded years before either for the 'Budget' LP record company or for another recording company.

The 'Budget' LP may have a predetermined press run, and may be manufactured at the same time as several other 'Budget' LP's.

Distribution of the line of 'Budget' LP's will be discussed by the record company and the retailers or wholesaler of the line.

The contract offered by the record company to an artist may have a provision to the effect that the royalty rate for budget LP's will be ONE-HALF OF THE BASIC ROYALTY RATE.

If the BASIC ROYALTY RATE is 6%, then ONE-HALF of 6% is 3%.

## CHAPTER THIRTY-FIVE. RECORD CLUBS.

Record Clubs offer records for sale through the mail.

Record Clubs generally sell records at full regular retail price PLUS cost of shipping and handling.

The variety offered by Record Clubs is tremendous.

Customers sometimes are able to acquire records before and or after the records are available in stores. Many of the records offered may never be available at stores frequented by the customer.

To entice persons to join a Record Club, a Record Club may 'give away' a lot of free records. Many thieves send for the free records without any intention of ever purchasing any records from the club.

Club operation is very expensive.

A record company may sell records to a club at a bargained for amount. Or, a record company may license a club to press records; the license may be for a flat rate or a royalty.

The record company contract offered to the artist may provide:

Artist shall receive ONE-HALF of the BASIC RATE on 85% of the records sold by the club.

Artist shall receive no royalties on records given away by the club.

## CHAPTER THIRTY-SIX. PRE-RECORDED TAPE.

When tape originally became popular, tape was not very popular.

Record companies faced the choice of investing in paying for pre-recorded tape (very expensive) and trying to distribute tape along with records, OR licensing tape rights to a company which could distribute the tape to locations willing to handle tape.

Many record companies leased tape rights to tape companies. (A 'lease' is used here in the sense of 'license').

The duration of such leases varied.

Since any money (front money or signing and possible royalties) was considered 'gravy' by record companies, royalty rates receivable by record companies were frequently low.

Record companies, in turn, offered contracts to artists providing that royalties on tapes would be **ONE-HALF of BASIC RATES** or **ONE-HALF of RECORD COMPANY'S RECEIPTS**,—whichever was less.

When record companies handle their own tapes, the factual situation has changed. Some record companies are willing to provide in contracts that the **ONE-HALF** clause applies to income they receive from leased tapes and that they will pay a **BASIC RATE** (or at least **75% of BASIC RATE**) for tapes distributed by the record company.

## CHAPTER THIRTY-SEVEN. PREMIUM RECORDS.

'For \$2.00 and six box tops of our product, we offer you an LP entitled: **THE BEST OF —————**'.

The premium provides something for the customer (hope for a bargain and anger at slow delivery), something for the premium offering company selling the boxes containing the box tops (lots of box tops, lots of orders from retailers running out of boxes), something for the record company (a few pennies per LP times lots of LP's), something for the artist (promotion and tiny royalties per LP or no royalties per LP).

The contract offered by the record company to the artist may offer:

**ALTERNATIVE 1: No royalties on premium records.**

**ALTERNATIVE 2: ONE-HALF of THE BASIC RATE TIMES SELLING PRICE OF THE PREMIUM.**

**ALTERNATIVE 3: ONE-HALF of the BASIC RATE TIMES WHATEVER COMPANY RECEIVES.**

Company may receive:

- (a) \$2.00
- (b) \$2.00 minus cost of handling and postage.
- (c) The wholesale portion of (b)
- (d) A flat amount for leasing masters.
- (e) A small royalty for leasing masters.
- (f) Other.

A record company may (lazily) consider any amounts received for licensing masters to special premium-record-companies as 'found' money (and may lazily accept the first deal offered).

If you multiply a royalty rate of 1 cent per master X 20,000,000 cereal boxes containing plastic sheet records, the amount of found money may be \$200,000.00 (for the record company). The potential of money from premium deals is tremendous.

## CHAPTER THIRTY-EIGHT. CUT-OUTS.

A record company may list the singles, LP's and tapes it is willing to sell on a salesman's order printed sheet.

The sheet contains lines for each item.

QUANTITY. ARTIST. NAME OF SONG OR ALBUM.

CONFIGURATION. MONO/STEREO/QUAD, etc.

The sheet lists current releases and the active backlist.

A record company's expenses in connection with each record are such that the record company does not want slow selling items on the order blank. The slow selling item may be crossed-out or cut-out of the order blank.

The item thus becomes a cut-out.

Record companies may have 'cut-outs' on hand and may receive returns of 'cut-outs' from distributors.

Record companies may dispose of 'cut-outs' by (a) selling some at regular price to meet orders received in the normal mail or through normal retailers orders (at the request of customers), (b) selling some at reduced prices (with small holes in the label areas) to specialized dealers, (c) having the records melted.

Sometimes record companies press large runs of 'cutouts' to meet special orders.

The contract offered by a record company to an artist may offer **NO ROYALTIES** on cut-outs, whether or not they are sold at above 50% of normal wholesale price.

## **CHAPTER THIRTY-NINE. ARMED FORCES**

Some records are sold to the Armed Forces.

Also, a military base may have a 'PX' (post exchange), (or equivalent), which may carry records.

Distribution of records from the record company to an individual PX (or military establishment) may be:

1. Direct from the record company to the PX (or military establishment).
2. From the record company to an area wholesaler who services the PX (or military establishment) in his area.
3. From the record company to an organization which specializes in serving PX (military establishment, and ships at sea), outside the U.S.

The contract, which the record company offers to the artist may provide that on sales to the military and sales to PX's (or equivalent), the royalty rate may be ONE-HALF OF THE OTHERWISE APPLICABLE RATE.

AFRS and AFRTS air play is highly important. AFRS is American Forces Radio Service and AFRTS is American Forces Radio and Television Service.

Service personnel are good spenders for albums and records.

## **CHAPTER FORTY. EDUCATIONAL INSTITUTIONS, etc.**

The record company contract may specify that the royalty rate shall be ONE-HALF the otherwise applicable rate for records sold to educational institutions.

Contracts vary. Some contracts provides for ONE-HALF rate for some reasons; other contracts provide for ONE-HALF rates for other reasons.

Think of it from the record company view. If the record company can save thousands of dollars by inserting a few words into a contract with a recording artist, then why should the record company not do so?

When the artist asks for the reason for the lowered payment to the artist for military, 'PX', educational, budget, U.S. manufactured records sold in foreign countries, foreign manufactured records by a foreign affiliate of a U.S. corporation, and each of the other ONE-HALF royalty items, the experienced record company negotiator may come up with an answer.

## **CHAPTER FORTY-ONE. FOREIGN SALES.**

U.S. record companies may export U.S. manufactured records to foreign countries.

Contracts may provide for ONE-HALF royalties.

A U.S. record company may lease a master to a foreign record company.

Contracts may offer for ONE-HALF royalties.

A foreign record company corporation may be wholly owned by the U.S. company.

Or, a foreign record company corporation may own the stock of the U.S. company.

Or, both may be owned by an international conglomerate.

In the last three cases, the artist should definitely ask for a royalty rate higher than ONE-HALF.

The absence of hints such as the above does not mean that the artist should not negotiate for better terms.

If the U.S. had approximately one-half of the world's record market several years ago, then consider:

**ONE:** the industrial revolution is spreading.

**TWO:** leisure time and luxury money is increasing.

**THREE:** 50% of the world market is outside the U.S.

**FOUR:** throwing away the chance to receive higher royalties from outside the U.S. makes no sense for the artist. The least the artist should do, is write the record company's representations concerning foreign royalties into the written contract.

Many foreign artists try to have close ties with the United States industry. Many foreign stars come to the U.S. and U.S. stars tour in foreign countries.

## **CHAPTER FORTY-TWO. COMPUTER.**

Computers can be fed sales and royalty and other information overnight and throughout the business day.

The record company can keep tabs of sales of thousands of items to hundreds of area distributors, retailers, master lessees.

The record company can keep daily accounts of each artist's royalty account, each producer's royalty account, each publishers royalty account.

The record company can keep daily records of pressing plant inventories, warehouse inventories, shipments, returns, etc.

It is easy for a record company to correlate an artists concerts on a road tour with subsequent sales at each location.

A record company can take past sales records and future potential sales of new albums into consideration when determining budgets of future LP's.

The thinking must still be done by persons. But the information input, storage and output can be done by computers.

When they work, computers are very useful in areas of accounts receivable, accounts payable, payrolls, etc.

## **CHAPTER FORTY-THREE. RECORDING BUDGETS.**

Recording budgets start with the concept of knowledgeable and co-operative artists; many artists are not knowledgeable and/or not co-operative; that is a basic weakness of recording budgets.

The contract between a recording company and an artist often leaves out the amount of the budget.

The theory is that the artist wants to spend as little as possible (since recording costs are deductions from his gross royalties) and also wants to spend as much as possible (to get 'quality' into the record). The record company wants to spend as little as possible (since it is their money) and as much as possible (to get 'quality'). The artist wants to receive as much money as he can for recording session time (\$1.00 today is better than \$1.00 at royalty time, and much better than \$1.00 never received).

The record company considers:

- (a) How much of the budget comes out of royalties already earned by the artist.
- (b) How many cents per sold LP can be allocated to recording costs.
- (c) How many LP's must be sold to break even on recording costs.
- (d) What is the likelihood of breaking even.
- (e) Is the risk of recording another LP worthwhile as far as the particular artist is concerned.

## **CHAPTER FORTY-FOUR. TALENTED PRODUCER'S ROYALTIES.**

A record company may have:

**ONE:** An exclusive recording contract with an artist.

**TWO:** A one LP non-exclusive production contract with a talented producer.

The record company may pay the producer:

1. One-half of a fee before the project starts.
2. One-half of a fee after the project is completed.
3. **A BASIC ROYALTY RATE** of ——% of retail price of singles sold in the United States, (and all the reductions in RATE and BASE discussed concerning the artist-record company contract).
4. **BUT NO PAYMENT OF ROYALTIES UNTIL AFTER THE ARTIST'S ROYALTIES EXCEED RECORDING COSTS.**
5. The fee is an advance against royalties.

The producer is thus encouraged to produce a good product.

The producer is encouraged to keep costs down by a provision that any excess recording cost (above budget) will be deducted from his royalties.

**NOTE.** Thus, excess recording costs may be deducted from two sets of royalties:

**ONE:** from the artist.

**TWO:** from the talented producer.

A producer, who finds himself in danger of exceeding the initial budget, should try to obtain from the record company a **WRITTEN UPWARD ADJUSTED APPROVED BUDGET.**

## CHAPTER FORTY-FIVE. SESSION PLANNING.

The producer, the record company contact, and the artist, discuss who is to be hired to arrange (the arranger usually selects the copyist), to play and sing, the recording studio, the use of different tracks.

The producer should know which musicians charge more than scale and should inform the budget preparer.

(NOTE: If a budget calls for a leader and 5 musicians, then the budget preparer calculates:

- (1) One leader receives double scale; counts as 2.
  - (2) Five musicians at single scale; count as 5.
- TOTAL: Multiply scale by 7.

If a musician receives double scale, then the count would be:

- (1) One leader receives double scale; count as 2.
  - (2) One musician receives double scale; count as 2.
  - (3) Four musicians receive scale; count as 4.
- TOTAL: Multiply scale by 8.

Some musicians work for single scale if all they have to do is follow a copyist's charts, and charge more if they are asked to do solos or to improvise.

Be careful about the contractor. Learn when he is (a) desired, (b) required. He costs double scale.

Session budgets should take into consideration all the extras which are paid to musicians (for doubles, overtime), to union funds (pension, health and welfare), to the government (employer payroll taxes), for workers compensation and to the payroll service.

Each session for an album should have its own budget.

The total of all planned sessions should be computed in writing by first setting forth the subtotals.

There may be recording studio expenses for pre-sessions, overtime, sessions, post-sessions, cancelled sessions, listening time, time-wasting time, damage to the studio, recording tape, demo tape and discs, masters, etc.

After all figures have been computed, add 10% for things going right, and add 10% for things going wrong - and hope.

Session planning is very important. Mislanning can be costly.

## CHAPTER FORTY-SIX. LIVE CONCERTS.

It sounds so simple: 'Let's record a concert.'

It is not simple.

A recording studio has equipment, if anything blows, the studio has equipment to find the fault, correct the fault, work around the fault, and substitute equipment.

There are fully equipped trucks that may have more equipment than many studios.

Musicians may have to be paid (in addition to the regular salary for the concert) an additional salary for recording.

The location at which the recording is to take place may have to be paid:

- (1) For the use of the location.
- (2) For the use of the name on any album.

Performers, in making movements for the audience to see, may forget the microphone.

Unwelcome noise may be recorded.

There is only one take per song. Different takes can not be combined.

Many so called 'live concert' recordings need correcting work (extra sessions) in professional recording studios.

## **CHAPTER FORTY-SEVEN. MINIMUM RECORDING OBLIGATION.**

An artist, who signs an exclusive recording contract with one recording company, gives up his right to record for another company as a featured artist.

An artist may, by custom of the industry, continue to work anonymously (without label credit) as a sideman or member of a background vocalist group, provided the artist is not recognizable.

Some contracts reduce this custom (which may be stated differently in writing) to writing.

The artist gives up his freedom to record for others because he wants the company, with which he is signing to record the artist.

The recording contract may have a schedule providing for minimum masters to be recorded:

### **PERIOD. Column of MINIMUM MASTERS. BASIC ROYALTY RATE.**

- (1) INITIAL RECORDING PERIOD 8.5%
- (2) FIRST OPTION YEAR 10 5.5%
- (3) SECOND OPTION YEAR 12.6%
- (4) THIRD OPTION YEAR 14 6.5%
- (5) FOURTH OPTION YEAR 7%
- (6) FIFTH OPTION YEAR 16 7%
- (7) SIXTH OPTION YEAR 16 7%

(NOTE: The figures are provided merely to demonstrate the chart. There are no standard minimum masters or basic royalty rates).

The contract offered by the record company may contain a clause stating that the company need not even record the minimum masters; that it need pay scale per unrecorded master.

The artist may want to raise scale to several times scale and may want to provide that a record company can not exercise an option until after it has completed recording minimum masters for the period.

## CHAPTER FORTY-EIGHT. MINIMUM RELEASE OBLIGATION.

Many artists express surprise when record companies fail to release recorded masters.

Artist: 'The record company spent \$40,000.00 recording enough masters for an LP. The record company should release the LP in the marketplace.'

Record Company: 'We press 10,000 copies of each single and 5,000 to 10,000 copies of each LP. Postage to disc jockeys and other radio station personnel, as well as reviewers, is expensive. Shipping cartons of records to distributors is expensive. Promotion is expensive. Every limited measure of time which a promotion man spends on a dud is a moment he can not spend on a hit. Every review of the dud is a review taking up space which might have been spent better. To support an album, we spend an initial \$50,000.00 to \$100,000.00. We simply don't feel that throwing good money (for promotion) after 'bad' (the recording session) makes sense. The album deemed 'bad' today, may be terrific in the future after the artist has some hits.'

Record company contracts often provide that the company has no obligation to release any product. The artist may desire a clause stating that a record company may not exercise an option to renew until after it has released (certain number of) singles and/or (certain number of) albums.

## **CHAPTER FORTY-NINE. MINIMUM PROMOTION OBLIGATION.**

Promotion methods vary.

Record companies do not want to contractually commit themselves to specific methods. Promotion methods change, increase, and vary.

Promotion methods may include:

1. Payola. (strictly illegal).
2. Sending free records to an artist's fan club (which may be run by a disc jockey and may have no members).
3. Sending free records to important stores (which suggest to a co-operative disc jockey that he play the record to arouse consumer interest). The stores may advertise on local stations.
4. By advertising on local stations.
5. Clearing the way for the artist to guest on TV.
6. Sending free records to radio stations for play purposes.
7. Sending free records to reviewers. Reviewers may sell records to retailers.
8. Telephoning disc jockeys and VIP from national record company headquarters. Sales may be made by the artist and promotion men.
9. Sending birthday, anniversary, Christmas cards and presents to VIP's.
10. Bringing copies of records directly to radio station personnel.
11. Collecting success information (charts, sales, reviews, playlists) and communicating them to persons who play successful and potentially successful records.
12. Tee shirts, posters, balloons, other souvenirs and merchandise.
13. Billboards on the Sunset Strip and elsewhere.

14. Sharing good news with reporters, columnists, other promotion men, gossips.
15. Artists performing for free or reduced rates at company, record industry, radio industry, political conventions, etc.
16. Subsidizing tours of artists (This may be in the contract).
17. Operating fan clubs.
18. etc.

## CHAPTER FIFTY. 'BLEED THE COMPANY.'

Years ago, an artist would be able to make a living on the road. The artist would spend a few days or weeks recording a single or album, would be paid for recording sessions, and would not bother the company. Eventually, the company time table for releasing the record would call for the release; the artist might or might not be notified.

Many groups 'starved' while they were not on the road, and broke up. Thus, when the record was finally ready for release, and a tour was desired by the company, there might no longer be a group.

Some record companies decided to consider long term exclusive artists as employees who were paid weekly or monthly, whether or not they were on the road, in the studio, or resting.

Artists who had been badgering companies for tour support found some companies willing to (1) reimburse artists for certain losses on tours, and/or (2) supply the cash for rehearsals, uniforms, transportation expenses.

Artists learned that they could bleed companies for money since companies could allocate all year around royalty advances to RECORDING COSTS and tour support to the PROMOTION COSTS of company budgets and expenses.

Two of the dangers to an artist in a tour support clause in a contract are:

- (1) The timing. A record company may be willing to reimburse the artist AFTER the tour. QUERY: how will the artist get money to start his tour?
- (2) The limited subsidy. The subsidy may be calculated:  
STEP ONE: Artist's gross receipts.  
STEP TWO: Less CERTAIN expenses.  
STEP THREE: Equals profit (or loss).

The problem is that the artist may have many expenses on top of the CERTAIN expenses. The OTHER expenses may be higher than the profit shown in STEP THREE, if any profit is shown.

If **STEP THREE** is a profit figure the record company need pay the artist nothing, even though the artist actually loses money on the road.

Road tours must be well coordinated. There must be radio and TV coverage with interviews and air play. There must be news media (newspaper and entertainment magazine) support.

## CHAPTER FIFTY-ONE. 'DAMN THE COMPANY.'

The exclusive artist recording company agreement usually has a very long term.

The term may be an original period of one year (or more or less) plus record company options for four (or more or less) one year options.

The artist may feel 'The record company is not doing enough for me.'

It is a natural feeling. After all, the record company is not in the business of pleasing its lesser paid employees (or even its well paid employees).

The company is in the business of selling records and commercially exploiting copyrights.

The artist may want:

1. More and higher budgeted recording.
2. More frequent releases of singles and albums.
3. More promotion.
4. More tour support.
5. More money more frequently.
6. More stroking.
7. To leave the record company.
8. To violate contractual obligations by recording elsewhere.
9. To violate contractual obligations by failing to cooperate with recording.

The record company contract is quite likely to provide:

- (1) Company may suspend the artist for certain breaches and may add the duration of the period of suspension to the active period of the contract.
- (2) Company may deduct from artist's royalties all recording expenses, whether or not the artist showed up for recording sessions.

(3) Artist expressly promised to not record for any other record company during the duration of the contract.

The artist may find that contract jumping artists are not welcome at most record companies.

## **CHAPTER FIFTY-TWO. LEAVING A GROUP.**

Groups tend to add and to lose members.

Record companies, as employers, want the right to determine who shall and who shall not be employed.

Thus a member of a group, who has left the touring group, is not automatically out of the recording group.

A new member of the touring group is not automatically a member of the recording group.

In the contract offered to the artist (the group), there are provisions that a record company may require any member, including a departing member, to perform as a solo artist.

Some members of a group may be key members (with individual, irreplaceable talent) and other members may be easily replaced.

The departing members may agree with the record company:

1. The departing member waives all royalties on unrecorded masters.
2. The departing member does (or does not) waive royalties on recorded but unreleased masters.
3. The departing member shall not use the group name.
4. The record company will (or need not) pay royalties on past releases.

## **CHAPTER FIFTY-THREE. THE GROUP NAME.**

Many group names are created by producers.

The producer finds singers/musicians, records them, sells the masters to a record company.

The singers/musicians are employed by the producer as recording artists. The contract provides that the group name belongs to the producer.

Membership in the group may change.

The surviving members and new members are employed by the producer as recording artists.

The singers/musicians, as partners, make money on the road. The producer gives them revocable permission to use the group name.

The producer feeds the record company a supply of masters sung/played by the various members of the group.

The record company cares less about the identity of individuals employed by the producer than about the quality of the masters furnished by the producer.

When the recording contract between the producer and the singers/musicians is over, the singers/musicians are free to stay together under any other group name than the name which belongs to the producer.

## **CHAPTER FIFTY-FOUR. TRADEMARK REGISTRATION.**

Group names may be registered as trademarks with the Patent and Trademark Office.

For free forms, indicate whether you wish to register a trademark on behalf of:

- (1) A one man business, or
- (2) A partnership, or
- (3) A corporation.

Ask for free information, and you may receive a free copy of 'General Information Concerning TRADEMARKS.' Write to:

Patent and Trademark Office  
Washington, D.C. 20231.

Be sure your name is unique and fits you or your group.

Be sure it is not too close to the name of another artist or another group's name to avoid their being mistaken for you or your being mistaken for them.

## **CHAPTER FIFTY FIVE. ROYALTY STATEMENTS.**

The recording contract may provide that royalty payments shall be rendered for semi-annual periods, that such periods shall be January-June and July-December, that the royalty period may be changed by the record company.

The record company may want to issue royalty statements within 90 days after the last day of the royalty period; the artist may counter with 1 day on the ground that the computer has the information ready; the record company may counter that all royalties are paid at the same time, that the computer is set for 90 days, that they are not going to change the computer.

The royalty statement should provide information concerning:

1. **GROSS ROYALTIES** (Record Sales and Royalties Per Record).
2. **DEDUCTIONS** (Session costs, contract required advances).
3. **NET ROYALTIES.**
4. **ADDITIONAL DEDUCTIONS** (Advances outside the particular contract. Unrecouped royalties of beginning of period. Reserves).
5. **CASH PAYABLE**, if any.

## **CHAPTER FIFTY-SIX. ROYALTY PAYMENTS.**

In most cases, the recording artist receives no royalty payments at royalty time.

Most records don't sell enough to allow the record company to recoup its advances.

If sales exceed that amount, the record company may have advanced money to keep the group together and on tour.

A record company, faced with the knowledge that an artist has actually earned royalties, may call for record sessions in order to spend the money on masters.

The artist may complain that sales of the so-called certified gold single (1,000,000 copies), platinum single (2,000,000 copies), gold LP (500,000 copies), or platinum LP (1,000,000 copies) is not fully reported by the record company on its royalty statements, or in royalties.

The record company contract offered to artists provides that royalties shall be payable only on records for which the record company has been paid (less a reasonable reserve in the event the company has to refund payments to wholesalers who return records for which the wholesalers have paid).

## CHAPTER FIFTY-SEVEN. SONGWRITER'S ROYALTIES.

Many talented songwriter/artists receive happy news at royalty time. While the artist receives no royalties, the songwriter does.

Songwriter-publisher contracts may be:

- (1) For one song at a time.
- (2) Non-exclusive employment covering all songs recorded by the songwriter as artist.
- (3) Exclusive employment covering all songs written by the songwriter during the term of the contract. (There may be a sentence fragment which provides that the songwriter assigns to the publisher all songs written before the commencement of the contract) A record company is likely to have at least two publishing companies (one affiliated with ASCAP and one with BMI).

The recording company is likely to offer in its contract (or with its contract) provisions (or a separate contract) pertaining to the songs written by the artist/song writer to be published by the recording company/publisher.

A recording company contract may wish royalty computations of all contracts between the recording company/publisher to be one accounting unit and that royalty computations shall be 'cross-collateralized.'

The artist/songwriter will want the contract to provide that songwriter statements and payments shall in no way be affected by royalty computations concerning the artist. (That computations, statements, and payments shall be separate).

## CHAPTER FIFTY-EIGHT. MERCHANDISING ROYALTIES.

The artist starts out with no contract, but owning rights to merchandise the artist.

When a group name is owned by a producer, he owns the merchandising rights.

The artist, the producer, and the record company may all want to share royalties from merchandising rights.

A professional merchandising rights licensing company may:

ONE: receive an exclusive or non-exclusive agency to represent the owner of merchandising rights.

TWO: contact manufacturers of toys, tee shirts, posters and other royalty payers for the right to use likenesses, names, photos, etc. of entertainers.

The artist, if he negotiates with a record company, a production company, may insist that merchandising rights be accounted for separately, and that the merchandise licensing agent pay the artist's share directly to the artist.

The parties may also negotiate concerning (1) who will select the licensing agent (or which of them will negotiate licenses in the absence of a licensing agent.), (2) who has final say concerning offers passed along by the licensing agent, (3) who will receive what fraction of the amount payable by the agent.

## CHAPTER FIFTY-NINE. RESPECT CONTRACTS.

You probably never heard of the group that I will tell you about.

They had a big hit record for a little company.

A manager persuaded them to tell the little company that the group was not going to honor its recording obligations.

The manager brought the group to a major record company, which gave the group a bonus for signing.

The little company sued the group and the big company for interfering with contractual relations.

The big company faced the alternative of dumping the group or keeping a law suit.

The big company dumped the group.

The only one happy was the manager who had collected a commission out of the bonus the big record company paid at the time the big company signed the artists.

A contract is one of the great creations of civilization. The group found out too late that contracts should not be treated with disrespect.

I am sorry the group killed its opportunities for success.

## **CHAPTER SIXTY. COURT PROCEDURE.**

The party who thinks he has a legal complaint and starts a lawsuit is known as the **PLAINTIFF**.

The plaintiff files a paper called a **COMPLAINT**, which sets forth facts to inform a judge about a situation, and requests that the judge order the **DEFENDANT** to pay money to the plaintiff.

The party which defends itself is called a **DEFENDANT**.

The defendant may file a **DEMURRER** (which alleges that the **COMPLAINT** is defective as a matter of law), or an **ANSWER** (which admits or denies **ALLEGATIONS** in the complaint). The **ANSWER** may also have **AFFIRMATIVE DEFENSES**.

The **DEFENDANT** may file a **CROSS-COMPLAINT**, which sets forth additional facts to inform the judge about the situation, and requests that the judge order the **CROSS-DEFENDANT** (the plaintiff) to pay money to the defendant (as cross-complainant).

The parties may try to discover facts with written questions (called **INTERROGATORIES**), oral **DEPOSITIONS** transcribable by certified stenographers, and other legal methods.

The parties may be encouraged by a judge to settle their differences at a settlement conference.

At a **TRIAL**, the plaintiff introduces documents and testimony from his witnesses.

The defendant may cross-examine.

Then the defendant introduces documents and testimony from his witnesses. The plaintiff may cross-examine.

Each party may argue the case.

The jury (if there is one) or the judge (if there is no jury) will try to decide the case for the plaintiff or for the defendant.

If there are several disputes, the fact finder (judge, jury) may decide one or more in favor of one party and other(s) in favor of the other party.

Law suits are generally time consuming and expensive for both parties.

Many contract breakers gamble that the injured party will not bother to sue.

However, in today's society, many people sue at any provocation.

## CHAPTER SIXTY-ONE. LAW SUIT ECONOMICS.

A party may sue because the party's pride is hurt.

A party may sue to let the world know that he is willing to fight for his rights and to pay for the cost of the fight.

A party may sue because he thinks that he can make money with the suit.

A party may sue because he has not considered the cost of time and money of even a successful suit, and he has not considered the likelihood of collecting a judgment.

A party may sue because he is sued (and thus he files a cross-complaint).

Calculate the amount of hours which the plaintiff may spend on the case. (For example: 200 hours).

Calculate the value of plaintiff's time per hour. (For example: \$20.00).

Multiply hours times value. (For example: 200 hours times \$20.00 equals \$4,000.00).

Possibly the calculation should not be in other value of time lost (value of income lost because the plaintiff is busy with the case).

Add dollars out of pocket for filing fees, service fees, deposition costs, any jury costs and other costs.

The plaintiff must also consider fees payable to his own lawyer.

Suppose the fee is \$5,000.00, is an advance against any possible recovery, the \$5,000.00 to be payable BEFORE the lawsuit. Can the plaintiff afford to pay the \$5,000.00 (or any other amount the lawyer wants for his services)?

If the plaintiff can afford the \$5,000.00 (or other amount), should the plaintiff use that money to pay an attorney or use it for some other purpose?

The plaintiff should also learn whether a court may determine that the plaintiff is wrong and must pay the defendant's lawyers fees.

What is the value of a successful law suit. (For example: \$100,000.00).

What are the chances of success. (For example: 75%).

Multiply: \$100,000.00 times 75% equals \$75,000.00.

If plaintiff's attorney is entitled to a percent of recovery, deduct that percent.

\$75,000.00 -(minus) 33.3% equals \$50,000.00.

Balance cost (time and money) against GOAL.

COST: \$10,000.00 versus GOAL equals \$50,000.00.

Consider RISK OF ADDITIONAL LOSS.

This oversimplifies the matter.

You can readily see why many persons unhappy about contracts don't bother to sue and thus save themselves time, money and misery.

## CHAPTER SIXTY-TWO. RIP-OFF A PIECE.

Many persons have learned that one way to wealth is to rip-off wealth from the wealthy.

Another way to wealth is to rip-off a share of income from high income earners.

Persons who receive percentages of an entertainer's gross income may ripoff portions far above and beyond their just due.

For example, an entertainer may have signed contracts to pay:

- (1) 15% to a booking agent.
- (2) 15% to an artists manager or personal manager.
- (3) 5% to a business manager.
- (4) 5% to a publicity agent.

-----  
40% total.

These fees may be fair or unfair, depending on circumstances.

The effect of the fees is to make it extremely difficult for an artist to tour successfully.

For example, if an artist receives \$10,000.00 for one week's tour, he may pay \$4,000.00 in commission, thus having only \$6,000.00 for his road expenses and himself.

The situation worsens for the artist as the percentage people charge expenses to the artist.

But, the artist may be fortunate that he receives services from his percentage people, and the amount they receive may be less than their value to the artist.

## CHAPTER SIXTY-THREE. ROAD PEOPLE.

The artist is torn between presenting a large show and practical economics.

Consider people who want to go on the road with the artist, and who is essential on the trip.

1. The artist.
2. Musicians.
3. Vocalists.
4. Dancers.
5. Gophers.
6. Road manager.
7. Sound and light equipment handlers and repairers.
8. Groupies and other friends.
9. Photographers.
10. Publicist.
11. Concession handler.
12. Box office checker.
13. Security guards.
14. Chauffeurs.
15. Personal, artist's and business manager.

Each person costs money (salary or allowance, per diem, transportation, telephone, other expected and unexpected costs) and aggravation.

What would be the consequence of not having a security guard (loss of equipment?), a box office checker (loss of income?), a concession handler (loss of income?), groupies (higher expenses for locals?), photographer and publicist (smaller audiences?), dancers, as many musicians and vocalists (less memorable show?), etc.

For a long time an artists may dream about going on the road. When the opportunity arrives, the artist must be very careful about the financial aspects of the opportunity.

## CHAPTER SIXTY-FOUR. TOUR PLANNING.

The record company may have (should have) an executive, whose job it is to COORDINATE company actions with artists tours.

The executive may be on the mailing list of persons who receive proposed itineraries from the booking agency.

The COORDINATOR can inform the record company's sales, promotion and publicity people, the concerned area distributors, the promotion people in concerned areas. As advertisers in various trade papers, the record company may be able to place schedules of tours into the trade papers (press).

Local promotion men may know about the good (or bad) reputations of the local promoters presenting the artist, and may coordinate efforts to achieve best cooperation from local radio stations, newspapers, retail stores.

The concert promoter may ask the record company to pay for advertising: 'See the artist at —on—', tied in with 'Get the artist's latest album '—' at your favorite record store.'

The local area distributor may be able to arrange cooperative advertising with large record retailers, rack jobbers, chains, etc.

The artist's booking agent books the tour.

The artist's manager supervises the artist getting his team together on behalf of the artist.

The artist's business manager budgets the tour and arranges for transportation, hotels, payrolls, etc.

The artist's record company throws its personnel's time into the project and gives tour support financially by buying air time advertising.

The booking agent receives deposits from promoters.

The artists and his entourage start the tour.

On tour, you meet VIP's, top bookers, other top TV and radio personalities who have public attention in their cities, top celebrities also on tour, owners of top clubs, managers of top auditoriums.

These people can be responsible for future personal appearance bookings and other work.

## **CHAPTER SIXTY-FIVE. ONE CITY.**

**'Keep receipts.'**

**'When you can't get a receipt, make an entry in your daily diary.'**

**'Even when you do get receipts, make an entry in your daily diary.'**

**Tax preparers say these words to clients.**

**It is difficult to keep receipts and to make contemporaneous entries in daily diaries for airport tips, airport-hotel limousines, hotel bell-boys tips, hotel-stadium taxis, meals and tips.**

**The road manager tries to arrange for stadium sound checks and light checks.**

**The artist meets people (press, promotion men, disc jockeys, wholesalers, retailers).**

**Instruments and equipment are placed on stage (or if another band plays first, slightly off-stage). Moving equipment and instruments is rehearsed.**

**The road manager worries about the danger of the promoter ducking out instead of paying, and about losing equipment.**

**Dressing rooms are inspected.**

**Credits on the marquee and on any program are checked. Drop-ins are greeted.**

**Eventually the artist does what he does best, which is to perform.**

**Applause. Screams.**

**The concert is over.**

**Try to get paid. Remove equipment. Return to the hotel. Meet local disc jockeys and other guests who can do some good for the artist, the record, the record company.**

**Sleep. Sleep.**

**Travel to the next city.**

## CHAPTER SIXTY-SIX. OPENING ACT.

The artist may be the opening act or the main act.

The main act is supposed to be the big draw. The main act may veto the use of a proposed opening act.

The main act does not want to be compared unfavorably to the opening act.

The opening act may be a slight box office draw. The promoter wants to fill the location (stadium, arena, auditorium, etc.). The opening act must not be disliked; must not keep people away.

The main act wants as much money as possible. The main act does not care how little money the opening act receives.

The opening act prepares a budget for the trip. The budget shows expenses are higher than income.

The opening act requests help from the record company. It helps.

The opening act artist asks his managers to agree to lower percentages. They agree to let the artist owe some of their fee for awhile.

The opening act artist appears.

The audience re-acts.

Some records are sold.

The record company wonders: Is this artist worthwhile?

## CHAPTER SIXTY-SEVEN. THE BOX OFFICE ACT.

The promoter says: 'I will pay \$5,000.00 for the night, against 60% of the gate. The house can hold 3,000 people. I plan to offer tickets for \$4.00 each.'

The booking agent calculates: '3,000 people times \$4.00 means a maximum of \$12,000.00 gross receipts from the gate. 60% of \$12,000.00 equals \$7,200.00. The artist may receive a maximum of \$7,200.00 and a minimum of \$5,000.00. The project is worthwhile.'

What is worthwhile in one location (\$5,000.00 minimum, \$7,200.00 maximum) may not be worthwhile in another location.

The cost of traveling to and from dates must be considered.

Deadtime between engagements is a factor.

The booking agent wants full and almost full houses. If a choice is presented to the booking agent between one location (auditorium, arena, stadium) with 20,000 seats and another with 5,000 seats, the agent may choose 20,000 (larger potential income) or 5,000 (easier to get a full house).

Expenses are high. The main act's gross income is reduced by the amounts paid to the opening act. The main act wonders whether the opening act is worthwhile or costs too much.

The main box office attraction worries: 'Will it beat previous records of competitors?' 'Will it rain?'

## **CHAPTER SIXTY-EIGHT.ARTIST/PRODUCER/PUBLISHER.**

The artist returns to his business home (New York, Los Angeles, Nashville, elsewhere).

The artist has money in his pocket from the road. He has not paid all road bills and owes money to his percentage people. But he has money in his pocket and he is not about to 'waste' it by paying his bills.

The artist makes the rounds, collecting money from his booking agent, tapping the record company for advance royalties, trying to tap ASCAP or BMI, tapping his publisher.

The experienced artist decides to use his contacts (the record company, other artists).

The experienced artist discovers talented songwriter/artists who are trying to be discovered.

The experienced artist offers form contracts to the youngsters. The form contracts provide that the experienced artist (as producer/publisher) ties up the new artist/songwriter for a term of one year plus six one year options.

He ties up merchandising rights.

The experienced artist is no longer just an artist.

He is now an experienced artist.

He has learned the record industry.

## CHAPTER SIXTY-NINE. A FLOOD OF MONEY FOR THE SONGWRITER.

Some talent and more businessmen experience receiving a flood of money.

For example, consider a *songwriter* who has contributed *five songs* on an album which sells enough to have the record company pay the publisher for two million LPs.

Publisher receives:

1. Statutory royalty for 3 songs which are less than 5 minutes long. 2.75 per song equals 8.25¢.
2. Statutory royalty at half a cent per minute for a 7 minute song equals 3.5¢.
3. Statutory royalty at half a cent per minute for any 8 minute song equals 4.0¢.
4. Add above to arrive at royalty per LP equals 15.75¢.
5. LPs sold and paid for less reserves equal 2,000,000.
6. Multiply LPs by royalty per LP \$315,000
7. Writer receives one-half of amount received by publisher \$157,500

It is possible that a second songwriter, who co-writes with the artist, co-writes ten songs on an LP which sells enough to have the record company pay the publisher for one million LPs.

1. Assume statutory royalty rates of 2.75¢ times 10 songs equal 27.5¢ per LP.
2. Assume 2,000,000 LPs.
3. Record Company pays publisher \$550,000
4. Publisher computes amount payable to all songwriters. \$275,000
5. Co-writer's share is half of the amount payable to all songwriters \$137,000

## **CHAPTER SEVENTY. A FLOOD OF MONEY PAID FOR RECORDING SESSIONS.**

In the years 1960-61, when the original RECORD INDUSTRY BOOK was written, I computed scale for an AFM musician at \$45 per 3 hour session.

A leader and four musicians could supply sufficient sound for an album.

A 12 song album could be completed in 2 sessions of 3 hours each.

Multiply the Factors:

1. Scale. \$45
2. Leader plus 4 musicians count as 6 musicians.
3. *Total* per session equals \$270.
4. Times number of sessions 2
5. Cost for an LP equals \$540.

All factors have increased.

1. Scale has (to simplify) tripled.
2. Number of musicians has increased.
3. Number of sessions has increased tremendously.

In 1960, most singles and LPs were aimed at monaural record players.

Stereo and tape have become more important.

Quad, video discs and video cassettes were born.

The number of sound tracks in recording equipment grew from 1 to 2 to 4 to 8 to 16 to 24 to 32.

The cost of studio facilities grew in recording budgets from a few hundred dollars to over fifty thousand dollars.

**Budgets grew from hundreds of dollars to thousands to tens of thousands to over a hundred thousand dollars.**

## **CHAPTER SEVENTY-ONE. A FLOOD OF MONEY FOR THE ARTIST.**

The number of LPs sold increased.

Retail outlets increased as jobbers serviced department stores, chain stores, other establishments with 'The Top Ten' (or Top 20 or Top 40, etc.)

Retail chains increased, and this enabled retailers to advertise more.

Through the concept of cooperative advertising (paid partly by retailers, partly by record companies), more albums were advertised in the local media.

Larger sales enabled record companies to afford advertisements in national media.

Masters were utilized, in addition to the old single, LP, on tapes.

Distribution, in addition to retail and record club distribution, grew in the television field. Big and small mail order companies could launch aggressive campaigns at local levels.

The international market became more organized as European giants bought established American Companies and vice versa.

Record Companies became more involved with tying in artists' tours with record promotion and sales.

Record companies sought more than just (1) talent, (2) masters for an initial single or album.

Record companies sought a purchase: (1) talent, (2) masters, (3) Management, (4) booking, (5) a group for public appearances. Some good artists were turned down by record companies if the artists had no management or poor management.

**Success came:**

1. More artists stayed successful.
2. Longevity increased.
3. More LPs were sold.
4. The royalty rate percentages increased.
5. The price of LPs increased.

Compute gross royalties for an artist who receives royalties of \$1.00 per LP when the record company pays royalties for a million LPs (sold and paid for less reserves).

1. Factor: Royalty per LP	\$1.00
2. Number of LPs	1,000,000
3. Gross Royalty	\$1,000,000

From gross royalties, deduct costs of sessions and other advances.

#3 Gross Royalty	\$1,000,000
#4 Less Costs and Advances	<u>– 150,000</u>
#5 Net Royalties	850,000

## **CHAPTER SEVENTY-TWO. A FLOOD OF MONEY FOR THE PRODUCER.**

In 1960, artist's royalties were often only 3% of retail, while artists with better bargaining power might receive 5%. One reason for the growth of independents was their willingness to pay more than the giants.

When the excise tax was removed, record companies were able to increase artists' royalties.

Royalties grew to the point record companies paid production companies 8%, and production companies paid artists 4% of retail.

Royalties grew to the point record companies willingly paid production companies 10%, and after some bargaining points: 11%, 12%, 13%. The bargaining points might concern sales of LPs, option periods, or other factors.

As record companies increased the basic royalty rate for the package (artist, talented, producer, production company). The producer's royalty rates and amounts increased.

1960 rate.      Possibly \$100 per master, \$1,000 per LP  
Possibly 1% of retail.

Possibly \$0 pay and 0%. The producer may have worked to receive royalties as a songwriter, publisher, or artist.

**Increases during the years:**

An assistant producer received about \$60,000.

A producer received \$5,000 of an album budget of 35,000, and a promise of another \$2,000 if the album was produced for the amount budgeted.

A producer was paid \$7,500 for a \$30,000 project.

A producer was paid \$10,000 for a \$60,000 budget.

A producer was paid \$1,500 per master.

A producer was paid \$20,000 out of a \$90,000 budget.

Producers' basic royalty rates of retail price increased from 1% to 2% to 3% to 4%.

A producer-Record Company contract might provide:

1. Producer receives a fee, as an advance against royalties.
2. Producer receives no royalties if recording costs are not recouped by the record company out of the artist's royalties.
3. Producer is paid from the first record.

*Imagine:*

1. Royalty rate of 4%
2. Times Retail Price – Cover \$7.98 – 1.48 – \$6.50
3. Equals 26¢ per LP
4. Times 1,000,000 LPs
5. Equals royalties of \$260,000

## CHAPTER SEVENTY-THREE. A FLOOD OF MONEY FOR THE MANAGER.

California has a law which changed the term "Artists' Manager" to "Talent Agency." The Industry, however, uses the term "Agency" to mean the salesman who sells the talent and uses the term "manager" to mean the licensed or unlicensed personal manager.

The "agency" (booking agency) may receive commissions of 10% or 15% or 20% depending upon:

- (1) *The contract.*
- (2) *The duration of the job*
- (3) *The presence or absence of union protection*

The "personal manager" may receive a commission of 15% (fairly usual) or more (if the manager is greedy) or less (on jobs for which the entertainer must pay both an "agency fee" and a "personal manager" fee).

The "personal manager" may be entitled, if the contract so provides, to reimbursement of loans he made to the artist, expenses he incurred on behalf of the artist, travelling expenses for travel incurred on behalf of the artist, travelling expenses for travel incurred on behalf of the artist.

An artist-songwriter may receive \$1,000,000 in royalties, and may then pay:

1. Agency 10%	\$100,000
2. Manager 10%	<u>\$100,000</u>
	200,000

Or, the contracts may be rougher on the artist-songwriter.

1. Agency 15%	\$150,000
2. Manager 25%	<u>\$250,000</u>
	\$400,000

## **CHAPTER SEVENTY-FOUR. THE TAX BITES.**

Almost nobody wants to pay taxes.

The wage earner may find that his gross salary check is reduced by several taxes.

When the wage earner files his annual income tax return, the wage earner may find that the amount of income tax withheld approximates his income tax liability.

The studio musician may find that his income tax withheld exceeds his annual tax liability computed in year 2.

The entertainer, who receives his income in fees, in year 1, has the obligation of computing estimated taxes four times a year (on April 15, year 1; June 15, year 1; September 15, year 1; January 15, year 2).

Most entertainers bitterly resent making tax payments during Year 1; all too many entertainers fail to make proper payments in year 1.

As a practical matter, many entertainers fail to make the estimated tax payments.

The government handles this refusal to file estimated tax returns and refusal to pay estimated income tax due in stride — often by insisting on penalties.

Some entertainers fail to file annual returns on time; the government often insists on interest and penalties (penalty at 5% per month up to 25%).

Occasionally, the government believes that the taxpayer overstated expenses, understated income, or both. The government may, or may not, assess a 5% penalty for negligence or higher penalties for civil or criminal fraud.

It is quite possible that the federal or state government may insist that certain "fees" paid by the taxpayer were really "gross salaries," and the authorities may remit to the respective government all taxes that should have been withheld from employees *and* should remit employer taxes, interest and penalties.

Thus an entertainer who does not promptly pay all taxes when due may be assessed, by the federal and state governments, taxes, interest and penalties which *exceed the entertainer's taxable income*.

If the entertainer needs to earn money in Year 2, to pay taxes for Year 1 income, the entertainer may find that his taxes payable in Year 2 on Year 2 income are not sufficient to pay past-due taxes for Year 1 and currently due taxes for Year 2 income.

## **CHAPTER SEVENTY-FIVE. THE JUNGLE.**

Many superstar entertainers who reach the “top” after a ruthless climb continue their ruthless tactics. They are not satisfied with receiving earned royalties. They want unearned royalties.

Such a jungle animal may eat alive a songwriter who has written an excellent song.

The entertainer may utilize his bargaining power by insisting that his publishing company publish the song. (That may be earned royalties).

The cannibalistic entertainer may eat the songwriter by insisting upon a cut of the songwriter’s royalties. (Those royalties are not earned by the entertainer.)

The jungle entertainer may remember how he was treated by producers when the jungle animal was an artist without bargaining power.

The jungle animal may then seek to become a producer of artists without bargaining power; the jungle animal may then consciously misuse and abuse these artists.

This jungle animal may deceive artists by stating: “I will treat you much better than the way I was treated when I was an artist.”

Beware of the jungle animal whose only growth from the criminal mind he formed as a child is the growth of opportunities to commit crimes.

## **CHAPTER SEVENTY-SIX. MAKING MORE EACH YEAR.**

“I made more in the first two months of this year than I made all of last year, and last year was better than ever before,” R. H. told me.

“You are not the only one who has told me that. Lots of music industry professionals do better each year,” I replied. “Reliable professionals tend to be able to obtain more job offers, more often, paying more, each year. Smart professionals learn more about music (for example, how to play other instruments, how to arrange), learn more about business, learn how to wear more hats (for example, sideman, leader, booker).

## **CHAPTER SEVENTY-SEVEN. THE PROFESSIONALS.**

Some people spend a little time and varying amounts of money in the record industry.

Other persons spend many years and earn a lot of money in the record industry.

Trade papers often have columns concerning "The Executive Turntable," in which the hirings and departures of executives are reported.

Many musicians work as sidemen, conductors, arrangers, orchestrators, copyists, contractors, producers, engineers, songwriters, publishers, artists, managers, agents, and may have regular 40 hour jobs which are outside the entertainment industry.

Talented persons may invest money in equipment, recording studios, office buildings, car leasing agencies, travel agencies.

Many persons holding down jobs prepare for starting independent entertainment industry businesses by seeking financial backers.

Independent business men (e.g., publishers) often seek the temporary steady weekly paycheck paid by a major record company.

A person may switch from a job as secretary to a publisher to a job as booker for a night club to a job as business manager in a law firm.

A recording studio owner may become the head of a college training persons for careers in the record industry.

A disc jockey may become a promotion man.

A promotion man may become a disc jockey.

A publicist may become a marketing specialist.

A songwriter may become a bookwriter.

A musician may work steadily in a T. V. talk show orchestra and at a recording studio for a few employers.

The professionals perform their jobs.

Professionals tend to increase "what they know" and "whom they know."

Many professionals tend to exchange favors, do favors, receive favors.

Jungle animals eat others and are frequently devoured. Lambs tend to be sheared and lose their wool. Sharks tend to fleece the young and the never-learning-ignorant of all ages.

Jungle animals, lambs and sharks exist in other fields, too.

Years ago, I felt that I did not want to *encourage* anyone to try show business.

I have an additional feeling now. I don't want to *discourage* anyone from trying to become a knowledgeable show business professional.

## **CHAPTER SEVENTY-EIGHT. THE 70 HOUR WEEK.**

Show business is rough. Hours are long. Workweeks may consist of 70 hours of business connected activities.

But, there are a lot of people who spend 40 hours weekly on boring jobs and 30 hours weekly watching television.

Who's the luckier person: the 70 hour workaholic with a dream or the 40+30 hour bored-aholic with a day dream?

I genuinely do not know. I can argue each way.

Which is better for you?

Whichever it is, you'll probably have pleasures, pains, day-dreams, regrets.

Do try to enjoy the road whichever turns you take.

## **EPILOGUE.**

**This book has introduced you to concepts behind contractual provisions which puzzle experienced lawyers.**

**If you have read this entire book, I think that you are ready to read the complex record industry contract between an artist and a record company.**

**Thank you for giving me your time. That has made my time more worthwhile.**

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April 25, 1977

Mr. Walter E. Hurst  
Author,  
6605 Hollywood Blvd.,  
HOLLYWOOD, CA 90028

Dear Walter:

I just finished reviewing your book © COPYRIGHT. It is very thorough, as are your previous books which are in constant use as reference beside my desk. It represents a most valued addition to our reference library and will be considered as a MUST reading for every one of our employees.

If I may, I would like to give you a simple illustration of what can and does happen with people when they are ignorant of Copyright laws and copyrights as 'property'.

A gentleman, who is quite prominent as a music lover and

*((rest of sad story deleted))*

Imagine their shock of disbelief, when they were told that they could not do this without proper licence and that they were violating several property rights under the copyright laws! Their shock and surprise was even greater, since they had lived under the erroneous impression that they would be able to 'copyright' "their" creations. How sad, that the investment of a few Dollars in your book, could have saved the poor investor almost One Hundred Thousand Dollars!!!!

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Warmest regards,  
*Herbert P. Haas*  
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