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For the European Music Office, US Development Project



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PREFACE

This US market analysis, guide and key contact list has been prepared to pre-shape a future European office based in New York that will propose its services to the national promotion organizations based in Europe. It is sponsored by the European Commission and by the European Music Office, and prepared by the European Music Office in New York City; US Development Project for the following platform members; co-organizers and Partners.

Co-organizers:

- **The Noorderslag Foundation (NL)**, organizing EuroSonic, Noorderslag, Noorderslag Seminar and ETEP. Partners are EBU (European Broadcast Union), Yourope (European Festival Organization), Network Europe (European Agents and promoters), Conamus, IMMF. Noorderslag Foundation is supported by Buma/Stemra, Ministry of Culture (OC&W), City and Province of Groningen, NPI (Dutch Pop and Rock Institute) NVPI (Dutch IFPI), Fonds voor podiumkunsten, (Fund for performing arts), EVD (Ministry of Economic Affairs),
- **TEOSTO, the Finnish Composers collecting Society (FI)** - It also represents a range of Finnish bodies and institutions among others : Ministry for Education, FINPRO (Ministerial trade body), GRAMEX (Artists and Producers Copyright Society), Finnish IFPI, the Musician's Union, SOLO (Soloist's Association), Publisher's Association, the Composers and Lyricists Association and the Composer's Union,
- **Fundacion Autor (SP)**, an institution part of SGAE group, the Spanish collecting society, supporting the development of Spanish-speaking creation,
- **IMPALA** - the independent music companies association, representing more than 1400 independent producers, distributors and publishers in Europe,
- **MICA (A)** - It represents 3 Austrian organizations: MICA/Music Information Centre Austria, IMZ (International Music Centre), SKE Austro Mechana (the social and cultural projects fund of the Austrian Mechanical Copyright Collecting Society,
- **French Music Export Office (FR)**, representing trade organizations for authors, producers, live music organizations, with the support of the Ministry for Culture, Ministry for Foreign Affairs, Ministry for External Trade,
- **German Sounds (DE)**, the German Music Export Office, a joint venture between the German Music Council and the music industry, founded by BPW(producers), VUT (independents), DMV (publishers), IDKV (live music), IMUC (managers), MMF (managers), MPAG, (producers) CLASS (classic indies), Womex and Popokomm tradeshow, with the support of GEMA and GVL collecting societies and the Federal Ministry of Culture and Media.
- **WBM / Wallonie Bruxelles Musique (BE)**

Partners

- **STIM/Svensk Musik-Swedish Music Information Centre (SW)**
- **Conamus (NL)**
- **French Ministry for Culture (FR)**

The leader, **European Music Office**, and co-organizers are the founders of this pilot platform. As the platform has the objective to respond to the needs of all the European music professionals, additional organizations have been asked to join the platform. Many other

national organizations have expressed their willingness to participate, including the following countries' national music promotion organizations: Belgium, Denmark, Estonia, Italy, Luxembourg, Norway, Portugal, Spain, Switzerland, Sweden, United Kingdom,

This platform aims at widening the knowledge of US market for the European cultural operators and European music professionals and creating an information contact point facilitating the development of European music in the US. This will be accomplished through an on-going study of the market, with the first report and guide presented in this study and by preparing, updating and distributing an aggregated database of key US contacts in the fields of the music business and related media.

The objective of this report has been two-fold; to present a US market analysis and key contact list as a draft towards a US Export Handbook for all involved European cultural operators, and to widen the knowledge of the US market and serve as a guide for these European cultural institutions and music businesses that can facilitate their penetration of the US market.

This report should be of interest and be useful to all music business professionals, researchers and educators worldwide. The single most important message of this work, is that there are many thousands of qualified music professionals in every area of the music business in the US, interested in hearing, seeing and working with international artists, publishers and labels to help launch, develop and grow their careers and businesses in the US. There are always many, often extreme, obstacles and barriers to entry and to success, especially in new (and chaotic) markets, however there are always pathways around, through, under and over, for the informed, energetic, creative, resourceful and talented artists and business people, especially those working well with local experts, enrolling and building strong teams of dedicated professionals. The aim of this study and the office in the US is to empower and to help discover, share and create various ways to achieve success in the US market.

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critical, often neglected, “side” benefit of a strong US label/distributor, or for that matter, any strong label/distributor worldwide, with an international system in place and well maintained.

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As most of you reading these lines know, since August 2004, Sophie has been coordinating all the Bureau Export offices abroad while directing much of the work of the French office. In conjunction with Jean-Francois Michel and the European Music Office, she hopefully will be coordinating the European Music Office US Development Project in the very near future. Gratitude and respect is expressed too rarely and the gratitude and respect that she so markedly deserves from the French music industry and French cultural forces for her tireless, good natured efficiency and vision is impossible to overstate.

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Any errors of fact and judgment in the editing process, especially with respect to the “out of context” nature of some of the more massive editing, are those of the editor. The views expressed herein are not necessarily those of anyone other than the editor.

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Helene Cann, co-founder of Outward Visions, Inc., was director of the Outward Visions Touring Program from 1977 to 1994, which established highly successful major U.S. tours for the Art Ensemble of Chicago, World Saxophone Quartet and many other jazz artists, as well as Ali Akbar Khan, Steve Reich, (whom she also managed for six years) and Nikolais Dance Theatre, (which she managed for two years). She has also worked as a freelance publicist and served as Associate Editor of the jazz sites gm.com and jazzplus.com. A consultant to the arts, she has lectured and held seminars and workshops for Arts Midwest, the New England Foundation for the Arts, Arizona Commission on the Arts, ASCAP, and *JazzTimes*. She co-directs all of the activities of Outward Visions along with her husband and partner, Marty Khan. The Governor of Arizona appointed her a member of the Arizona Humanities Council in March of 2003.

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METHODOLOGY

The US is a big country. The largest music market has its own set of parameters like every market. The size of the country, various regional traits, distances between cities, transportation modes, mobility and demographics of the local populations are all important aspects to consider while launching or developing a US campaign. That said, it is not “brain surgery”, and most likely the same type of discovery, creativity, expertise and energy involved in approaching domestic markets is what is required of the US marketing approach.

As can be seen from the map of the US, most of the population (and media) is centered around the urban markets. Often, bands, songs and music “break” regionally, usually either from LA, NYC or Chicago or sometimes from smaller markets like SF, Seattle, Boston, Minneapolis, Atlanta, Miami, Philadelphia or even smaller cities like Austin, Texas. While there are ways in which certain key radio stations, print media, touring focus and retail efforts can be centralized around a certain city, if a song and album are released and promoted nationally, with efforts anything can “happen”, anywhere and then, as always, it’s the follow-up that makes all the difference.

The marketing of music is not a science, however much certain areas of the business, like format specific radio or advertising campaigns may make use of formulas and “tried and true” methods. It is extremely difficult, however not impossible, to launch from abroad without a strong and knowledgeable US team. It is usually a “which comes first, chicken or egg” enigma, but with interested partners in the US and good agreements and great music that motivate the partners, the path can always be found, or built through the natural and corporate challenges to achieving critical mass.

Critical mass is different, depending on the type of market you are approaching, (regional, by age, demographic, national, mainstream or alternative, new or classic, genre of music, etc.) Building towards critical mass is the same, though, just one person/company at a time, one article, one radio station, one internet site, one retail outlet, one advertisement, one person communicating to another person, always building to the point where a few people/media are communicating to the same person at which point that person usually takes the communication seriously, oh yes, something is happening, I need to take action, react, listen, watch, buy, talk to others, find out for oneself what this new information is about. A big country becomes small. A big world becomes smaller and music is the catalyst.

Finding US partners, methodology:

The first place to look is in the mirror. What are your artist’s, label’s, company’s, talents, strengths, resources, success level locally, goals, ambitions, dreams? Why do you want to approach the US market and exactly what are you working to achieve in this market? Who are your producers, musical collaborators, industry colleagues, governmental and corporate sponsors, friends, fans, current partners, investors and who are your desired future friends, fans, and partners? How much time, energy and finances are you willing to invest in launching in the US? Are you ready to go, if not, what do you need to accomplish first and which timing makes the most sense?

What have you done already?:

How have you accomplished what you have already accomplished in your markets and in the other markets you have approached. What has worked, what hasn't? Do you have any instincts, or pre-conceived notions, about the challenge of the US and which ways you can achieve your goals? Are your goals realistic, given the unknown and known circumstances and given your vision. Is there an underlying reason and if so what is it, for your work.

These are the most important questions to find the right partners and the answers will come in the conversations you can have with potential partners, who will have to address and answer these questions too, in order for you to work successfully with them and for them to work successfully with the US.

As follows in the guide, there are many different avenues to pursue for success in the US, depending mostly on many of the answers you've discovered above. Of course, there are always surprises and "curve balls", unexpected and unforeseen obstacles, challenges, coincidences, relationships all of which can be put to constructive use in the short and long term. As the answers above vary so much, it is impossible to synthesize a game plan that works for all, but some of the most important general methods of achieving US success are simplified, as follows:

Finding partners, making agreements: (Publisher, label, distributor, manager or consultant, agent, independent promoters, publicists)

1. local success, work drawing attention to export potential
2. showcasing through national and international media, or live at conferences and festivals; (Popkomm, Midem, Womex, SXSW, Global Fest, Noorderslag, Bourges, Angouleme, By:Larm, CMJ...
3. working with your domestic partners, labels, agents, managers, export offices to introduce US potential partners, through their contacts, references, experience, research
4. When interested parties appear, vetting (ask everyone!) must be done and agreements made, based on mutual goals, methods, resources, timing, performance levels, research, legal and industry advice, investment and/or sharing of work and future income.
5. Continual communication and review of planning, goals, resources, current status, and work with international partners, to continue to build and nurture, grow, the team and the project.

Creating a marketing plan/strategy:

When partners are secured, revise your own team's plan, through integrating the new partner's input, ideas, advice, timing and the marketing plan must be fully developed, agreed and attempted; additional partners solicited and secured, investment secured, timing agreed, plan revised and begun.

Album release; (licensing/distribution):

Depending on the genre of music, often a single is released to radio and internet earlier than the album release with a promotional tour scheduled, if the artist is sufficiently well known for advance radio/press/internet interviews; (sometimes possible by phone).

A tour, at least a few key dates, should be scheduled within a few months maximum of the album release, as all the promotion needs to be coordinated around the album release.

Especially if it's a distribution agreement, with little or no promotion by the distributor, or even in the case of most license deals, additional "outside, independent" promoters in radio, publicity and where possible, internet and retail marketing, should be researched, contacted, solicited through contacts wherever possible to check their response and suggestions for the campaign and their thoughts on the potential in their area of expertise, for the album, artist in the short and long term. Then, research needs to be done about comparable competing firms, specifically to the music being promoted, resources available and current partners and vetting/negotiating completed.

Touring:

In the US, once an agent is secured, the timing of the tour, length of the tour, sequence of return tours, and cities to be focused upon needs to be discussed and agreed with the entire team. A sample budget should be discussed, with the agent helping by estimating fees and total expenses/shortfall. A tour can be one date, a few dates or six months or more of work a year.

Remember, most local, American groups do tour the US at least six months per year to "break" this market, so success can not be gained without repeated appearances, each building on the past.

If it is impossible, or takes too long, to secure an agent for a usual commission deal, usually an agent can be retained, on a fee basis, to set up a promotional tour, if there are those resources, sometimes available through the label, publisher, sponsors, grants, embassies, or music export organizations.

The financial cooperation of the group, management, agency and label, is usually essential for the first tour, as it is extremely rare, though it does happen, that the group can earn in a new market what it is used to earning in their own market and generally the expenses are much higher abroad; with visa costs, flights, etc. When the group realizes the potential of the US market and enjoys performing to different audiences, usually they will be more than happy to make initial sacrifices, as they did when starting in their own countries.

Promotion: (Radio, Press, TV, Video, Internet, Retail, Advertising)

All the promotion campaigns must be coordinated with the release and with the promotional and actual tour and planned and maintained for a long term, as often it can take a year or more for an album to be well promoted in the US. It's important to make sure that the promoters can work well together and with the manager, agent and label or distributor's internal staff, to maximize the success, by watching carefully what's happening where and focusing on taking advantage of opportunities in local and regional markets.

Synchronization: (Film/TV/Advertising/Games)

All of the above methods can be affected in a tremendously positive way when a major synchronization; like an advertising campaign, feature film, tv series theme, big game or internet campaign occurs anytime in the life cycle of an album's promotion, months/years before or months/years afterwards. In many countries, like in the US, an advertising campaign is the most important determining factor in achieving a new launch of an artist, before radio or press, although it is uncommon and extremely difficult to secure.

There are many listings of music supervisors and agency creative directors available, and these supervisors are swamped with submissions, like major label A&R executives, but it does happen that they hear something new, can clear it quickly and realistically and the client agrees to use the music for the campaign. If followed up well, this can be the equivalent of striking gold by achieving critical mass in one, relatively quick, campaign, (and follow-up), as TV audiences can number in the millions and with repeated exposures, (and good music), the music becomes known and requested, consciously and subliminally.

There are also "pluggers", brokers in some manner, often doubling as publishers, or lawyers, who solicit music to music supervisors, music editors, creative directors, games producers, tv executives, etc. and those with the power to hear and initiate "deals". If you can make an agreement with the right plugger and they are successful, (again, not a simple nor quick task), it can sometimes return more rewards than a label deal, distribution deal, publishing deal, agency deal, and independent promoters of all the other various media.

Of course, these campaigns and methodology are very different, based on resources, budgets, goals, genre of music, and type of company and scaling of market.

The most important thing is to begin and to continue, there's no winners without playing the game and the game is possible to win, in stages. It depends on many, many variables, but mostly the music, the artists, the resources, the coaching and the team's hard work and creativity.

1. LEGAL & ECONOMIC FRAMEWORK

1.1 U.S. MUSIC COPYRIGHT BASICS FOR EUROPEANS

What is U.S. copyright?

U.S. and European copyright operate pretty much in the same manner. There are however a few exceptions that we will point out and that European musicians, labels or publishers should know. As in Europe, U.S. copyright is a form of protection given to the authors or creators of “original works of authorship”. U.S. copyright law protects music in two distinctive forms: musical works and sound recordings.

A musical composition or song includes the words, if any, and music and is owned by the songwriter or, by assignment, a music publisher. Just like in Europe, music publishers represent musical works, composers and lyricists. They market, license and promote songs for songwriters. Typically, songwriters “assign” (transfer ownership) of all or a portion of their copyrights to publishers in exchange for royalties. (See Section III. C. for further developments on publishing contracts) If a copyright notice is displayed on the compact disc, audio cassette or sheet music, the copyright owner in the musical composition is typically identified after the © frequently with the names of the writer(s) and publisher(s). In some countries in Europe, like France, the © is also often used to identify the copyright owner of the artwork, for instance on a CD.

A sound recording is an actual recorded rendition of the musical composition or song. It results from the fixation (i.e. recording) of a series of musical, spoken or other sounds. There can be different sound recordings of the same musical composition. The sound recording copyright is typically owned or licensed by the record label that represents the artist. If a copyright notice is displayed, the sound recording owner is identified after the (P). Unlike Europe, the U.S. copyright law recognizes a more limited copyright protection in sound recordings. As a matter of fact, sound recording owners have limited public performance rights as well.

As the author of the work (in this case the author of the lyrics and/or the music of a song), one will alone have the exclusive right to do (or to let others do) any of the following:

- make copies of his work;
- distribute copies of his work;
- perform his work in public (such as for plays, film, dances or music);
- display his work in public (such as for artwork, or stills from audiovisual works, or any material used on the Internet or television); and
- make “derivative works” (including making modifications, adaptations or other new uses of a work, or translating the work to another media).

As a general rule, there is copyright infringement anytime one does any of the above without the copyright owner’s permission. However, there are some exceptions and limitations to these rights. A major limitation is the doctrine of “Fair Use”, a doctrine for which there is no true equivalent in Europe. “Fair use” is the right for the public to make reasonable use of a copyrighted material, such as music, in special circumstances without the copyright Owner’s

permission. Such circumstances are usually limited to criticism, comment, news reporting, teaching, scholarship, parody or research. Whether or not a fair use of music has been made is not always easy to determine and to avoid any potential lawsuits from the copyright owner, we recommend that you consult an attorney who will assist you in deciding whether something qualifies for the fair use exception, or requires permission from the copyright owner.

How to and why register a musical work or a sound recording in the U.S.?

If a work is already registered at a collection society in Europe, its copyright owner will already have a copyright protection, receive his remuneration from the exploitations of his works in the U.S. through the reciprocal agreements that exist between the collection societies in the world. However, registration of a copyright with the U.S. Copyright Office (which costs \$30 per registration) creates a public record of the basic facts of a particular copyright. Again, registration is not necessary for copyright protection, the only reasons why copyright owners may want to register are as follows:

- Registration establishes a public record of the copyright in the U.S.
- Registration is necessary before an infringement lawsuit may be brought in the U.S.
- If registration is made within 3 months after selling or distributing the work to the public or prior to an infringement of the work, a copyright owner will be eligible for Statutory Damages if he or she sues for infringement and wins.

How long does copyright last in the U.S.?

The length of copyright protection varies, depending on whether the owner is an individual, joint author or a corporation. You also need to take into account the year the work was created. In general, for works created on or after January 1, 1978, copyright protection lasts for the life of the author plus 70 years after the author's death. In case of joint authors, the starting point is the death of the last remaining co-author.

How music is protected against piracy under Copyright law?

The different types of piracy:

Just as in Europe, U.S. copyright forbids the unauthorized recording, reproduction, adaptation, distribution and/or performance of musical compositions and sound recordings. When discussing the different types of music piracy, the following terms are often used:

- "Counterfeit" phonorecords are duplicates of legitimate product where both the content and cover art of the phonorecords are copied. Counterfeits may look remarkably like the legitimate product;
- "Pirate" phonorecords contain unauthorized copies of sound recordings. However, the packaging is original and does not match the packaging of any legitimate product. Common examples are mix-tapes and compilation CDs;
- "bootleg" phonorecord contains unauthorized recordings of an artist's live concert;
- unauthorized sampling;
- "Digital piracy" is the most common form of piracy. With both the latest peer-to-peer and broadband technologies made accessible to a higher number of consumers, digital piracy has developed worldwide with the main consequences of dropping CD sales

drastically. In 1999 CD sales in the U.S. were worth 14.8 Billion dollars. In 2003 sales dropped to 11.4 Billion dollars. Recently, the Recording Industry Association of America, which defends the rights of record labels and sound recording owners, made the headlines by suing individuals that were uploading their music files onto peer-to-peer services such as Kazaa or Gnutella. As of today, the RIAA has not sued individuals who download those music files.

How to protect music copyrights in the U.S?

Beyond creating a copyrightable work, an author need do little else to gain copyright protection. Neither publication, nor registration with the Copyright Office, is required today to secure copyright. However, no legal action can be initiated without registration with the U.S. copyright Office. Just like in Europe, copyright exists automatically upon creation, that is, when it is fixed in a tangible copy for the first time. A song can be fixed in sheet music (a "copy") or in a CD, or both. Neither publication nor registration with the Copyright Office, nor even notice, is required to secure copyright in the U.S. The use of notice is still important, however, because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year that it was first sold or distributed to the public.

A word about international copyright protection:

Like most laws, copyright laws are territorial in nature. This means that in general, a musical work or sound recording protected in Europe is not automatically protected under the U.S. copyright law and vice-versa, unless certain conditions are satisfied (such as membership and ratification of reciprocal international treaties). Today, most European countries, along with the the U.S., are members of the Berne Convention for the Protection of Literary and Artistic Works ("the Berne Convention"), which not only establishes the rules for eligibility for protection in other countries and forbids formalities but also binds countries to protect another Berne Convention members protected works at a minimum level known as "convention minima." This is why, as seen above, Europeans authors do not necessarily need to register their works at the U.S. copyright Office anymore to be granted copyright protection in the U.S.

There are other international agreements, treaties or conventions, which also establish eligibility rules and minimum levels of protection for works from another member country as the country where protection is claimed. The most important of these are the TRIPS Agreement in the World Trade Organizations panoply of agreements dealing with international trade rules, the Geneva Phonograms Convention (establishing minima and eligibility

criteria for sound recordings or phonograms), the Rome Convention (to which the U.S. is not a party and which sets up rules for performances, sound recordings/phonograms and for broadcasts) and the new "digital" treaties, the WIPO Copyright Treaty (WCT) (and agreed statements) and the WIPO Performances and Phonograms Treaty (WPPT) (and agreed statements) which clarify and extend protection offered under Berne and TRIPS. These latter treaties are not yet in force but will be when ratified by thirty countries.

Conclusion: how to protect European music against its unauthorized use in the U.S?

The first essential step is to make sure that the work is registered with a European collection society that has reciprocal agreements with their U.S. equivalent. As of today, it is the case for

most if them. As most of the copyright enforcement takes place in the criminal environment because the work is often being commercially reproduced, sold and/or performed without the permission of the copyright owner, copyright owners or their representative usually will have to hire a local counsel in order to bring their action in the U.S. judicial system. However, as most European individual musicians or independent labels do not have the resources to enforce their rights in the U.S. they will often rely on their publishers, producers, major companies they are related to, or other associations of copyright owners to enforce their rights globally. Finally, before initiating any infringement lawsuit in the U.S. it is recommended to register the work with the U.S. Copyright Office in Washington.

[Editor's note: Given the widespread use of unapproved "samples" in many forms of music today, (including hits), there are many experienced "sample clearance" experts that can be retained before releasing unapproved samples of US artists, (to legally clear them, which is usually possible at reasonable fees), or to collect fees for uncleared samples of your masters and compositions; (ask first and threaten/commence (with litigators) legal action if unsuccessful.)]

1.2 VISAS & IMMIGRATION ISSUES

Different types of visas:

The two most often used categories of visas for European artists are the O (for individual artists) and P (for groups) visas. These two categories can be divided into the following sub-categories:

- O-1 is for individuals “with extraordinary ability in the Arts” as opposed to a group
- O-2 is for the band and crew members accompanying the O-1
- O-3 is for the spouse or child of O-1 or O-2
- P-1 is for entertainment groups
- P-2 is for artists and entertainers in reciprocal exchange programs
- P-3 is for artists and entertainers in “culturally unique programs, which is used by entertainers that come to the U.S. to perform at cultural events organized by universities, churches, museums, etc.
- P-4 is for the spouse or child of P-1, 2, or 3

How long does it take?

As of April 2004, U.S. embassies in the world no longer process visa requests in one day as in some cases they did earlier. Therefore, depending on the country of origin, people contemplating a visa application to the U.S. should be aware that they should keep at least three to six months for embassy processing (Canadians excluded). Also, some countries are now imposing reciprocal additional fees and time constraints on US performers traveling abroad. Some other countries may also want to interview people at their embassies before issuing the visa (just as the US is doing) and it may thus take 3-6 weeks or more to process requests. Because of recent land security constraints, the business of touring has changed considerably. It actually takes a much longer time to process any visa. Finally, the examination of a visa application becomes more difficult these days based on the place of birth. In fact, European citizens that are born in certain countries (especially the following countries that are listed by the Department of State as sensitive countries: North Korea, Iraq, Iran, Syria, Libya and Cuba) may find it more difficult and in some cases, impossible, to obtain a visa to enter the U.S. these days. The complexity of the immigration laws and the fact the laws are constantly changing makes it indispensable to seek the advice of a specialist before contemplating coming to the U.S. for promotion, recording sessions or touring.

How much does it cost?

Artists contemplating to obtain one of the above visas should definitely consult a specialist prior to their trip. An immigration attorney will usually cost \$2000-\$5000 plus additional fixed filing fees (as of today, the standard fees are \$185 for a normal procedure and \$1185 for an expedited procedure (two weeks minimum time, a.k.a. “premium” service). However, there are also some companies or professionals (such as the NY-based Traffic Control Group’s Maureen Baker or RAZCo’s Ron Zeelens) that charge much less than attorneys do (except for the filing fees that remain the same) and are specialized in obtaining work visas for musicians and often organizing all the travel logistics (including visa application) for foreign musicians and their crew.

[Often, musicians do “sneak” into the US on tourist visas, for showcase dates or recording sessions, or even for touring, but this is risky and could result in being refused entry, even on a long term basis. It could work, though, if musicians are not carrying much equipment, musical instruments, cds, merchandising for sale and have US friends and addresses they could be visiting and are convincing to customs officials. Do not, under any circumstances, allow musicians or crew to carry even small quantities of ANY! illegal drugs through any border crossing, as this could AND OFTEN DOES result in immediate imprisonment. There are trained dogs at many international airports. In this age of heightened security, do not talk about or make any jokes, even in native languages, about security/terrorism issues, as again, customs officials and airline officials have increased sensitivity and full rights to refuse and stop passengers from traveling.]

The editors of this volume recommend consulting www.artistsfromabroad.org, a practical guide to U.S. immigration law and procedures governing the principal nonimmigrant work-related visa categories used by the performing arts world. See Appendix IV for detailed information and Visa forms]

1.3 TAX ISSUES

A European artist who contemplates touring in the U.S. should consider international, Federal, as well as state and local tax laws.

[Although on a Midem 2004 panel called Crossing Borders, an experienced and prominent UK manager stated anecdotally that every international artist who launches abroad, including in America, has broken many laws, mostly through ignorance of the law; remember this is not a valid excuse, if caught.]

To determine the tax status of foreign artists in the U.S, it is important to first examine the specific treaty positions regarding artists with the country involved, as Treaty provisions supersede the Federal Internal revenue code.

Under Federal law, foreign artists who are residents of the United States are generally taxed in the same way as U.S. citizens. A foreigner who is merely visiting or whose stay is limited by immigration laws will usually be considered a non-resident. A foreigner who intends, at least temporarily, to establish a home in the United States and has a visa permitting permanent residence will probably be considered a resident. Foreign artists who are not residents in the United States are taxed on income from sources in the United States under special rules that are modified every year by the Internal Revenue Service (IRS¹).

As state tax laws vary drastically from state to state, it is important to obtain the itinerary and contracts from management and /or the booking agent as far ahead as possible. The business manager will then be able to deal with individual states that impose an income tax on entertainers. Some of the most aggressive states are California, Massachusetts, Wisconsin and Connecticut. On the other hand, Nevada is known for its more favorable tax provisions. Each tax authority must be contacted and a budget specific for that state along with relevant contacts should be provided. Some states may require this submission 30 days in advance. Once the tour is over, tax returns are filed with the Federal and relevant state authorities after the end of the corresponding year.

¹ For more information see IRS Publication 519, United States Tax Guide for Aliens.

Due to the diversity and complexity of regulations involved we recommend that you consult your business manager or tax attorney before touring in the U.S. *[For artists touring on deficit financing, or earning little income, this is probably unnecessary, unless promoters are “withholding” large amounts from your gross fees, which is unusual.]*

CUSTOMS

Custom duties, bonds, brokers or ATA carnets are not required on personally owned instruments, but if the traveling party is carrying its own professional equipment, owned by a group, or rented equipment, owned by a sound or lighting company, an ATA carnet is recommended. Make sure the carnet is processed correctly on the way in and on the way out of the US and supervise the signature of the correct pages; otherwise it looks as if you left the equipment in the US and therefore would owe significant customs duties and penalties. Bring whatever ownership papers you may have on the personal equipment and if you do buy equipment or computers in the US, expect to pay duties upon entering your home country, based on local laws.

2. THE KEY PLAYERS IN THE AMERICAN MUSIC INDUSTRY

2.1 THE MANAGER

Personal managers vs. business managers vs. agents

The **manager** (a.k.a the personal manager) is often the key person at the start of an artist's career. The easiest distinction one can think of between the personal and business manager is that the former helps the artist to start, develop a career and make money out of it while the latter usually deals exclusively only with the money issues. At the beginning of a career, the personal manager is usually the person who shops the tape in order to obtain a record deal. He may also advise the artist on all the aspects of the production and on his various collaborations. In some cases, the manager may also give creative advice to the artist. Last but not least, the manager is also responsible for contacting agents and getting the artist booked for live performances.

The duties of the **business manager** include income tax planning, estate planning, tour budgeting, balancing financial and career goals, royalty audits, risk planning, to name a few. Business managers are commonly (but not necessarily) certified accountants or tax attorneys.

An **agent** (a.k.a a "booking agent", see below) is commonly defined as someone who secures employment for an artist. In other words, the agent books artists for live and sometimes television performances. As the agent is going to be working with the manager, it is often recommended to first get a manager.

This distinction between an agent and a manager is crucial both in New York and California where their activities are severely curtailed by the provisions of their respective statutes. Under California law anyone who secures employment for an artist must be licensed pursuant to the Talent Agents Act and the California Labor Code. If a manager is found to have procured employment on behalf of the artist (and thus has acted as an un-licensed agent), the management contract may be held to be void by the California Labor Commissioner with all compensation to the manager returned to the artist. Under the New York General Business acting as an unlicensed talent agent by the manager may void the management contract for a violation of the statute, although there is an exception to the licensing requirement under New York law for any managers who procure some employment for their artists as an "incidental agency function". For this particular reason, most of manager's agreements in New York will contain an "employment agency disclaimer".

How to find a good personal manager in the U.S.?

Very few managers will consider unsolicited material from upcoming artists. In most cases it is the manager who approaches the artist, usually at live performances. In that case, the artist can give away a press kit with audio material. The best way to find yourself a good manager is to ask other "like" artists or industry professionals for references, to check the credentials, check industry directories such as the Musician's Atlas, or the Indie Bible, etc. As for European artists seeking to be represented by a manager in the U.S, we should mention that the artist could avoid worldwide representation. The European artist should seek to limit the representation to the U.S. and perhaps Canada, unless he finds that the manager is qualified and experienced in another particular country, or worldwide.

What to expect in a management deal?

Like any other music contract, the content of the manager's agreement truly depends on the leverage of the artist compared to the experience and reputation of the potential manager. The common provisions of the contract are as follows:

- The term of a management deal is anywhere between 3 to 5 years and is usually renewable;
- The manager is often granted a power of attorney to receive artist's funds and cash the artists' checks. This is one of the reasons why the granting of a power of attorney to a manager to bind artists to any agreements must be carefully evaluated;
- For all the services he performs the manager's commission tend to go between 15% and 20%, and on rare occasions more, of the artist's gross earnings, with certain deductions and exemptions. Managers also usually get their percentage before any expenses are paid. He also has the right to reimburse all expenses that he reasonably incurred in the performance of his duties for the artist;
- The manager may be entitled to select the team that will work with him for the artist (the attorney, the business manager, the talent agent, etc.);
- Often the artist may want to protect himself by inserting a performance level clause that conditions the life of the contract to reach a certain level of gross income, or certain necessary accomplishments, like recording agreements, touring opportunities, etc., which, if not obtained, can result in termination at the election of the artist; In some contracts one can also find a "key man" clause (whereby the artist can choose to terminate the agreement if the "key man" or particular person ceases to be actively responsible for the day-to-day management of the artist's career)
- Finally the choice of forum is very important here as we already know that California and/or New York law may impose some restrictions as to license requirements or term limits (in California for instance the term must be limited to three years).

[In many cases with European artists, US or North American agreements will be "co-management agreements", with the artist's original or Worldwide manager retaining many of the rights, responsibilities and conditions of their original management agreement. These types of agreements vary widely based on original contract and negotiations between and US manager/representative, but are possible to negotiate and generally more effective for the artist, as the will usually insist to be involved in the US business, and their advice and hard work is invaluable to the artist. In these cases the provisions stated above can be lowered or altered based on the original agreements, such as the commission level to be split between the two managers; usually a minimum of 10% each, or 15% for the US manager on US earnings and 5% for the original manager. Avoid paying "double commissions" of 15-20% to the US manager and then another 15-20% to the original manager. Remember, the booking agent also commissions 10-15% of touring GROSS fees, so the total commissions could be over 50% of the GROSS fees, or even more if there are booking agency double commissions or "buy/sells" ie your local/national agent is selling to the US agent and both are commissioning fees. This double commissioning from booking agencies especially happens frequently in Europe and often involves triple or even quadruple commissions, with a local agent selling to a foreign agent, who in turn sells to a regional agent in his country, with then a fourth "cut or margin" being taken by the local promoter.]

Another relatively new and now common business relationship is between an overseas artist or original manager and a US consultant or representative. These agreements often follow and always include some elements of the above distinctions, but can be more flexible (non-exclusive) and short term than a full US management or co-management agreement. Experts in many fields of the music business are more and more open to and familiar with consulting agreements where a fee is negotiated for a specific and general task, with some incentives built in, (percentage commissions of various income sources) for successful results. These consultants can be hired in lieu of or in addition to US management or co-management, and/or to perform various functions such as independent radio promotion, US tour logistics, independent publicity, independent retail marketing, independent video promotion, street marketing, A&R consulting, etc.] With the cutbacks and retrenchment of the US music business, many extremely qualified professionals are becoming independent consultants and can be an effective alternative to a long term contract with US management or even licensed booking agencies, which are difficult to find for new, unsigned artists. In the opposite cases, with major international artists, US consulting agreements are often preferable to US co-management agreements for both the artist and the original manager.]

2.2 THE BOOKING AGENT

How to find a booking agent?

A good agent is someone who has an excellent network and relationships with club owners, festivals, concert series, other booking agencies and tour promoters. Booking agents usually work at talent/booking agencies, which come in all sizes. They can be large (nationwide like Famous Artist Agency) or smaller with a regional focus (like Dancing Bear in New York). For European acts that are still unknown to a foreign public, their best chance is to get in touch with regional agencies, *[although if they can attract the attention of a national agency known for its development of artists with international reputations and/or excellent critical acclaim, like Eye For Talent or High Road Touring, it's much more effective as any first showcase tour should be national, at least LA and NYC.]* It is usually up to the manager to choose the right agent for the artist. A very good source is the Billboard International Talent and Touring Directory, published by Billboard, which includes an exhaustive listing of booking agencies, facilities, services and products. Another major publication regarding touring is Pollstar. *[Much more effective than "cold calls" however is to find other artists who know and respect you and your music represented by target agencies and ask them to speak with the agent they deal with, on your behalf. Then follow up professionally with that agent, after their artist gets the approval for that, and make your conversations quick, simple and professional, with a personal touch the agents will remember positively.]*

There are also some genre specialized booking agencies, especially for classical music, opera singers, jazz, world music, blues, folk, dance, DJ's and often agencies specialized in development acts or types of venues, such as universities or cultural series. These agents are usually much closer to the artists and field of music they represent and much more open to choosing unknown artists they would love to assist. They are also much closer to all the clubs, venues, festivals and series specialized in presenting those artists. Do the research of the booking agencies represented acts and generally one can find "fits" that are much more natural to start good relationships. Booking agencies are critical to the initiation of any artist's careers and a great booking agent who understands the artist and the artist's (and team's) vision is of the utmost importance. If the artist is a cross genre artist, ie electro-jazz, make sure that the agency understands both genres, likely venues and career development.]

What to expect in a booking agency deal?

- The artist should try to limit the agent's rights to sign contracts on his behalf and obtain a right to approve a show or have their manager approve the show before the agent gives his final commitment to the talent buyer;
- Every contract should contain a provision as to how exactly the agent will pay the artist;
- The term: it's always in the artist's best interest to seek a short-term agreement (one to two years in general). If the booking agent insists on having a longer term, the artist can always require a minimum of dates booked per year in clubs of certain size in order for the booking agent to exercise their option for an additional year.
- Lastly, an artist should never accept a re-booking provision *[Some booking contracts do have this clause, where if an agent books a band into a venue, then the contract expires and another agent books the same artist into the same venue later on, even years later (if this clause isn't restricted by time). The re-booking clause holds that the*

first agent is due a commission, generally a full commission on the thought that since he brokered the initial deal, he deserves all the residual deals on the original. This usually will be a negotiable point, ie the agent will delete the demand from his contract.]

For the territory, as many agencies are regional, the artists should try and limit an agent's territory to only the geographical area the agent is familiar with (usually one or two states), although this is impossible with national artists;

Superstars typically pay their agents between 5% and 10% of the gross fees for their commission. Some superstar clients pay agencies only on net, depending on leverage. Most national agents commission 10%. Smaller regional agencies usually charge between 10% and 20%; *[but 15% should be the maximum, unless the agency is also doing management tasks, such as travel logistics, publicity, label solicitation, etc. If the artist is a new or developing artist in the US and the manager specifically wants a particular agency or agency to represent the artist for booking, fee based agreements can usually be negotiated, such as paying a booking agent a set fee to book a showcase tour. In these cases, the fee should be paid partially in advance and partially upon completion and specific goals should be set, based on number of dates and financial considerations, such as tour gross or maximum tour deficits. This suggestion usually won't work with the superstar agencies, unless it's a superstar type fee and even if those resources are available, it would probably be better spent with smaller agents (at lower fees) and on other promotional costs.]*

2.3 THE ENTERTAINMENT LAWYER

In the U.S., the role of a good entertainment lawyer is far more versatile than in Europe, where the lawyer's activities are usually limited to drafting and negotiating a contract or going to court. There are two types of entertainment lawyers:

Lawyers who specialize in a particular area of law that is not related to entertainment law (tax, immigration, family, real estate, litigation, etc.) but whose clients happen to be mostly from the entertainment business. These lawyers are not per se entertainment law practitioners but are indispensable when you need legal assistance in a specific or technical area of law;

Lawyers who specialize in an area of entertainment law (music, movies, publishing, etc.): these are the lawyers that will be able to draft various music contracts, solicit deals for their clients by "demo" shopping and even act as or become a manager for an artist they truly believe in, in other words lawyers that can truly get more involved in your music career/business; for better and for worse.

How to choose one?

Get a specialist: a good music lawyer is often determined in large by his numerous contacts in the music industry; a lawyer that stays behind his desk all day (and all night) will probably not have all the necessary contacts to help you with your career; as for specific areas of law that are not necessarily related to entertainment (such as tax, immigration, litigation. etc.) we must insist on the absolute necessity to get a true specialist of the field;

Get a referral from satisfied clients and do not be afraid to ask the names of at least two clients you can call for further references. Bear in mind that a lawyer with big names clients is not necessarily the best choice for you (especially when starting out a career in the States), *[unless you already have a bidding war with "big name" offers, or #1 hits abroad.]*

Have an informational consultation. Most attorneys will usually waive their hourly fees on that first consultation. During such a meeting you can always inquire about the extent of the attorney's contacts in the industry, ask for references, explanations for the fee arrangement, etc.

How much?

An entertainment lawyer usually charges an hourly fee or a percentage of the value money of the deal. Hourly rates commonly run from \$150 to \$300 and up. Most lawyers will require a payment of money in advance (also called a "retainer") before starting to work for you, even if their remuneration is based on a percentage of the value of the deal. *[In the cases of extensive work and responsibilities an annual, bi-annual or monthly retainer can be negotiated.]*

Short-term projects like drafting a performance or partnership agreement, copyright assignments, essentially any contracts that do not require lengthy negotiations, or trademark/copyright registration, are usually negotiated on a flat fee based on the attorney's hourly rate.

Long term projects and legal representation to labels, publishers, merchandising companies are more often paid in percentage points on the reasonable value of services rendered of contract advances and future royalties.

In addition to the flat fee or percentage, the client will usually be required to reimburse the lawyer for his out-of-pocket expenses, including long-distance calls, photocopies, fax, postage, FedEx, messenger, transportation whenever necessary, etc.

In most instances, lawyers are required to put the fee arrangement be in writing. In that case, you also have the right to seek the assistance of another lawyer to review the validity of the fee arrangement. In any case, do not hesitate to shop around to see if the proposed arrangement is competitive.

Another option used by many starting artists and labels is an organization called VLA (Volunteer Lawyers for the Arts). Founded in 1969 with offices in every major U.S. city, VLA is the first legal aid organization dedicated to provide free or low costs art related assistance to artists and arts-related organizations in all creative fields who cannot afford to pay a regular counsel. The main office of VLA is in New York and is located at One 53rd Street, New York, New York 10022. Tel: (212) 319-ARTS, Ext.1. For more information, log on to www.vlany.org.

2.4 THE MAIN U.S. COLLECTION SOCIETIES AND THE RIGHTS THEY MANAGE

Harry Fox Agency and mechanical licensing

a. What is a mechanical license?

A mechanical license is a written permission from the copyright owner of a musical work (usually the music publisher) to record and distribute a musical composition on a tape, CD, DVD or other recordable media. Mechanical rights or a mechanical license must be obtained in order to lawfully make and distribute records, CDs and tapes containing sound recordings of underlying compositions (e.g. a compilation of hits, a best of, etc.). U.S. copyright law provides that once the copyright owner has recorded and distributed such a work for the U.S. public, a compulsory license is available to anyone who wants to record or distribute the work upon payment of a license fee. Similarly to Europe, a mechanical license does not include the following rights:

- The right to display or reprint lyrics or the right to print sheet music or any use of the song or lyrics in karaoke. For these rights, you must contact the publisher(s) directly.
- The right to reproduce an already existing sound recording. That is a separate right, which must be obtained from the copyright owner of such sound recording (usually the record label).

A word about the Harry Fox Agency²

The Harry Fox Agency, Inc (‘HFA’) was established in 1927 as a musical copyright information source and licensing agency for the music industry. HFA currently represents more than 27,000 music publishers and is the premier licensing resource for the mechanical use of music reproduced in all formats and media. HFA was established to license, collect, and distribute royalties on behalf of music publishers only (which must be affiliated to one of the three performing rights societies, see Section 2.b) below), who in turn represent writers. HFA issues mechanical licenses that are valid for products manufactured and distributed in the USA (including its territories and possessions) only. Mechanical licenses are available only to U.S. manufacturers or importers with U.S. addresses. The rate charged for mechanical rights is statutory, meaning that it is set by the government and adjusted every two years. For the period January 1, 2004 to December 31, 2005 the statutory mechanical royalty rate is 8.50 Cents for songs 5 minutes or less or 1.65 Cents per minute or fraction thereof over 5 minutes³. On January 1, 2006, the rate will be raised to 9.1 cents for songs 5 minutes or less and 1.75 cents per minute or fraction thereof over 5 minutes. As of 2004, HFA’s commission for its services is 6.75% of the royalties collected. *[often, in America, especially with major labels, the mechanical royalty rates payable are negotiated down to a 75% of statutory rate with a maximum of 10 songs per CD. These budget projections, while outdated, are based on the premise that a profit point is 5 songs per side of a vinyl LP, and even to this day, US*

² For more info, log on to www.harryfox.com

³ For example:
5:01 to 6:00 = \$.099 (6 x \$.0165 = \$.099)
6:01 to 7:00 = \$.1155 (7 x \$.0165 = \$.1155)
7:01 to 8:00 = \$.132 (8 x \$.0165 = \$.132)

companies will insist on either dropping tracks from an album or reducing the mechanical rate overall in order to ensure profitability on a release.]

In general, European collection societies (SDRM in France, GEMA in Germany, and PPL in the UK) remit a mechanical license application to notify HFA of the release of a musical work in the U.S. HFA agents then research the licensing status of the work. If the release is licensed, HFA collects and distributes the royalties. If the release is not licensed, the application is sent to the HFA Licensing Department to expedite the licensing process.

Disputes in European territories are typically resolved by the European societies in accordance with their established practices. In the event of ownership disputes and/or counterclaims between or among societies and publishers, HFA will notify the U.S. publisher to initiate communication between the publisher and the European society and offer limited research to address disputes, including terminated sub-publishing agreements.

A word on import licenses:

The U.S. Copyright Act bars the importation into the U.S. of copyrighted musical compositions embodied on phonorecords (vinyl, tapes and CDs) without the specific consent of the U.S. copyright owner, regardless of whether the phonorecords were licensed abroad. HFA has notified importers, manufacturers, retailers, and foreign societies that it will license such importations upon request, and at the discretion of its publisher principals. This separate import license issued by HFA is a variation of the aforesaid mechanical compulsory license. It is HFA's policy to fully enforce the rights of its publisher principals, at their direction, in pursuing importers and others who fail to procure import licenses mandated by the U.S. Copyright Act prior to importation.

ASCAP, BMI, SESAC, SoundExchange and Public performance rights:

What are public performance rights?

A "public performance" is one that occurs in a place open to the public or any place where people, other than a small circle of family and its social acquaintances, gather. A "public performance" also occurs when a song is played for the public reception via the radio, TV or cable broadcast; via telephone or wire transmission; or over the Internet. To perform a musical composition publicly, the user must obtain a license from the copyright owner or his representatives. There are some exceptions for certain governmental, educational or religious uses. European performing rights societies (unlike the U.S., generally only one performing rights organization exists in the majority of European countries: PRS in the United Kingdom, GEMA in Germany and SACEM in France) monitor foreign performances of compositions in the U.S. through the domestic repertoire of its three main performing societies (ASCAP, BMI, and SESAC, and pay money royalties for such performances to the U.S. writer and publisher through ASCAP, BMI and SESAC. However, in contrast to the American and Canadian systems where the performance rights societies follow an equal split of performance rights royalties between the writer (50%) and the publisher (50%), some countries (like France) follow a statutory equal split of 1/3 between the writer of the lyrics, the composer of the music and the publisher. Others, like the UK, do not follow a statutory split and tend to rely on the negotiated provisions of the publishing agreement.

A word about ASCAP, BMI and SESAC

Founded in 1914, ASCAP was the first performing rights society to be created in the U.S and lobbies, licenses, collects and distributes fees, on behalf of over 50,000 writers and publishers and international affiliate organizations, for the rights to public performance of their copyrighted musical works. It is the only Performing Rights Society run exclusively by its membership. BMI initially was formed by broadcasters to provide a competitive and alternative source of music licensing in the United States. In 1940 at the time of BMI's formation, the works of less than 150 publishers and slightly more than 1,000 writers were the only U.S. works available through the existing performing rights organizations. The repertoire available almost entirely excluded certain forms of music, which were beginning to grow in popularity in some areas of this country, such as soul music and Country music. For more information, log onto www.ascap.com or www.bmi.com. Both BMI and ASCAP have an open-door policy regarding membership.

SESAC was established in 1931 and is a private company, the smallest of the Performing Rights societies. In the past, SESAC was a publisher-oriented organization noted primarily for its activity in the Gospel and Country music fields. In 1973, SESAC began to affiliate writers directly and has rapidly expanded its repertory in the areas of Pop, Rock, Rhythm & Blues, Jazz, Latin, and Classical music. Unlike ASCAP and BMI, there is no fee for affiliation of either writers or publishers with SESAC. Unlike the two others, the application process is a selective one based on prior submission of solicited material only. SESAC is also responsible for issuing mechanical licenses on its catalogue, just like Harry Fox Agency. For more information, log onto www.sesac.com. *[SESAC, unlike ASCAP and BMI, has been known to pay advances to known artists in order to secure publishing performance rights.]*

The three American performing rights societies (ASCAP, BMI and SECAC) as well as over 40 foreign performing rights organizations in the world mostly operate in a similar manner. Just like in Europe, in order to get paid for foreign performance of their music, songwriters and publishers must join a Performing society. Although the exact requirements may differ slightly among different organizations, in general, one who has songs that are being publicly performed on the radio or television, is eligible to join. The PRS have three main duties:

- issue licenses and collect license fees;
- monitor public performances of music; and
- pay songwriters and publishers based on the number of performances of their music.

Most of the time, a European songwriter will not need to join an American performing rights society as all of these performing rights societies have reciprocal agreements with their foreign equivalents that provide a way for European songwriters and publishers to get paid for American performances of their music. Due to the differences in the copyright systems between the U.S. and Europe, it is often more advantageous to remain affiliated with an European collection society. In fact, one major difference between the U.S. and European systems is that copyright owners of sound recordings in the United States do not receive royalties for performance of their recordings in countries that are signatories of the Rome Convention (i.e. 45 countries including Canada, the UK, France, Germany but NOT the United States). Among other rights, the Rome Convention recognizes the necessity to remunerate the performers and copyright owners of sound recordings for the public performance rights of the said sound recordings. This remuneration is called the “equitable remuneration” and is part of a bundle of rights (called “neighboring rights”) that only exist to

a limited extent in the United States. However, such a treaty provides for a reciprocal treatment and since the U.S. copyright law does not provide for royalties to be paid for the performance of foreign copyrighted sound recordings in the U.S., foreign countries do not pay for performances of U.S. copyrighted sound recordings. Needless to say that this situation has a serious impact on the U.S. recording industry since American recordings are performed on an international scale to a much greater degree than recordings from any other country.

Another major distinction lies in the fact that in the U.S., the American performing rights societies are not permitted to collect public-performance monies for motion pictures shown in the theaters in the United States. This is not the case in Europe and motion picture performance rights there can be very significant, mainly because the performing rights fees there are based on a percentage of the box office receipts.

A word about SoundExchange:

Commencing in 1996 sound recording owners in the U.S. (as opposed to musical works copyright owners) have the exclusive right to control interactive digital performances (as distinguished from analog ones) of their sound recordings. In addition, the law gives sound recording copyright owners certain rights relating to various types of non-interactive transmission (including both subscription and non-subscription transmissions).

SoundExchange, which administers the collection and distribution of the statutory or compulsory license fees available to digital music service providers is working with several overseas performance rights organizations like PPL in the U.K. to facilitate the distribution of royalties owed to U.S. artists from U.K. performances and vice-versa. By completing the Artist Designation and Authorization forms, in addition to the other required forms, SoundExchange members are hoping to ensure the receipt of all royalties due to these artists from non-U.S. performances, in addition to their U.S. performances. To qualify for remuneration, the sound recording must have been recorded in one of the qualifying countries of the Rome Convention. As of today, SoundExchange has only signed reciprocal agreements with its British and Dutch equivalents.

2.5 THE MUSIC SUPERVISOR

What is a music supervisor?

With the recent globalization of culture and the increasing use of European pre-existing music (as opposed to music specially composed for an audiovisual program) in audiovisual works, the music supervisor for film, television and other audio/visual productions has become one of the key people of the music industry in the U.S. and in Europe as well. The music supervisor is the person (usually hired by the studios or independent movie producers) who is responsible for all of the musical elements (technical, creative and administrative) that are necessary for the production of a score, including finding and contractually securing outside cuts (songs from released or upcoming albums) and often the soundtrack album then inspired by the score. The music supervisor may also often serve as a coordinator between the TV/Movie producers, the copyright owners of the musical material used, the director of the audiovisual program and his technical crew.

How to get in touch with a music supervisor?

Start networking in the TV and movie industry; research various directories, and trade publications such as the Film/TV Music Guide, published by SRS Publishing, the Hollywood Reporter, Variety, Billboard, Musicians' Atlas; and look for the credits at the end of a movie or TV program. *[There are also very important resources called music pluggers, who specialize in finding placements with music supervisors and generally take a percentage; 20-50% of synchronization and master fees for successful placements, negotiated with the master owners and publishers, often in advance, ie for catalogue representation. Also consider investing in a publication called the Music Supervisor Directory, published by the Film Music Media Group (www.filmmusicworld.com)]*

What is music clearance?

It is usually the producer's responsibility to obtain clearance and pay license fees for both the musical work and sound recording that he intends to use in his audiovisual production. To do so, he will be helped by a music supervisor and or a music attorney. The rights commonly need to be cleared are as follows:

- public performing rights;
- reproduction rights (also called "synchronization rights" and "master use rights);
- distribution rights: these are the rights, once copies have been lawfully manufactured, to distribute those to the public;
- adaptation rights: the right to alter a song;

Public performance rights are customarily obtained by broadcasters and owners of public venues such as restaurants from the performing rights societies (see section above) that represent composers and publishers (ASCAP, BMI and SESAC). NB: as there is no compulsory license for a use of a song in a motion picture, producers will have to obtain those rights directly from the copyright owners.

The right of reproduction must be obtained both from the music publisher (via a “synchronization license”⁴) and the sound recording copyright owner (via a “master use” license). Synchronization rights, distribution rights and adaptation rights are usually obtained directly from the copyright owners.

2.6 THE PRODUCER

Individual producer vs. Independent Producer (or Production Company)

A very common confusion relates to the distinction between an individual producer who actually oversees the studio recording session of an artist and an independent producer (see below). The role of the individual producer is primarily to plan the recording session and help to choose the songs recorded. He also is responsible for the artistic and commercial quality of the recordings, the creative components and for completing them within the prescribed budget. In a standard producer’s contract, the producer usually receives a royalty on record sold and an advance.

The independent producer (or independent production company) is generally a discoverer of new talent who signs with an artist an exclusive recording contract but who does not have the necessary financial and staff resources to distribute and promote its productions. Most of the times it only has enough to record a demo that will be presented to a record company, which if interested, will enter into a production contract with the producer. Under this contract, the independent producer will provide the exclusive recording services of the artist to the record company for a period of time measured by years of albums delivered and its production services in exchange of a royalty on the records sold.

What to expect in a producer’s agreement?

Most of the time (especially when the producer has not great individual leverage) the provisions of a producer’s deal will be dependent on what has been negotiated in the artist’s recording agreement. Otherwise, if you are dealing with a superstar producer, these provisions may be negotiated separately. The key provisions are as follows:

- **Advances:** they are usually deducted from the artist’s recording fund or advance. Under standard major deal provisions the average advance amount varies between \$2,000 and \$5,000 per master; in some instances (especially with successful producers in the hip-hop area, the fees can reach up to \$50,000 to \$80,000 per master);
- **Royalties:** they range from 2%- 3% (and more for successful producers);
- **Payment** can be made by the artist or the record label pursuant to a direction letter;
- **Sample clearances** for all material submitted or suggested by the producers are commonly his sole responsibility;
- **Services** are usually exclusive but are limited to a certain period.

⁴ Although some publishers retain their prerogative to quote the fees and approving the use, may prefer to do so through an collective organization (such as The Harry Fox Agency).

2.7 TRADE ORGANIZATIONS

<p>National Association of Record Merchandisers (NARM) www.narm.com 9 Eves Drive, Suite 120 Marlton, NJ 08053 +1 856.596.2221 / +1 856.596.3268</p> <p>This trade association represents the interests of the merchandising segment of the recording industry. It has 700 members, including retailers, rack-jobbers, and independent distributors.</p>	<p>Country Music Association (CMA) http://www.cmaworld.com One Music Circle South Nashville, Tennessee 37203 +1 615 244 2840 / +1 615 726-0314</p> <p>This trade association with 8,000 members promotes and develops country music worldwide and hosts the annual CMA awards.</p>
<p>National Academy of Recording Arts and Sciences (NARAS) http://www.grammy.com/ The Recording Academy 3402 Pico Blvd. Santa Monica, CA 90405 +1 310.392.3777 / +1 310.399.3090</p> <p>The academy is the sponsor of the Grammy Awards. It has 8,000 members including singers, musicians, songwriters, composers, engineers, and industry professionals.</p>	<p>Gospel Music Association (GMA) http://www.gospelmusic.org/ 1205 Division Street Nashville, TN 37203 +1 615-242-0303 / +1 615-254-9755</p> <p>This is a service organization of 2,200 members, including international representatives that promote gospel music.</p>
<p>Recording Industry Association of America (RIAA) http://www.riaa.com</p> <p>This trade association is composed of numerous members who create, produce and market 95 percent of all recordings produced and sold in the United States.</p>	<p>International Recording Media Association (IRMA) http://www.recordingmedia.org/</p> <p>This trade association is composed of more than 450 magnetic and optical media manufacturers and related industries. 182 Nassau Street, Suite 204 Princeton, NJ 08542 +1 609 279 1700</p>
<p>National Association of Broadcasters (NAB) http://www.nab.org 1771 N Street, NW Washington, DC 20036 +1 202-429-5300 / +1 202-429-4199</p> <p>This trade association serves and represents 5,000 radio stations, 950 TV stations as well as the TV networks.</p>	<p>National Association of Music Merchants / International Music Products Association www.namm.com</p> <p>This trade association of the music products industry represents approximately 4,000 retailers of musical instruments and allied products as well as manufacturers, distributors, and jobbers of instruments and accessories.</p>
<p>Nashville Songwriters Association International http://www.nashvillesongwriters.com 1701 West End Avenue, Third Floor Nashville, TN 37203 +1 615-256-3354 / +1 615-256-0034</p> <p>This organization is dedicated to the advancement of musical composition and the protection of 2,600 member songwriters' rights.</p>	<p>Video Software Dealers Association http://www.vsda.org 16530 Ventura Blvd., Suite 400 Encino, CA 91436-4551 +1 818-385-1500 / +1 818-385-0567</p> <p>This is an international trade association of 4,300 video retailers, manufacturers, and related companies involved in the home video industry.</p>

2.8 UNIONS AND GUILDS

<p>American Federation of Musicians (AFofM) www.afm.org</p> <p>This union represents, negotiates, administers and protects contractual rights of its 190,000 professional members in the US and Canada.</p>	
<p>American Federation of Television and Radio Artists (AFTRA) www.aftra.org New York National Office 260 Madison Avenue New York, New York 10016-2401 Tel: 212-532-0800 Fax: 212-532-2242</p>	<p>American Federation of Television and Radio Artists (AFTRA) www.aftra.org Los Angeles National Office 5757 Wilshire Boulevard, 9th Floor Los Angeles, California 90036-3689 Tel: 323-634-8100</p>
<p>This union includes 55,000 professional performers and broadcasters through contract negotiation and administration of live and taped broadcast performances.</p>	
<p>Screen Actors Guild (SAG) www.sag.org National Contact Information Hollywood</p> <p>5757 Wilshire Blvd. Los Angeles, CA 90036-3600 (323) 954-1600 Main Switchboard</p>	<p>Screen Actors Guild (SAG) www.sag.org National Contact Information New York</p> <p>360 Madison Avenue 12th Floor New York, New York 10017 (212) 944-1030 Main Switchboard</p>
<p>Members of this union must be a working member of AFTRA, AGMA or AGVA, and have employment as a player in a film or commercial.</p>	
<p>American Guild of Musical Artists (AGMA) www.musicalartists.org 1430 Broadway, 14th Floor New York, NY 10018 +1 212 265-3687 / +1 (212) 262-9088</p> <p>This is a labor union of 5,000 opera singers, ballet and modern dance companies.</p>	<p>American Guild of Variety Artists (AGVA) +1 212/675-1003 / +1 212 663-0097</p> <p>This labor union includes comic, jugglers, magician, variety acts, and nightclub singers.</p>
<p>The Songwriters Guild of America http://www.songwritersguild.com/ http://www.songwritersguild.com/about.html#regions</p> <p>The organization fosters and protects its membership of 4,500 American songwriters.</p>	

3. THE MAIN CONTRACTS AND US AGREEMENTS

Today, with the evolution of the music industry, fewer artists tend to get signed directly on major labels via a record agreement. In the U.S., the main contracts of the record industry where Europeans stand a better chance of getting involved are:

- A distribution only agreement (or a pressing and distribution agreement (“P&D”));
- A licensing agreement;
- A production deal; or in some cases
- Joint ventures (whereby a major label advances all of the operating costs, and the independent label and the major then share the net profits once the major label has deducted a 10% fee for overhead as well as an additional 15%-25% for distribution).

As for European artists, even if there are fewer chances for them to obtain a recording or a publishing deal directly from an American label or publisher, there are some exceptions, that is why some aspects of these contracts (even if these are similar to what one can expect in Europe) will be briefly examined.

3.1 DISTRIBUTION (PHYSICAL & DIGITAL)

How does a record get distributed in the U.S.?

For European labels there are three means of distribution to consider in the U.S.:

- Physical importation of manufactured products to the U.S.; or P&D
- Domestic distribution of products manufactured in the U.S. by a U.S. licensee; and
- On-line distribution (of physical products or digital downloads).

Imports

Importing to the U.S. can be a financial burden for a small label as it involves shipping overseas, import duties and the possible returns, which can really reduce the label's profit margin. That is why, often, European labels would rather deal with a U.S. licensee who will manufacture the products locally and have them distributed for the label (see page 25 on Licensing). Many distributors belong to a coalition of independent regional distributors and can recommend that other members pick up the label's releases, since the potential national sales can justify their involvement. The main reasons labels prefer licenses to distribution are promotion, as licensees are required by contract to promote the albums, and the lower retail cost to the consumer; whereas often distribution agreements mean little more than a name on a sales list.

Domestic distribution

Again, the common way for a European independent label to domestically distribute its products (as opposed to a major label where its European affiliates sometimes distribute their products via their export department dealing directly with the U.S. office) is to find a U.S. licensee who will manufacture the product in the U.S. then deal with the distributor directly. This distributor will then treat the licensee as the record label and the domestic rules of distribution will apply as to how to find (or more exactly how to get selected by) a local

distributor, what the financial terms will be, etc. Once the product is picked, and distributors receive the finished product from the label, the distributor then proceeds to sell (or at least attempt to sell) to retail stores, other distributors (also called “one-stops” which usually sell to smaller outlets which cannot meet the credit requirements of the original distributor) and directly to the public (including through the internet). Another way distribution works is through “P&D” agreement whereby the major label manufactures press then distribute the records of the independent label. The independent label remains however solely responsible for financing the production, the artwork, the promotion and advertising.

A word about digital distribution

There are many businesses to consumers’ models in the U.S (“B2C”). To name the most popular ones: iTunes, Napster v.2. and the main business to business model called Musicnet that gathers the catalogue of three major labels. Again, digital distribution is a great way for independent labels to be known but is still limited in terms of profitability. Most of these business models still are limited to distributing releases from labels that are incorporated in the U.S. Therefore European labels still have to wait for these companies to launch their services overseas. *[I-Tunes launched its first European online stores in June 2004, with a pan-European store announced for the fall.]*

The main legal aspect of digital distribution (identified as “Digital Phonorecord Delivery” by the U.S. Copyright Act, “DPD”) is to secure all of necessary authorizations to do so (i.e. the right to reproduce, to distribute and, in some instances, to publicly perform). Thus, Internet music sites of distributors (or retailers) that provide DPD must be assured by the distributed label that both mechanical licenses for the musical work have been secured (usually obtained from The Harry Fox Agency if it represents the copyright owner) and master use license from the master owner. Usually, both the master use and mechanical agreements will include (if negotiated) the right to put streaming audio previews of the song on the website. There is still a controversy on whether, in the absence of a music preview feature, internet music services may still be required to secure a public performance license from the owner of the copyright in the musical work.

What to expect in a distribution agreement?

- How much? Labels usually sell their products to the distributor at 50% of the retail list price. The most common prices for new releases in the U.S. are \$14.99. Thus, the label usually gets 7.50 and the distributor keeps a commission of 30%, although this can vary from 20% to 40%.
- The initial term is usually set for two years followed by option periods.
- One of the unfortunate aspects of the U.S. music business is its highly strict return policy. In most instances, all goods must be 100% guaranteed against defects and overstock, returnable for full credit for any reason. Some large chains of distributors commonly practice a withholding up to 20% (in some instances that withholding rate may go up to 35%) of their payables to distributors as reserves against returns. In the case of European products being imported, depending on what is negotiated in the initial distribution agreement, because of the costs of shipping back products, it can be preferable to grant the distributor a sell-off period at the expiration of the term under which he is either allowed to destroy the remaining unsold products, sell those products to a discount retailer or transfer the remaining stock to a new distributor. In the latter case, the label is usually responsible for the handling and shipping fees.

- As far as promotion is concerned, distributors usually look to the labels to provide most of the work such as getting airplay on radio, national advertising, press and other media. The distributor provides some information to the retailers such as one sheets, tour info etc. Many don't provide store by store sales reports but they may run an inventory report by request (again, this must be negotiated in the contract) to evaluate product placement and estimate sales.

3.2

ARTIST RECORDING CONTRACT

The reality of the music industry in the U.S. is that most of the acts are signed to a national label after they have been released independently. Getting signed directly to a major label is extremely difficult. Two factors made majors more prone to limit the risks of investing in totally unknown acts: first of all, the current crisis in the music industry but also the development of Soundscan (a system which, via a bar-coding, is able to measure about three-quarters of the records sales in the U.S.). With Soundscan, major companies will already know what upcoming act is selling well. Therefore, if the major company wants to sign the artist(s) and he is already signed to the independent label for a long time, it will have the choice between:

- Purchasing the masters directly from the independent label and re-signing the artist;
- Signing a production agreement with an independent label which will provide the artist's recording services to the major company; or
- Signing a license agreement or joint venture agreement with the independent label.

Nevertheless, again, the possibility of having a European act signed directly to a U.S. major label is very rare, without the artist already being signed to the multi-national major label with a US affiliate (usually the home office or a successful independent third party.) Therefore we will only list here some of the main characteristics of an artist's record agreement, knowing that there are some major differences between European and U.S. recording contracts:

- The term is based on a minimum recording obligation of a fixed number of albums or one album per contract period. Typically the number of albums is between five and seven; additional albums are usually at the record company's option; some contracts with independent companies can be only one or two albums and sometimes the artist can negotiate a guarantee of the second album being produced and released.
- When dealing with recording costs, there are many ways to compute them: either record company provides an all-inclusive recording fund to the artist, out of which the artist is to pay all of the recording costs, either the record company allocates a fund in the contract but pays the recording costs directly and will pay the difference to the artist (this option is not the best for the artist who ends up being subject to the delays of the financial approval procedures of a major label); in any event the entire amount of the recording costs including any artist advance is recoupable from the artist's royalties, as any additional amount paid by the label in excess of the recording fund; often significant parts of promotion costs are also recouped from artist royalties.
- Royalties are usually based on suggested retail price less packaging deductions and other possible adjustments. They vary between 10-13% for singles and 12-16% for albums; the amount of advances and royalties depend on the artist's leverage;
- Website rights and digital distribution, which are the two most recent hot topics of the recording agreement, are subject to fierce negotiation. When signing with a major (or even with an independent), the latter will tend to claim the property of the domain name of the artist in order to develop and exploit its official website. This point also should be negotiated.

3.3 LICENSING AGREEMENTS

Major vs. independent label licensing vs. distribution

A licensing agreement differs with a regular distribution agreement whereby a foreign record label sells its products of the original label to a U.S. distributor. In a licensing scheme a record company is licensing the use of the masters it owns or controls to the U.S. licensee who is authorized to manufacture and sell the licensed product. Other rights also transferred include the right to use the name and likeness of the artist, the right to perform publicly and to broadcast, the right to advertise, etc.

It is important to point out the difference between major and independent labels licensing:

Major companies have the advantage to license their whole catalogue through inter-company license agreements. Thus, the U.S. entity is generally (unless there are any territorial restrictions in the agreement with the original label) able through an internal mechanism to exercise its option to license the album/single in the U.S. If not, the original owner of the master recording who licensed its recordings to the major company is usually free to find another licensor in the U.S., an important point to negotiate with major label deals as usually most countries will not release many, if any artists in their territory.

Small European **independent labels** that have not licensed all or part of their catalogue to a major company and have a limited success in their respective countries will often have a hard time finding a U.S. licensor or distributor. The latter will often require that the relationship begin with an import arrangement whereby the European label will export manufactured products in limited quantities at a fixed price.

What to expect?

- Territoriality is one of the key aspects of a licensing agreement between a European label and an American licensee. The territory can sometimes expand to include Canada, or other desired territories without a current release. At times the term must be re-negotiated with the artist, if they have a short term deal with the licensor, or the US major label will request the Artist to sign longer term rights directly, possibly even for worldwide rights.
- The product licensed can be in rare cases the entire catalogue of the label, more likely one or more albums from an Artist or a single (as it is often the case in dance music). Catalogue distribution deals are far more common.
- Royalties payable to the licensor vary from one contract to another. However, rates commonly range from 15%-22% of the retail price. Advances are also negotiable; from no advance to large advances.
- Currency, timing and methods of payment should be considered in the agreement;
- The agreement often requires a license of all material supplied by the licensor (trademark, artwork, etc) and corresponding warranties and indemnification clauses;
- Finally, each party retains a right to terminate the agreement under specified conditions that are also subject to negotiation.

3.4 PRODUCTION AGREEMENT

A production agreement is a type of contract that is very rarely used in Europe and more common in the U.S. music industry. It is in fact a hybrid type of contract that combines a master purchase (between the indie and the major label) and a recording agreement (between the indie and the artist).

Often used as a way to nurture new talents production deals can also be contracted with famous and recognized artists who get rewarded by their major companies by setting up a production deal for them. The advantage for the artists is that the royalty rates are often higher than the ones set in major recording agreements.

The main provisions of a production agreement are as follows:

- Production deals usually have an initial term of 2 or 3 years with additional 2 or 3 years at the option of the major label;
- The number of artists subject to the production deal is limited and the major company is not always obligated to release all albums delivered by the production company; the production company should then be allowed by the contract to offer the rejected albums to another label;
- The major pays the production company a royalty for which the typical range is 14%-20%, less the same packaging deductions and adjustments of standard recording agreements;
- In most production deals, the major label owns the masters of any recording released and sold. However, some production companies with enough negotiation leverage often succeed in obtaining a reversion of the ownership of the master after a certain period of time (usually 5 to 10 years)

PUBLISHING

In general, publishing agreements are quite similar in Europe and the United States. There are however, some differences, like the one pertaining to the publishers/writers split which is always based on a 50/50 ratio in the U.S. (unlike some countries of Europe where it is often 1/3 to the publisher, 1/3 to the writer and 1/3 to the composer of the musical work); the absence of theatrical performing rights in the U.S. and the absence of any reference to moral rights of the writer in U.S. publishing agreements.

The choice of a publisher of a musical work is often the first step of the creative process. Most of the times, when a song created in Europe and embodied in a sound recording reaches the United States, that means it has already been published. Therefore, the possibility of having a European writer signed directly to a U.S. publisher is rare. Also, unlike the U.S. (where copyright laws make U.S. publishers seek sub-publishing deals in Europe to take advantage of the laws there) there is limited incentive for European authors to publish their work in the U.S. One of the main reasons is that, when a musical work is published in Europe and the work is exploited in the U.S., payment of the royalties dues to the European authors/publishers will commonly transit through the U.S. collection societies via their reciprocal agreements with their European sister organization. Even when European and American writers collaborate and co-write songs that end up being published in the U.S., if the European writer has an exclusive deal with his European publisher then his share of the musical work (which will have to be determined before publishing) will be subject to the provision of his original publishing agreement.

However, there may be some advantages for a European writer to be published or sub-published in the U.S. A U.S. sub-publisher would be able to collect publisher share performance royalties much faster - rather than the royalties going from the US then on to their local publisher and finally to them (same reason why a lot of U.S. publishers get published in Europe). By having a US sub-publisher they would get the money directly and speed the process by about a year. A European writer would also need a sub-publisher for anything more than extremely passive mechanical licensing. If the European writer is also a performing artist, a US sub-publisher may underwrite tour support, contribute to advertising, posters, independent promotion, provide recording facilities, or help the writer financially. When a European writer has a US sub-publisher they are easier to find by Americans and they also have a presence here in the states. On the creative side a US sub-publisher can help a writer by placing songs in film, television, advertising, video games and ring tones. They may also help to set up co-writes, collaborations, and present songs for other artists to cover and can work with the artist to create other possibilities and revenue streams for their own original European publisher.

Another advantage of being published directly in each country, which is possible, is that there are no sub-publishing commissions (commonly up to 50% percent of the publisher's share), although it can be as little as 10%, or 5% of the entire publishing income, including writer's share; avoiding double commissions.

The different types of publishing contracts are basically the same as the ones used on Europe:

- Single-song agreement;
- Exclusive songwriter agreement;
- Co-publishing agreement;
- Administration agreement;

- Hybrid administration agreement; and
- Sub-publishing agreement.

4. PUBLISHING MARKETPLACE

At a time when global record industry sales are steadily declining due to a combination of on- and off-line piracy, less investment, downsizing, mergers and increasing consumer apathy towards buying cds, (for many other reasons), the music publishing industry has seen steady revenue increases. Recently published figures show a 7% increase in music publishing collections by performance and mechanical rights organizations, to an estimated US\$6.87 billion in 2000, the most recent full year that statistics are available. (Source: *International Survey of Music Publishing Revenues*, as compiled by the National Music Publisher's Association) And that amount does not include income that is collected directly from music users, such as synchronization licensing fees and (in some territories) fees paid directly to publishers by record companies for the reproduction and distribution of copyrights. As stated by respected trade publication *Music & Copyright*, this suggests that the true value of global music royalties is substantially higher.

4.1 SYNCHRONIZATION LICENSING MARKETS

Advertisements

Tens of thousands of advertisements are produced each year, and an enormous number of those advertisements use music. Approximately 50% of the music used in advertising campaigns is licensed from outside sources as opposed to being specifically created for the campaign, and that figure is on the rise.

Advertising agencies look for music that gets attention, so in some respects the more unique the music is, the better – as long as it fits into the overall tone of the campaign. The right song can help make a campaign successful – while generating a substantial fee for the music provider. The amount of money paid for licensed music depends on a variety of factors, two of which are the size of the campaign's music budget and whether or not the song being licensed is a hit. But this does not mean that only high-profile songs can make money in advertising, as the other key factor in determining license fees is the strength of the negotiator. Knowing what the right music – hit song or unknown act – is worth to the advertising executive, and knowing how to determine the overall campaign production budget, is vital to getting top fees.

Although the global advertising industry did see a downturn in 2001, it was only a 2.5% reduction from 2000 figures – much less than originally estimated. Interestingly, certain "secondary" markets (Paris, Frankfurt, Milan, Madrid, Düsseldorf, Amsterdam and Mexico City) actually saw an increase in client billings from 2000 to 2001, some by as much as 9%. (Source: *Ad Age- Appendix II*)

With almost US \$150 billion in 2001 billings, the United States is by far the world's single largest advertising market. Second is Japan (US \$36.6 billion in 2001), and third is the United Kingdom (US \$23.5 billion in 2001) (Source: *Ad Age*).

A trend has emerged in that advertising agencies are increasingly frustrated by the high costs and long turn-around time involved in licensing music from the major multi-national music

companies. Many agencies are actively seeking alternative music sources that can provide a broad range of high-quality music quickly and at a reasonable price.

However, license fees are only one example of how placing music in advertisements can prove beneficial. Licensing music for advertising is also an increasingly viable way to help break an act in a foreign territory, as advertising account executives will often take a chance on interesting and unique international music long before a record company would do so. And once an act's music is being shown several times a day on nationwide television and/or radio, local record companies are often much more interested in releasing that music and in promoting the artist that created it.

Major Motion Pictures

Many of the larger film producers (most of whom are Hollywood-based) are looking to alternative music sources – especially for unusual genres that are not popular or easily obtainable in the United States.

Major motion pictures account for the bulk of global motion picture revenue. In 2001, 55.6% of the top 250 grossing films were produced by major motion picture studios, but they accounted for 80% of overall revenues (Source: *Variety*). Top film grosses for the first six months of 2002 were already 78% of the entire year's grosses for 2001. Grosses for the first half of 2002 in the U.S. alone totaled US\$6.4 billion.

Subsidiary income from the placement of music in a major motion picture can be enormous, as once the film's theatrical run has finished, the music providers have the opportunity to access several different income streams. When the film goes to DVD it can (depending on the initial contract) generate mechanical royalties for the copyright – especially if the song is the title song of the film. The film will go on to generate performance royalties when it is shown on Pay-Per-View and subscription cable, as will subsequent airings on broadcast networks and other cable channels worldwide. In addition, major motion pictures soundtrack CDs are often released by a record company, which results in its own set of fees and royalties including an initial master licensing fee, mechanical royalties and performance royalties (if the song receives additional radio or music video airplay).

Independent Films

Major motion pictures are not the only way to go when it comes to film synchronization licensing. The number of important independent filmmakers and production studios is steadily increasing, as is the commercial viability of the films that they produce. Films such as *Lord of the Rings: Fellowship of the Ring*, *The Full Monty*, *Monster's Ball*, *Austin Powers in Goldmember* and *Crouching Tiger, Hidden Dragon* were all produced by independent production companies.

U.S. box office receipts for the 75 top grossing independent films were over US\$1.6 billion for the first six months of 2002, and internationally receipts increase due to the fact that most of the films produced outside of the United States are considered independent productions. U.S. and international filmmakers alike are further taking advantage of an increasing trend by working in conjunction with major studios for the distribution, marketing and international exploitation of their productions.

Obviously, most independent films do not have blockbuster potential, but the vast majority of independent filmmakers are alike in that they need high-quality music that will fit their creative vision, but do not have the budget to license music from the large record companies and publishers. Additionally, the production of independent films is steadily increasing both within the U.S. and internationally.

Television Productions

There are literally hundreds of thousands of hours of television programming produced worldwide every year. These include fiction or non-fiction television series and specials, made-for-TV or -cable movies, mini-series and documentaries. While these productions do not usually garner high initial synchronization licensing fees, they do generate considerable performance royalties, especially when a TV show goes into syndication, is licensed internationally, or eventually gets released on DVD's, which is happening more often.

While the largest synchronization licensing fees are still paid for music placed in broadcast television programming, by far the largest consumer of television programming is the ever-growing cable television market. As cable television market penetration continues to increase in international markets, local television production companies are churning out programming at an unprecedented rate. Many networks focus on pre-produced shows or movies; however, even traditionally non-producing pay cable networks have developed original production departments. HBO's *The Sopranos* and *Sex in the City* are just two examples of highly-rated shows produced by a pay-cable network seeking to increase its ownership percentage of its programming.

In many countries, television production companies and broadcasters have blanket agreements with local performance rights associations to license music on a flat-rate "per-second" use fee. However, in certain key markets (such as the United States), television production companies must negotiate separate fees directly with music providers for each licensing.

There are over 300 key television production companies in the U.S. alone, with each company producing anywhere from 1 to 75 television shows at any one time. (Source: *Variety*). Some representatives have targeted those that primarily license music (as opposed to using an in-house composer) and some focus on production companies that feature creative music rather than standard, stock music.

Record Companies

Even though the record industry has seen a drop in income in over the last few years, it is a vital and necessary market for licensors as the release of copyrights on records results in several distinct income streams for the publisher. Licensors seek contracts for recordings of the copyrights it represents, which generate an initial licensing fee or advance (of which the licensor often receives a percentage). The record company releasing the music is then required to obtain a license from the licensor for the right to mechanically reproduce the copyrights that appear on that master (a mechanical license), and must pay a royalty for the right to reproduce those copyrights on retail-ready CDs (a mechanical royalty). The more popular the music, the more records manufactured and sold – the more mechanical royalties are paid to the licensor. While mechanical royalty rates vary from country to country,

worldwide mechanical royalty revenues (which are usually paid one to two years following album sales) totaled \$2.74 billion in 2000 (the most recent year for which statistics have been published) – an increase of 4.8% over the previous year. (Source: Music & Copyright) Certainly, music downloading continues to be an issue for the recording industry; however, developments in tracking technology, music subscription services and the increase of legislative action against larger “file-swapping” services show a developing trend that will eventually ensure the payment of music publishing income no matter if it is derived from physical or virtual sources.

Further, record companies usually promote their releases to radio, which results in the payment of performance royalties to the publisher. These royalties are collected by Performance Rights Organizations (PROs), which issue licenses to broadcasters and then track performances of songs played by those broadcasters – and distribute income derived from those performances to publishing companies and writers. Once again, the more popular the music, the more airplay it receives – which results in even more performance royalties being paid. Global radio performance royalties increased to \$714 million in 2000 – up 7% from the previous year. Further, PROs also pay performance royalties for the use of music in films, television shows and advertisements, resulting in a global increase of television, cable & satellite performance royalties to \$1.07 billion in 2000 – up 8% from the previous year. (Source: *Music & Copyright*)

While large territories have seen a decrease in album sales, certain smaller territories have held their ground or even seen increases. France, for example, saw sales increase by almost 11% in 2001, while Sweden notes year-to-date increases of 2.3% (Source: *Billboard*) And the International Federation of the Phonographic Industry (IFPI) Platinum Europe certified more platinum albums in 2001 than in any other year since the awards program was introduced, with 87 albums from 15 different countries receiving platinum certification (Source: *Billboard*).

Artists, Producers and Managers

Most artists write and record their own songs. However, many others do not, especially in the pop, R&B and country genres. Artist managers and record producers often look for songs to present to recording artists before album production begins; therefore, it is important to know who is going into the studio to record, and who will be producing that recording so that the need for songs suited for that artist can be determined. At that point, a song presentation can be made and, if the artist, manager and producer like a song, they usually will request a “hold” be placed on that song for a limited amount of time so that the artist can record a demo version. If the song is selected to be recorded and released, the publisher of that song receives a First Use fee, the amount of which is determined by the artist’s stature, the songwriter’s stature, the overall production budget and whether or not the parties involved believe the song has hit potential. Long the province of larger as well as a few “old-timer” publishers in Nashville, this sort of “song shopping” has entered a new era with the establishment of writer-producer teams. These teams often see a project through from beginning to end, resulting in a fully-recorded master.

Multi-media, Home and Industrial Videos, Internet and Games

The licensing of music for games, home video, corporate use and the Internet are simply additional forms of synchronization licensing.

Video games are now the most lucrative of these specialty markets, with potential income being derived from both up-front licensing fees and from per-unit-sold royalties (technically, mechanical royalties). Home videos/DVD's and the Internet are also potential sources of synchronization licensing fees. Home video/DVD licensing fees can be an unexpected source of revenue when television production companies must replace music used in broadcast for contractual reasons. Industrial videos, which are produced for a company to show to its employees or clients, also generate licensing fees.

4.2 INCOME STREAMS

Advertising Synchronization Licensing

Synchronization licensing fees for advertisements are an extremely strong short-term income stream. And as music licensed for advertisements earns performance royalties, music providers stand to earn money from advertising placements well above and beyond the initial synchronization licensing fee. Initial fees are usually paid by the licensing agency within six to eight weeks of client approval of an advertisement; a much faster payment schedule than film or most television production companies.

U.S. music licensing fees vary, but the average licensing fee for unknown music for a nationwide U.S. ad is between US\$10,000-\$70,000, all in. Many advertisements produced in the U.S. are also shown worldwide; for a U.S.-produced worldwide license the U.S.-only fee would be increased by approximately 45%-60% (US\$14,400-\$17,000 to US\$100,000-\$112,000).

While most advertising licenses are issued for a set territory and length of time (for example, North America for one year), international campaigns will often request options on additional territories – usually on a country-by-country basis which may or may not be picked up as a campaign is expanded. Advertising licenses are almost always non-exclusive, in that a song could be simultaneously licensed for a soft drink commercial and a car commercial; however, most agencies insist on “like-product” exclusivity – you would not be able to license the same song to competing soft drink companies within a set period of time. Some agency clients might insist on a total advertising exclusive (the song could still be licensed for films and television shows, but not any other products) for a certain period of time (usually one year), but this right to exclusivity would substantially increase the basic licensing fee – to as much as 50% to 200% of the original fee.

Film Synchronization Licensing (see also Appendix III)

Film synchronization licensing fee amounts are determined by the size and budget of the film production, as well as the usage of the song in the film; i.e., title song, opening or closing credits, as a featured (on camera) performance, background vocal music, background instrumental music, or incidental music. The other determining factor is the length of time the song is featured in the film and, as always, the status of the song being licensed.

There is understandably a difference between independent film licensing fees and those paid for use of music in a feature film produced by a major motion picture studio. Initial fees for background music range between US\$2,000-\$5,000 for an independent film, and

approximately US\$5,000-\$15,000 for a feature film, whereas a featured performance would be approximately US\$5,000-\$10,000 for an independent film and approximately US\$10,000-\$50,000 for a feature film. Higher fees are paid for music used over opening or closing credits, approximately US\$5,000-\$20,000 for an independent film, and between US\$10,000-\$75,000 for a feature film. It is important to note that the above fee quotes are for unknown music. The use of a hit song in any of these capacities would usually command a much higher licensing fee.

The largest fees are paid for the use of a song as the title track, which is when the name of the film is taken from a song, and the song is played during opening and/or closing credits, as well as at plot points during the film. It is rare for a previously unknown song to be selected as a title track, unless it is written specifically for the film (for example, *Who's That Girl*). The licensing of an older, hit song (such as *Sea of Love*) as a title track would command a licensing fee ranging from US\$100,000 to US\$1 million for a feature film. Independent film licensing of a title song can command as much as 50-65% of the film's overall music budget, and most independent filmmakers would usually only be able to license a hit song if they have been able to secure licensing permission directly from the song's artist or writer.

If a feature film receives a wide (600-2000 screen) or saturation (over 2000 screen) U.S. theatrical release, the publisher of a licensed song can demand a separate performance licensing fee from the film producer for the right to perform the copyright in U.S. theatres, as (unlike in most international markets) U.S. theatres are not required to pay performance royalties for music placed in the films they show. That additional Performance Licensing Fee can be as much as 50%-100% of the publishing portion of the initial synchronization licensing fee.

Film synchronization licensing fees are usually paid once the film has been released – which is often months after the license was granted, and even longer after the first pitch was made. While music is often one of the last elements to be finalized in a film's post-production, the amount of lead-time between production shut-down and the eventual release date is often determined by outside factors such as advertising and marketing campaigns, or the release schedules of competing films. It is not uncommon for a completely finished film to be held back for as much as 6-12 months before being released, and studios reserve the right to withhold payment until they are certain that there will be no further edits. Once the film is released, licensing payments are usually processed within four to six weeks.

Synchronization licenses for film usage are almost always granted for non-exclusive, worldwide use in perpetuity. This is standard practice, as no filmmaker wants to have to re-negotiate music licensing fees for certain territories, or after a certain amount of time. However, there are small exceptions to the worldwide/perpetuity rule.

Many young, independent filmmakers request music for their productions for either a reduced or no license fee. One way to exploit this resource is – after reviewing the project to verify its quality – to issue a festival license, which allows the filmmaker to place a song in their film for a set period (usually one year) while they enter the film for competition in a selection of annual film festivals that take place around the world. If the film is selected for competition in a festival, the filmmaker will often be able to secure a distribution deal for the film – along with an upfront fee from the distributor. A festival license provides that the Licensor will receive its licensing fee once a film gets distribution; that fee is usually negotiated on a most-favored-nations basis; i.e., Licensor will receive the same amount of money as the highest

licensing fee paid for similarly-used music anywhere in the film. Further, Licensors often issue step licenses, which ties the eventual final amount of a synchronization licensing fee to the film's gross income, or different fees for different steps of success ; festivals, video/DVD distribution, TV sale, limited release, soundtrack release, full theatrical release.

Television Synchronization Licensing

Average fees for the synchronization licensing of music for television productions often depends on whether the show will be shown on a broadcast network or cable network. Highly-rated television shows will often license one known song per episode, and fill any remaining music needs with unknown material. These remaining spots will pay anywhere from US\$2,500-\$6,000 for a background vocal or instrumental cue, while cable or smaller network licensing fees for unknown music will run approximately US\$1,500-\$3,000. Featured vocal or instrumental fees are approximately 50% higher, as are fees for use of music in the pilot episode of a series. A television show's theme music is the most sought-after placement, as not only will the television production company pay an upfront licensing fee, but the theme will earn tremendous performance royalty income – especially if the show becomes a hit. However, many U.S. television production companies insist that any new theme song be a commissioned, work-for-hire piece, and that they retain ownership of the underlying copyright. Therefore, theme licensing fees vary; if the production company retains ownership of the copyright the initial licensing fee can be anywhere from US\$5,000-\$25,000. If the writer retains the copyright the rate will be approximately 50% less.

Television synchronization licensing contracts usually include a videogram option that will take effect if the show is ever packaged and sold as a video or DVD. Videogram licenses are usually anywhere from US\$1,000-\$5,000, depending on the status of the show (and, as always, the music). Television synchronization licensing fees are usually paid within 6-12 weeks following the initial airing of the program. All fees quoted in this section are all-in (master and copyright). Generally master and synchronizations are split equally, but that's not necessarily the case, based on negotiation and ownership.

A recent trend in the cross promotion of television productions is to license and release master recordings of the music featured on that show in conjunction with a record company – an obvious asset to any artist, record company or publisher who's music is so featured. In addition, information about music appearing on a show is often included on the show's website, together with links to the artist or record company site. These cross promotional efforts are usually undertaken by the show's producer in order to increase fan dedication to all things related to the show and its characters.

Mechanical and Performance Royalties

Virtually all of the publisher's activities have the potential to generate performance royalties, which are earned from the performance of represented copyrights on television (cable or broadcast), on radio, in concert, or the international theatrical performance of films containing licensed music. As an example, performance royalties for a song licensed for background vocal use in a broadcast television show would be approximately US\$2,500 for just one prime-time airing in the U.S. alone. That amount drastically increases for shows broadcast internationally, or for featured performances and theme songs. Performance royalties are some of the most important and long-lasting of traditional music publishing revenue sources

Mechanical royalties are generated by the reproduction of copyrights on CD, tape or other distribution method. As an example, an album that sells one million copies would net an estimated US\$300,000 in mechanical royalty fees. In addition, film synchronization licensing has a direct result on mechanical royalty income, as any copyrights included on a CD release of a film soundtrack generate mechanical royalties directly proportionate to that soundtrack's eventual sales level.

FILM, TV, COMMERCIAL & VIDEO MUSIC PLACEMENT:

The placement of music into movies, TV shows, and video games is a thriving business and becoming more important to record companies and artists with each passing year. Music supervisors work with TV and film producers/directors to determine what music is used. The licensing fee for such placements varies widely from a few thousand dollars for a developing artist on a TV show to hundreds of thousands for an exclusive new song from a superstar act in a movie.

Soundtracks to films and TV shows are a huge part of the music industry's bottom line. Some films and TV shows have led to multiple CD releases. Of the top 99 biggest albums of 2002, four were movie soundtracks including Oh Brother, Where Art Thou, which sold 2.7 million copies during 2002.

The music used in commercials is often more hip than movies or TV shows. A single TV ad campaign can break or save a project. In 2001, Nissan's Outback campaign used Lenny Kravitz' "I'll Fly Away," and gave new life to a record that was sagging in sales. Not all TV commercial campaigns lead to greater sales for the acts involved. According to Mike Bone, General Manager of Palm Pictures, the long-running Nissan spot using the song "Last Good Day of the Year" by Cousteau, showed no impact on record sales.

Some of the most impactful commercial uses of music in 2002 were:

Telepopmusik - Breathe	Mitsubishi Outlander
Sev - Same Old Song	Pepsi Blue (featuring the band in the ad)
Mr. Scruff - Get A Move On	Lincoln Navigator
Andrew W.K. - Rock the Party	Coors Light
Hoobastank - Crawling in the Dark	Mountain Dew

The new frontier in music placement is video games. The year 2002 was a breakthrough year for this section of the business, led by seven volume Grand Theft Auto: Vice City soundtrack. Marketing company ElectricArtists recently published some very interesting figures on how consumers respond to the music on their games. A survey of 1,000 gamers found the following:

- 92%** Remembered the music after they played the game
- 74%** Agreed that the music soundtrack help sell the video game
- 40%** Discovered a new song or band from playing games
- 27%** Purchased the music they heard on games

5. THE KEY PLAYERS AT THE LABEL (AND HOW TO PLAY)

While this is true in all business, personal relationships and building a team in the music business are even more critical for success. Without the clout inherent in current success, or in a bidding war, good relationships with all the people at a label are one key to success, which isn't always easy with the pressure of multiple releases, market downsizing, budget reductions, personnel reductions, job security, etc. that all label personnel face. As with any relationship, frustrations of all types and magnitudes ensue and must be kept under control within a framework of respectful and friendly behavior.

The music business is a very fragile environment in which to develop quality personal relationships. Of course, many do exist. For an insight into which ones those are, take a look at any long-term (seven years or more) relationships between an artist and a label. In this era of disposable artists, *that* says something for both sides; maybe even more about the label, especially if they sustain a good percentage of such relationships.

And this is where management does not have all the value, regardless of the quality. There must be a good relationship between the artist and label head – or at least an acceptably discreet semblance of one. And that takes some intelligent perception and judicious selection on the part of the artist, especially if long term success while maintaining self-respect is the goal.

Most labels, especially the independent ones, often perceive a good manager and team as necessary and as a blessing for everyone else at the label. All the people who actually handle the real business of running a label usually appreciate a manager and artist who makes their job easier.

With most label execs, the best approach is to let the artist deal with the executive about everything but the business, and let the manager deal with everyone else. A good partnership between the artist and manager will make this work smoothly. The artist, able to back out of any conversation in which *business* crops up, avoids the potential confrontations that such discussions can fuel and simultaneously supports the manager's position in the overall relationship.

Social and humanistic qualities vary from person to person, especially with different cultural backgrounds, and the same efforts that go into all personal interactions are key to maintaining good relationships. But just as importantly, there must be an understanding of the roles and responsibilities of the various players with whom both artist and manager will have to interact.

5.1 THE EXECUTIVES

– those who have the decision making power in signings and terminations. Sometimes the artist has to deal with only one of these and sometimes as many as three, depending upon the label and circumstance.

Major Label Head

This person is generally autonomous in terms of their own label (or division), but is always answerable to someone higher up in the corporate chain of command.

The corporate well being is their *real* job and they usually know it in no uncertain terms. Some make the best of it, trying to sign artists they like when possible, but nothing can interfere with their responsibility to the corporate bottom line. Of course, none of this can ever be mentioned in the course of the relationship – at least not until the relationship is over, or about to be. Formal meetings with execs are rare, usually only in the case of a “bidding” situation soliciting the artist, or when entering into a new agreement, when planning a new record or terminating a contract. Most of the other encounters are in performance settings or informal run-ins at the label offices.

Straight talk, sincere communication, and a mutual sense of partnership are *not* necessarily the rule in these relationships – at least until a crisis arises. Often non-committal, the word most difficult to get out of an executive is “yes.” The second most difficult word is “no.”

Most of these execs have others working under them in A&R ostensibly with the power to sign artists. In reality they usually only have the power to plead the artist’s case to the top guy. He is the ultimate decision maker across the board in all major day-to-day operations.

The A&R Executive

Some majors have a second-in-command, and maybe even a third person in A&R, although that person is usually more of a project manager or international A&R, which means both “exporting” US artists and “importing” acts signed from overseas labels. The international A&R person can be the important first label contact for overseas artists, as their recommendations are important, but they rarely have the power to sign/license overseas artists without generating approvals from all their colleagues, including the publicity, promotion and marketing staff, as well as a product manager and usually other top A&R executives.

For key meetings, these people may be present to either participate or witness the proceedings. Whether or not, the manager should immediately follow-up by sending this person a meeting memo, or a simple letter of understanding that delineates the promises, decisions and expectations that the meeting established.

The A&R executive is more directly involved with the staff who carry out the day-to-day activities for the company. Often this A&R man also functions as the product manager. That means that the real thrust of the company’s activities directly related to the artist is in his hands.

A good manager or savvy artist can assess the artist’s *real* position at the label, request, suggest and get what they want/need and learn what can *really* be expected to occur on the artist’s behalf through the A&R representative, or other key staff members with good relationships.

The Independent Label Head

Often the label’s principal owner as well, this individual faces the daunting task of achieving a balance between artistic identity and economic success. Even when this person is not the owner, the artistic control is generally entirely theirs as sole representative of the financier’s interest.

Without the corporate structure that defines major labels' divisions, this exec has the freedom (and the inherent economic risks) to choose artists, concepts and contexts, without concern as to the conglomerate bottom line (although there is the occasional circumstance of a label being part of a corporate investment strategy by its owners).

This results in strong personalities and more easily identifiable artistic goals, based on the executive's personal tastes. To this individual, participation in the music industry is almost always in some way a labor of love – at least at the outset. Often doubling as the label's principal producer, the label becomes this person's "instrument."

The clearest gauge of this exec's attitude is usually evidenced in the length of artists' relationships with the label. Alfred Lion (Blue Note) and Norman Granz (Verve and Pablo), enjoyed long and productive relationships with their artists, in Granz' case, some as many as half a century (sometimes, also as manager). Among today's independents, Manfred Eicher of ECM is still recording artists who were part of the label's original talent pool in 1970. But for each of these and a few other individuals, there are scores more whose relationships with artists are significantly less successful. Sometimes this is a matter of economics or organization; other times it's the character of the label head.

But one thing is overwhelmingly consistent. This executive will always take a pro-active involvement in the creation of the label's musical product. Sometimes it's limited to the visual presentation of the packaging; sometimes it includes the studio production, personnel and even repertoire. But it's always a prime part of the artist's relationship with the label. This is not necessarily a bad thing, dependent upon both the artist's need for independence and the executive's attitude toward issues of control. Of course, personality enters into the equation quite extensively as well. Music history provides many instances of enormously valuable relationships in this area.

But those label heads who have succeeded in this capacity have all understood the give and take required in balancing a relationship of this sort. In its most ideal form this is the most productive type of artist/label relationship, both economically and artistically. It *can* exist with a major label exec, but too many other factors tend to make such a relationship more rare.

The prevalence of the corporate approach to business that overtook the world of economics in the '80s has become the standard, even for small entrepreneurs. The likeliness of an Alfred Lion or Norman Granz, or even major label execs like Ahmet Ertegun (Atlantic), John Hammond (Columbia) or Bob Thiele (ABC/Impulse) emerging in this climate is unlikely, although there are many individuals who have significantly influenced the direction and marketability of specific genres of US music, like Russell Simmons, Tom Silverman and Matthew Marshall.

Whether tiny one-man operations, vanity endeavors of wealthy fans or wannabe business tycoons, or a product arm of a live performance facility, one thing is constant -- the long tradition of economic inequities and capitalism have made most American independent labels minor league versions of the majors.

While the spirit of the classic independent label head still exists in Europe and occasionally in Japan, the control of American distribution either forces them to adhere to the same contract

provisions of the American labels, or suffer the consequences of limited distribution. That reality inevitably enters into even the *best* of these relationships in one way or another.

The Independent Producer/Production Company

Occasionally a label will enter into an agreement with an independent producer or a production company to deliver completed product. This is more typical with majors than indies. Sometimes the producer will receive a separate label status, usually as a subsidiary. Often the product is issued along with all of the other releases, either with a mention of the production company in a secondary manner, or not at all.

Producers who get these kinds of deals generally fall into two categories:

The established producer who is trusted enough to deliver product without the label's involvement and is hired to deliver a certain number of albums over a given period of time; or an artist already contracted to the label, or whom the label wishes to sign – as an incentive in either case.

While exceptions may exist among the most well known producers, the label must approve all artists selected in this manner. Usually they're required to sign directly with the label, even if contracted separately to the producer's company – at least for product created under this particular agreement. In some cases, the product may follow the producer from company to company, as may the artist.

The relationship with the independent producer is much like one with the independent label exec; the key difference being that the production of the music is pretty much the entire basis for the relationship. Promotion, publicity, marketing, etc., all fall totally under the label's activities.

Business issues may also be similar to those with independent label owners, especially if the producer's deal with the company is based on the payment of a flat fee to deliver a specific quantity of albums. That means that every expenditure diminishes the producer's share of the flat fee received from the company. Even if the producer receives a specific fee from the label for each production with the label paying all other expenses directly, any costs incurred above the pre-approved budgets will most likely be the financial responsibility of the producer.

For the artist, the independent producer is best viewed as a cross between the independent label exec and the label's A&R executive.

In the case of the artist production deal, the artist often tends to record friends, colleagues, or others in whom there is some personal interest. Rarely is economic potential a real factor, unless it's so negative that the label would refuse to allow it. The greatest concern here is that the fellow artist/producer is now taking an active part in that musician's own creativity. It's substantially different from performing in that artist/producer's group under his or her leadership. This can sometimes create a dynamic that is detrimental to the overall relationship, especially if things don't go as well as anticipated.

Although such production deals are rare among independents, they do occur. The most common occurrences are in the cases of:

- independent producers who are connected to the label head as associates, advisors, or unofficial “partners”
- artists who’ve enjoyed a long relationship with the label and receive this deal as a reward, incentive or artistic decision or
- artists or professionals who provide legitimacy to label heads.

5.2 THE STAFF

– these are the people who run it all. Depending upon the size of the label, the positions listed here are often combined into one to ten or more persons and/ or contracted to independents.

The relationship with the staff is crucial to a successful relationship with the label. While no deal would exist without the good will of the signing executive, the overall payoff to the artist hinges on the activities of the staff. The packaging, marketing, distribution, promotion/publicity, and every other aspect that is fundamental to the artist's career (including live performances) lie entirely in the hands of the people who do the *work* in operating a record label.

Knowing where to direct inquiries, provide pertinent information, or address problems will produce efficient and productive results in coordinating all of the label's activities with the artist's career needs. Remember, it's the job of the manager or artist to make sure that coordination occurs. Understanding each person's role in the label operation is essential to fully exploit the opportunities the record deal can provide.

The staff should be treated with the same respect and dignity as the executives. And there should also be a stated appreciation of work done well. Far too many artists (and even worse, managers) treat staff gruffly, or disrespectfully for no reason.

While major labels are the only ones in which all of these roles may be held by different individuals (often with assistants and sometimes even full staffs of their own) or by outside contractors, *all* labels (even little indies) have someone handling the various jobs. Sometimes, the label owner does them all, sometimes there's an assistant or two, or maybe a small staff in which the obvious jobs are linked together – publicity and promotion, marketing and product packaging, etc.

Obviously, the more jobs being handled by a single person, the less the focus will be on each role. But sometimes one person doing three different jobs for five separate artists is no worse than doing one job for fifteen of them. And if that person is really competent, then inherent coordination of effort can be even more productive.

Product Manager

This specific position is virtually non-existent outside the major labels. This person is responsible for coordinating all of the various staff members' and outside independent's efforts in regard to a particular product item. The focus is still on that single recording, not necessarily the artist's entire catalogue on the label.

This person should make the manager's job easier, providing a single source of information for "all the management needs." Again, this is an extremely important person to have as part of the overall team, as their position is central.

Relying primarily on the ability, concern and dedication of a single individual when so many are involved in the process is not an ideal situation by any means – unless that particular individual offers truly extraordinary service and communication skills.

Art Director/Production Director

In pre-CD days, when a 12"x 12" album cover could legitimately be considered a piece of art, the art director's vision could define the essence of a label. But today's 5"x5" format makes cover art considerably less meaningful. This doesn't mean that photographers, designers, artists and art directors take less pride or care in its creation, but that its purpose and value is substantially different than in the past.

This essentially redefines the art director as production director; responsible for coordinating photography, design, liner notes and copy, artist input, technical info (bar codes, copyrights, etc.) and so forth, as well as making sure that all artwork, parts and other materials needed for the manufacture and packaging of the product is received in a timely fashion all along the various points of assembly. This means lots of complex scheduling and securing of the various approvals regarding the professionals selected to provide their services, and then negotiating their fees. Most labels want new press photos with new releases, so this usually gets rolled into the responsibilities of this person as well. The reduction of the cover's importance in establishing the label look that make old Blue Note, Prestige and Impulse label product so classic, means that artists have more freedom in deciding what their albums will look like. The disadvantage, of course, is that it means relatively little in any area other than personal aesthetic satisfaction. Often at major labels, the art director also supervises video planning, production, advertising and sometimes even distribution.

It's important to recognize the enormous complexity that faces the production director in terms of coordinating so many schedules and deliveries *and* doing it within the parameters of the label's release schedule. In order to properly assist this person in handling these tasks *and* getting the best results in the final product, the artist/manager should provide the following:

- clear and precise liner information, including ensemble personnel, album and song titles, appropriate composer and publishing info, and any thank yous, courtesies, and obligatory credits
- timely and reasonable requests regarding preferences for photographers, liner note authors, designers, etc.
- fast approval or changes desired with regard to materials for artist review (colors, photos, liner notes, etc.)
- timely arrival for all meetings and photo sessions
- prompt responses to scheduling requests
- a generally cooperative attitude.

Not only will this produce the best results for the particular album, but it will go a long way in securing that extra cooperation from this individual -- the little bit extra it may cost for the photographer or writer of choice, the assignment of the job to the label's *best* designer, the additional press photo (or two) purchased from the photographer, a few needed promo copies or press photos after the allotted ones have run out, and so forth. All these little things can make a big difference in the final results.

Marketing Director

This person's job entails handling all of the elements *directly involved* in getting product from the distributor into the home of the consumer; and in the case of the independent label, into the hands of the distributor as well.

Most marketing directors do not necessarily involve themselves in the more abstract areas of publicity and artist recognition that builds the most permanent and committed fan base. Instead, their focus is on label advertising and specific market focus through chains and individual retailers. This person will interact with distributors, sub-distributors, regional sales personnel, retail store buyers, exporters, overseas label reps or licensees, and the various other functionaries in the general industry mechanism of product sales.

Those who are best will stay on top of all aspects of the artist's record-selling potential, and the label's promotional and publicity efforts on the artist's behalf. They will also place proper emphasis on the artist's live performances and other appearances, and capitalize on every element of the artist's visibility.

Some labels will contract outside marketing companies or individuals who've built a solid reputation among retailers. Their efforts are provided in conjunction with the label's overall marketing department and its plans. Again, the quality of the work – and even the accessibility of this individual to the artist or manager – is entirely dependent upon the individuals providing the service.

The outside retail marketing companies can do everything from making sure instore copies are available and being used for airplay, advise on pricing issues, work with the distributor's sales force to maximize sales and knowledge of the artist, inform the buyers at chains and key shops, devise listening station budgets and deals, work with in-store press and visibility (posters, displays, sales), set up in-store live appearances and autograph sessions, set up coop advertising campaigns with local, regional and national outlets, work with street marketing teams, coordinate with tour advertising and marketing and devise "blue sky", (non-traditional) retail outlets and retail marketing methods whenever possible. These companies can influence buying, sales and chart position with consistent work and creative energy.

Radio Promotion

Almost every record company in America uses radio as a means of reaching the music buying public. They often have staffs of employees whose job is to promote records to the stations and DJs deemed most appropriate to reach the target audience for any given artist/recording.

For major labels with mainstream artists, the process involves promotion staff actively "working" the radio station music directors and program directors to "add" their current priority songs into "rotation." Once a song is in rotation, computer software is programmed to play the song a certain number of times each day. These categories are generally referred to as heavy, medium, and light rotation.

Publicity

Reviews, interviews, and television performances are the bedrock of publicity in the American music industry. While the press does not have the power to break a new band in the U.S., they do get the word out and contribute to marketing and promotion campaigns. Most record companies have dedicated publicity departments and augment their efforts with independent publicity firms. Independent publicists can earn large fees for their efforts. The biggest indie publicists can command fees of \$3,000 a week plus expenses. Smaller firms charge anywhere from \$400-\$1,000 a week depending on the contract period and company involved. Like radio promotion, there is intense competition for print space and television appearances.

In the last two years, poor sales and cost cutting have led to large reductions in the amount of CDs that are sent to writers and critics. Where once major labels might send out 3,000+ review copies of CDs for a significant new release, that number is now closer to 900 for most publicity departments.

The important elements of publicity are:

- **Performance and interview television** (Saturday Night Live, Oprah Winfrey, David Letterman)
- **General entertainment television** (Entertainment Tonight, Access Hollywood)
- **Monthly and weekly magazines** (Rolling Stone, Spin, Entertainment Weekly)
- **Newspapers** (New York Times, USA Today)
- **Alternative free weekly publications** (The Village Voice, L.A. Weekly)
- **Wire services** (Associated Press, Reuters)
- **National Public Radio** (All Things Considered, Morning Edition)
- **Radio Syndication services** (Westwood One, Premier Radio Networks)

Publicist

The publicist's job is to secure media exposure for the artist in every area except radio. This includes securing articles, reviews, in-store activities like signings, and even television appearances. But be aware that the company publicist is more concerned about publicizing the artist's latest product and even more importantly the label itself, more than the artist.

This is another area where labels have been increasingly "farming out" these responsibilities to outside agencies. Sometimes this may be done on a project-by-project basis, but more commonly a label contracts the agency for its entire label (or division, as the case may be). Most publicity firms have multiple label clients, and may also have a number of other clients as well, both individuals and entities.

This means that a publicity firm could be pushing dozens of projects simultaneously, many in competition for the same coverage. Even a company publicist encounters this same conflict for artists on the same label.

In either of these cases, the artist/manager should take a pro-active role in the publicity mechanism, working in tandem with the publicist provided by the company. The publicist should be consistently updated on all of the artist's activities, including performances (as leader or sideman), honors, awards and any other potential opportunities that enhance visibility, and are thereby useful to the publicist.

The more accommodating, willing, affable and professional the artist is in giving interviews and working with the publicist's efforts, the more willing the publicist will be to work hard for the artist. It also helps considerably if they like the artist, the music, or both.

The Executive Assistant

A major part of these people's jobs are running interference for their bosses. In any half-hour meeting with an exec, the phone could ring as many as fifty times. Obviously all of these calls won't be returned, probably a few at most. Between fielding these calls, providing the proper screening, keeping the boss on schedule, and following up after him in all the areas that aren't the responsibility of the A&R man, the day is pretty full and often somewhat less than enjoyable. These relationships tend to be very close and usually quite long-term, meaning that a large degree of loyalty is at play here.

These individuals should be treated with the same courtesy and respect accorded to the boss. You do not want the exec's secretary to develop a problem with you under any circumstances. This person is probably the most capable and dedicated individual at the label, so you can count on information getting delivered properly.

The Company Attorney

This person's only effect on the artist/label relationship usually occurs during contract negotiation and termination. While they may be involved in certain issues during the term of the agreement, it's generally kept within the executive/attorney interaction. The executives make all decisions pursuant to the contract – such as sideman recordings for other labels, permission to re-record contractually prohibited compositions, etc.

Company attorneys may work directly for the label, or for a legal firm hired by the label. Some negotiations are done directly with the attorney, but this individual has no real decision-making power other than within parameters pre-determined by the label exec.

The label attorney's primary function – aside from handling the simple legalities of contract signings or terminations – is to thwart any legal action against the label by artists who feel their contractual rights have been violated. Any attorney understands how to tie up a situation by creating an amount of work for the opposing attorney that will create prohibitive costs for the artist, thereby making legal action impractical and pointless.

Falling somewhere into the limbo between artist and label are certain attorneys who, while officially representing the artist, are also close to particular label execs. This is most common for artists who negotiate their own contracts without the aid of a manager, or who don't initiate the negotiations through an attorney of their own.

Other Personnel

In addition to all of those staff members, various other individuals are involved: assistants, interns, receptionists, mailroom personnel, etc., etc. Other than the receptionist, who is a quasi-traffic controller, while handling all calls, most of these folks are like any other personnel found in any company. Some may be student interns learning the business and making some extra money. But for the most part, they are regular working people trying to earn a living and get promoted through the ranks to better and more lucrative positions. Some may be impressed by “stardom “ enough to be awed by even marginally well-known names; others might not know a major name.

As with everyone else, they should be accorded proper respect and kindness, not only for basic humanistic reasons, but also because you never know what their position will eventually be at this label, or another in the future. And because they handle much of the actual work that gets done, they are in an excellent position to assist an artist or manager.

One note of advice: these individuals are privy to a lot of decisions and actions that are made. They can often be quite helpful and informative to the manager or artist in gaining valuable information. These individuals can be enlisted to be eyes and ears on the inside. Overall, in dealing with any employees of a company, it must be understood that most people know where their own best interests lie and risking job security or future potential for an artist's benefit is never advantageous unless the person is looking to move away from the label side and go into the artists' representation. Great discretion should be used in dealing with these various individuals in terms of any compromise of their integrity regarding loyalty to the label or execs.

6. INTERNATIONAL DISTRIBUTION

This section is in the US market guide as often the US labels who license overseas albums will have territories covered by label distribution agreements that the overseas label may not have already secured, or may not be even positioned to secure. This is true even in the case of major labels, where a US licensee that's a different label, can ask for and receive a license for the US and other territories.

International Sales can be a very profitable sector for labels as well as for artists. Specifically, because international sales of records rarely represent any returns to a company as sales are generally made "one way".

US Labels have contracts with international distributors on both exclusive and non-exclusive terms. Labels can also sell directly to chains and to one-stops. Pricing of CDs can vary from one country to another depending on the custom duties that the distributor has to assume.

Certain labels would request that an artist signs for specific territories or for "The World". One needs to determine what kind of distribution network the label has established. Do they have an international staff, do they have satellite offices in other countries, and do they manufacture in several parts of the world? Do they visit their international distributors on a regular basis? Do they translate their promotional material in various languages to adapt to several market demands? How established are their artists worldwide? What is the International outreach effort for the specific releases (for example: how many promotional items do they distribute to press for each release)? International distributors generally assume the responsibilities of promotion, radio promotion, press and artist visibility. It is also a good idea to look at one of their international press books as indication of the response or impact that one could expect in a given country.

An artist/label can independently negotiate various international deals as well; however most International distributors are interested in acquiring a full label deal with substantial catalogue for exclusive distributions, as dealing with each artist or small label independently can be too big an expenditure of time and money.

When licensing a record out, a label often attempts to negotiate a lower royalty rate for foreign territories; however, it is preferable for the artist or label to maintain a consistent royalty rate for all territories and for the artist to request that of his label. In the case of export sales, the royalty rate should remain the same, with no deductions for foreign sales, except with approval in certain territories where retail prices require lower wholesale prices.

Various types of international deals:

The **finished product deal** is based on an agreement with a set price varying from \$5.00 to \$7.50. Generally, a very low return rate is expected and contractually fixed.

Product is shipped to the distributor, who covers freight costs and custom duties. One option is the semi-licensing deal: In this arrangement, independent labels would allow a type of deal in which the distributor would manufacture discs in his country and would assemble the CDs locally, with printed matter received from the label. This usually lowers the cost of the discs

at retail, i.e. selling in the stores at a domestic price, rather than an import price, which can be 50% higher, resulting in much fewer sales. Publishing “mechanical” royalties are important to consider in this decision, as in most countries these royalties are based on sales, not pressing, as is usually the case in France, (for example). Licensing would eliminate customs duty, freight costs and can help reduce piracy.

The **licensing deal** works like a Pressing & Distribution Deal. Sales are generally reported on a monthly or quarterly basis. Royalties are on a basis of 15 to 25 percent of retail price. In this kind of an arrangement, it is crucial to assess the level of piracy each country is experiencing before granting such deals and it is essential to be confident of your partner’s ability to sell significantly more CDs in this way, than with export.

7. HOW IS A RECORD WORKED IN THE US MARKET?

THE MARKETING PLAN

A good marketing plan will contain the following essential elements for presentation to record label colleagues as well as potential business partners and outside interests. The marketing plan should start with a list of the participants attending the meeting:

List participants:

Art/Concept

A&R

Marketing and Sales Representatives

Publicity (both internal and independent)

Radio promotion (both internal and independent)

Video promotion (if any videoclips are available, both internal and independent)

Non-traditional sales representative (both internal and independent)

International sales representative (if applicable); state their sales goal

Kids (if applicable) ; state their sales goal

Internet (if applicable) ; state their sales goal

Overview:

A detailed description of the product, including a brief history, the strong selling points and its sales objectives.

Target audience: By demography, race, gender, areas.

Top 10 soundscan markets

Top 10 international markets

Top 30 cds comparable to product and their sales

Campaign highlights & revenue drivers

list of various planned promotions:

print advertising: by publication, size, retail tag, value in \$ USD and circulation

publicity campaigns:

television specials: (If budget permits)

radio promotion

festival participation

internet marketing campaign:

retail:

Promotional tools/visibility in stores:

other related marketing campaigns:

campaign goals

cultural impacts

The marketing director as discussed in the previous sections will supervise the sales and marketing teams whose speciality are among the following:

MASS-MARKET AND SPECIALTY RETAIL

Just as record companies and radio have been affected by increasing corporate domination, the retail landscape is changing rapidly on several levels. At the top of the business are mass-market retailers like Wal-Mart, Target, Kmart, Fred Meyers, and Best Buy that sell everything from televisions to groceries and offer a relatively limited selection of music titles as well. These chains either buy direct from record companies (Target, Best Buy) or through wholesalers known as “rack jobber.” The two biggest music rack jobbers in the U.S. are Handleman and Anderson.

Top 10 music retailers by percentage of unit sales

1	Walmart	13.5
2	Best Buy	12.0
3	Target	5.9
4	Transworld Group	5.1
5	Sam Goody	3.9
6	Tower Records	3.4
7	K-Mart	3.4
8	Coconuts/FYE	3.1
9	Amazon com	3.0
10	Circuit City	2.9

(Source: NPD Group, Inc. 2002 Ranking Report for NARM)

Because these large retailers have buying power, they can offer the biggest hits at significant discounts, thus drawing record buyers away from traditional music retailers. Best Buy has become known for selling CDs at cost or less to entice customers to come into their stores and buy other more expensive items. In the past year they have held first-week sales on superstar acts like The Red Hot Chili Peppers at \$9.99. Emerging acts including The Vines have been sold for as little as \$5.99. This aggressive pricing has forced other retailers like Tower Records to do their own deep discounting on select releases. In fact, the prices of certain new releases are so low at Best Buy that competing retailers actually buy large quantities of discs off Best Buy shelves because they are getting a better price than that which is charged to them for the same titles by the major distributors. Thus far, these price wars have been limited and show no sign of significantly impacting the overall price of CDs at mass-market retail.

At the other end of the spectrum, specialty retailers like Amoeba Records in Los Angeles and San Francisco, Hear Music, and New England based chain Newbury Comics, are doing well be offering what larger retailers cannot -- an exciting music retail experience for customers. While these stores cannot compete in volume with the larger chains and mass-market retailers, they make buying music fun again through great customer service, in-store performances, better selection and stock, and better looking/organized stores.

The Coalition of Independent Music Stores (CIMS) is a loose organization of 77 stores across America that offers similar experiences. There are other such organizations of independent retail including: AIMEs (32 stores), and LINC's (6 stores).

The members of the retail community most at risk in this turbulent period are the mid-sized music-only chains that find themselves under price competition pressure from above and

cool/fun competition from below. Tower Records, Virgin, HMV, Sam Goody, Musicland, and the Wherehouse are all part of this level of the business and each is losing money and/or closing stores.

SOUNSCAN

Just as BDS and MediaBase revolutionized radio promotion (see following section) with accurate reports on airplay, SoundScan has dramatically altered the way record companies work with retail. SoundScan uses “point of sale” computer technology to automatically count every sale at 85% of American retail. Using these numbers SoundScan estimates the remaining 15% of sales to give the most accurate possible reporting of all format (CDs, DVDs, etc.) sales each week on tens of thousands of individual titles. This accuracy has allowed record companies to become more skilled in how they develop artists.

PRICE AND POSITIONING

Major labels pay large amounts of money to major retail chains in exchange for ordering in quantities of records and positioning them in the most desirable parts of the stores. For important new releases, the amount averages \$3.00 per CD. This can add up quickly on major releases like the recent rap album from 50 Cent that shipped more than a million units to retail in the first week of release.

EXCLUSIVE RELEASES AND VALUE-ADDED EXTRAS

Another result of the increased power of retail powerhouses like Best Buy and Target are the exclusive releases that record companies arrange to get added support from these major customers. Last year Target was the exclusive distributor of limited edition CD EPs from U2 and Bon Jovi. Best Buy consistently offers special editions of new albums that include extra CDs or DVDs that can only be purchased at their locations.

STREET MARKETING

Street and grassroots marketing are broad terms that describe direct-to-consumer promotion, implemented on a market-by-market basis. In hip-hop, street marketing is essential to breaking any new rap act. Large and small companies alike spend hundreds of thousands of dollars on individual campaigns targeting not just cities, but specific neighborhoods and streets based on what kind of consumer they are trying to reach.

Sniping, the activity of posting cardboard backed oversized posters on lampposts and construction walls, is the most visible part of street marketing. The fact most sniping is done illegally in most markets does little to curb the activity. Another avenue to reach the most active hip-hop consumers is via barbershops and beauty salons. These locations are extremely important to marketing new rap music. In Los Angeles alone there are thousands of such locations targeted by street marketing teams.

Other kinds of music also benefit from direct to consumer/street market campaigns, and most of the basics are the same across all genres.

The basics of street marketing include:

- Postcards, flyers and stickers, often left on counter tops at the entrances of record shops, clothing stores, nightclubs and restaurants, or handed out in shopping/night life areas
- In-store airplay CDs distributed to coffee shops, clothing stores, restaurants, etc.
- CD single and compilation give-aways
- Contests for concert tickets, desirable merchandise, and chances to meet the artists

As with every other aspect of music promotion, independent companies exist to augment the work of record companies. In the case of street marketing, a majority of the work is done by independent companies. An average campaign for a new act costs between \$7,500.00 and \$10,000.

NON-TRADITIONAL OR "BLUE SKY" MARKETING

An artist or label can also seek advice from a consultant who may have an overview of the trends in various countries and who may suggest specific distributors according to the genre of music. An example of this would be the non-traditional US market, also known as "Blue Sky" marketing.

Selling to non-traditional outlets is a new way of introducing music to different audiences. With the branding and expansion of "lifestyle culture" outlets one can find a variety of non-traditional distributors such as Latin Music distributors, book distributors, gift stores, department stores, resorts, clothing stores and libraries to distribute music. Certain labels service this market, both domestically and internationally. They use special displays and fixtures for their line of products and generally sell to individual stores. They sometimes hire field marketers to do tastemaking marketing and to sell to non-traditional stores in key US markets. This can work especially well with audience targeted compilation CDs.

RADIO PROMOTION

Radio is segmented into many formats and types of stations but each station is important, some critical to the "breaking" of an artist's career. The funding of independent radio promotion is one item often negotiated in advance in recording agreements.

RADIO PROMOTION AND AIRPLAY

The amount of airplay a record gets is different depending on the station and the rotation. A heavy rotation record on a CHR Rhythmic station can be played up to 90 times a week. At an Alternative station that number would be closer to 40. At an Adult Alternative or Adult Contemporary station it could be as low as 15.

For every one new song added by the most important commercial radio stations in America there are dozens of songs being considered. Because radio airplay is so crucial to the success of mainstream music, major record companies spend tens of millions of dollars each year

trying to get records played. The competition is fierce, and the success of individual artists and entire companies is at stake.

Regardless of the new technologies that have been introduced to the American marketplace, radio remains king. As Mike Bone, General Manager of Palm Pictures and a veteran of the top echelon of the music business put it “Radio is still the best way to record buyers and that isn’t going to change anytime soon.”

One of these new technologies, satellite radio, involves two main competitors (XM and Sirius) and is growing at a fast pace, offering commercial-free music (for now), huge choices of genre-specific music and cross-country reception.

INDEPENDENT PROMOTION

A lucrative industry has grown up around record company promotion departments. Independent promoters sell their services to labels seeking extra advantage in their competition with other labels for radio airplay. The activities of “indie” promoters are extraordinarily sophisticated. Companies like Jeff McClusky & Associates and Tri-state Promotions & Marketing have a full staff and pay individual stations and ownership groups large sums of money each year for the right to be the exclusive independent promotion contact for those stations’ Program Directors and Music Directors. The indie then turns to record labels and sells that access. New airplay for a song at any top-ten market radio station these days can require a payment of \$1,000-\$3,000 to the indie and more money to the station for “promotions” around the airplay. This “pay-for-play” system has evolved to avoid record companies directly buying airplay from radio, which, unless announced on-air by the station, is illegal in the U.S. By providing large sums of “marketing” dollars each year for “access” to programmers, independent promoters and record companies get around the law.

Record companies have for years decried the millions of dollars they spend each year on indies, but until recently have not been able to bring themselves to give up the spending for fear that their competition will thus gain an advantage by still playing the game. The current music business troubles may finally give impetus to change. Columbia and Universal have recently set out new policies to control indie expenses. It remains to be seen whether they will have the courage to hold to this policy and if other companies will follow their lead.

Whether a staff person or an outside agency handles radio, the job is quite straightforward. It’s to get radio stations to play certain CDs. The airplay is then reported by the stations who are playing the CD as light, medium or heavy rotation; referring to the frequency with which it’s played. Many stations use playlists from which the deejays choose their shows’ repertoires. The strictness to which they adhere to the list varies from station to station. The focus is usually on new releases (not usually including re-issues) to keep the labels happy and justify their receiving new product free of charge. Whether what’s reported reflects the *actual* airplay is somewhat questionable. Artists should get information from the radio promotion people that show which cities and stations are playing their records and in what rotation. Even if it doesn’t completely reflect reality, it will at least give a sense of which markets are the artist’s strongest radio markets.

The promotion person can also arrange record give-aways and other marketing concepts on an artist’s behalf, which are most effective in conjunction with a live appearance in that town.

But it should *never* be assumed that these ideas will be instigated by the label or promo person. It's the artist/manager's job to make sure those things happen. Sometimes a request or suggestion is all it takes.

Radio interviews, (sometime live on air performances), phoner interviews and recording radio "drops" (station ids) in advance of the tour, in conjunction with live performances are also quite productive; and these interviews, give-aways (CDs or tickets), and similar promotions are good selling points during negotiations with sponsors to secure engagements. Often, stations will even participate in the performance as co-sponsor – usually meaning free promotional spots to help publicize the show. As a rule of thumb, rely on the promotion person to handle the actual business of setting up these things; except for the interviews, which are the job of the publicist or manager. But don't expect them to do so without the manager setting the wheels in motion.

PROMOTING YOUR RECORD TO RADIO

College Radio

College radio by nature embraces new music and is a media that supports new and independent artists. There are many opportunities for international artists in various formats within college radio's eclectic programming including (but not limited to) Alternative, Punk, Jazz, World, Electronic, Pop, Singer-Songwriter/AAA, Heavy Rock and Urban. (Formats generally not accepted include Country, Top 40 and Smooth Jazz.) College radio stations are staffed and run by college students and allowances for them must be incorporated into your promotion. The student Music Directors (the person who decides what will be played on their particular radio station) are usually volunteers and may not be easy to contact on a regular basis. E-mail is a great way to stay in contact, and some Music Directors even prefer e-mail over phone calls for tracking a CD. When dealing with college students, do not reprimand them and do not expect them to be studious. They are receiving 50-100 new CDs a week and are usually behind in listening to them.

College stations are album oriented which means that they do not accept singles. Types of CDs accepted include EPs and Full Length CDs. (Vinyl is rarely played.) Singles are generally not played. Make sure to include at least 5 songs on the EP in order to give the station an adequate selection of songs to choose from. Recommended track stickers placed on the outside of the CD can help guide the Music Director as to what tracks the label or artist wants that station to play. However, keep in mind that the radio station will play whatever track off the album they want, and different stations will be playing different tracks. Generally, the recommended tracks should be less than 5 minutes in length and free from obscenities.

There are hundreds of college radio stations throughout the United States and it is very easy to get overwhelmed. It is common for records to only be serviced regionally. For geographical reasons, European artists may find it easier to work with the East Coast region of the U.S. Not only is it more economical to fly to New York than it is to fly Europe-Los Angeles (if a tour is to be planned), but the East Coast also has a better concentration of radio stations. A band can tour and hit major cities every couple of hours rather than on the West Coast where major cities can take 6 or more hours to get to. Most stations on the East Coast are "formatted", which allows the Music Director to make formatting decisions for the station. If he/she

decides that the record will be added into the rotation, the record is guaranteed to receive airplay. On the West Coast, most of the stations are “free-formatted” which allow the DJs to choose what they want to play. These type stations are more difficult to get airplay on. (There are a few stations that are both formatted and free-formatted.) Some artists/labels prefer to market their records in order to get charted on a national airplay chart. CMJ, the College Music Journal is the most popular in the U.S. and has a top 200 chart. In order to chart on CMJ, the record will need to be sent to 350-500 radio stations nationally, and promoted properly with a radio promoter. A regional campaign can be done with as few or as many stations as desired. Unlike commercial radio, a college station bases its decision to play a record on the music itself, not what stations around them are playing.

Radio campaigns are usually handled by either the promotions department of a record label, an independent radio promoter, or both. A highly motivated and determined individual could also attempt to market the record, although it is difficult to attain the relationships with the Music Directors. Independent promoters often have the advantage because most have been working with the stations for a long period of time and know the individual personalities of each station. Finding the best promoter for the record takes work. Most promoters only handle national campaigns but a few will offer regional campaigns as well. Some promoters prefer specific types of music while others will handle all genres. It is important to keep open communication with your radio promoter. Make sure to keep them updated on a project's progress including tour dates, press, etc. so that they can pass this information along to the radio stations. Sending this type of information in writing via e-mail or fax is best. Radio promoters will charge between \$1500 and \$4000 for a college campaign depending on how many radio stations are involved. Most campaigns last about 10 weeks. It is common to hire two promoters if doing a national promotion.

BDS AND MEDIABASE

Two services have evolved over the past ten years to offer detailed data on what music, hundreds of stations in the U.S. are playing. These two services are Broadcast Data Systems (BDS) and MediaBase. BDS uses sophisticated software and local monitoring systems in most of the top 200 markets to determine what stations are playing. MediaBase uses a combination of computers and human technicians to collect the same data in roughly the same number of markets. These services have revolutionized the way record companies and radio stations work together. Before BDS and MediaBase, record companies had to depend on radio stations telling the truth about how much they were playing each song.

RADIO FESTIVALS

Many radio stations have developed lucrative live concert series in the past 12 years. Now important radio stations can demand live performances from acts being promoted to them. Only the very biggest acts get a fair price for their appearances. Often new and developing acts play for free. The biggest of these shows occur during the summer and Christmas seasons and attendance can be as high as 50,000. Needless to say, many radio stations make a healthy profit from their live events.

TOURING

(see also Appendix V : Practical Information on Touring in the United States)

In stark contrast to the pre-recorded music business, the live performance business in America had a tremendous year in 2002 ringing up a record \$2.1 billion in ticket sales. While much of this increased business was the result of higher ticket prices and superstar tours, live music continues to be vibrant and a key to introducing new acts in U.S. consumers.

According to the concert trade publication Pollstar, this was the fourth consecutive record year, up nearly 20% from 2001's \$1.75 billion sales. Ticket prices for the top 100 acts averaged \$46.56, a 6% increase over 2001's \$43.86 average.

The top grossing tours of 2002 (in \$ millions)

(Source: Pollstar.com)

1	Paul McCartney	\$103.30
2	The Rolling Stones	\$87.90
3	Cher	\$73.60
4	Billy Joel & Elton John	\$65.50
5	Dave Matthews Band	\$60.10
6	Bruce Springsteen & the E Street Band	\$42.60
7	Aerosmith	\$41.40
8	Creed	\$38.40
9	Neil Diamond	\$36.50
10	Eagles	\$35.40

For developing acts, touring is an essential part of “breaking” in the U.S. With thousands of concert venues from coffee houses to stadiums spread across thousands of miles of country, playing music in front of audiences can be grueling and expensive. Large and mid-sized record companies often have to pay significant amounts of money to help fund developing act tours. This funding is called “Shortfall,” and it can be as little as \$500-1,000 a week for a fledgling rock band to tens of thousands of dollars for pop and R&B acts.

Despite the costs and the hardships involved, touring can be a substitute or compliment to radio airplay. Some of the biggest bands in America first established themselves as regional touring successes before attracting the interest of record companies. Areas like the Southeast and Northeast with their concentration of colleges and universities offer a fertile ground for bands to develop their live performance skills and local followings. The Dave Matthews Band and Phish are excellent examples of bands that established themselves first through touring.

For acts coming from Europe repeated and lengthy touring is just as essential, especially because radio airplay is so hard to come by. Again, quoting Mike Bone of Palm Pictures (home to European buzz bands Zero 7 and Koop), European acts “think about U.S. like they think about Europe. This [the U.S.] is a big place... people think that if they play Boston, New York Philly, Chicago, and Los Angeles, they’ve toured America. It is not that way.”

Tour sponsorships in US music industry are on the rise. Music sponsorship spending was \$575 million in 2003 and it is projected that the number will jump to \$695 million in 2004.

According to Billboard Magazine, music is the fastest growing sponsorship category in US with an increase of 21% from last year. Although struggling record labels are unable to continue with their previous levels of tour support, companies are constantly increasing their branding. There is a fierce competition between videogame and telecom companies for brand opportunities.

In order to promote new products more efficiently, these companies associate their products with an artists' tour, which benefits both sides. The Top 10 sponsorship categories in 2003 were the auto, beer/spirits, candy, credit cards, footwear/apparel, non-alcoholic beverages, personal care products and quick serve restaurant sectors. In tour markets where one date has played, companies have seen an increase of up to 25% in sales in reaching the young adult market.

CHARTS AND TRADES

Charts created by trade magazines compile and rank the airplay of each format's stations and record companies vie to get their songs as high on the charts as possible. These trades sell advertising to record companies and offer additional services including promotion, marketing, and sales information. The weak economy and business troubles have led to decreased expenditures by record companies on these magazines. Several trade publications have gone out of business in the past five years including Hitmakers and the Gavin Report.

The key trade publications in the United States are: **Billboard Magazine, Radio & Records, Album Network, and Hits Magazine.**

[One way to gauge the relative success of "foreign" or imported music in the United States is to consider charting acts in America. This is an informal survey of non-American acts on the Billboard charts on an average week's record sales - results are indicated with chart placements, country of origin and record company. Broken down into percentages, 17/200 or 8.5% of the charting acts are non-American, 10/200 or 5% are British, 1/200 or .5% is Australian, 1/200 or .5% is Canadian, 3/200 or 1.5% are Mexican and 1/200 or .5% is French. Artists of non-US origin fare better on the Heatseekers chart, the Internet albums chart, and the Independent Labels chart.]

THE BILLBOARD 200

- 36 *The Darkness (UK)/Atlantic*
- 40 *Dido (UK) Atlantic*
- 55 *Coldplay (UK) Capitol*
- 71 *Joss Stone (UK) S-curve*
- 83 *Kylie Minogue (Australia) Capitol*
- 86 *Sean Paul (Jamaica) VP/Atlantic*
- 102 *Sting (UK) A&M*
- 121 *Seal (UK) Warner Bros*
- 135 *Paulina Rubio (Mexico) Universal Latino*
- 148 *Air (France) Source/Astralwerks*
- 156 *Thalia (Mexico) EMI Special Markets*
- 163 *Bronco/Los Bukis (Mexico) Fonovisa*
- 172 *The Beatles (UK) Capitol*
- 181 *Coldplay (UK) Capitol*

- 185 *The Crystal Method (UK) V2*
- 187 *Simply Red (UK) Red Ink*
- 199 *April Lavigne (Canada) Arista*

INTERNET ALBUM SALES CHART successes include *Sarah McLachlan (Canada), Dido (UK), Coldplay (UK) and Sting (UK)*

TOP HEATSEEKERS CHART successes include *Juanes (Colombia) distributed in US by Surco, Grupo Mojado (Mexico) distributed in US by Universal Latino, Stereolab (UK) distributed in US by Elektra, Laz Oreja de Van Gogh (Spain) distributed in US by Sony Discos, Sin Bandera (Mexico/Argentina) distributed in US by Sony Discos, Vicente Y Alejandro Fernandez (Mexico) distributed in US by Sony Discos, Joan Sebastian (Mexico) distributed in US by Musart, Ravin Buddha Bar VI (France) distributed in US by George V, Elbow (UK) distributed in US by V2, Starsailor (UK) distributed in US by Capitol, El Coyote Y Su Banda Tierra Santa (Mexico) distributed in US by EMI Latin*

TOP INDEPENDENT ALBUMS include: *Air (France) distributed in US by Source/Astralwerks, Simply Red (UK) distributed in US by Red Ink, Joan Sebastian (Mexico) distributed in US by Musart, Ravin - Buddha Bar VI (France) distributed in US by George V, The Wiggles (Australia) distributed in America by KOCH.*

See Appendix V for an in-depth explanation of the many radio formats in the United States]

ADVERTISING AND DIRECT RESPONSE CAMPAIGNS

Print, radio, and broadcast television advertising are extremely expensive when attempted on a national basis. Regional and local campaigns in targeted publications and local cable television, while still expensive, are more cost-effective, especially as part of a plan to develop a new act in the markets that are most likely to react first. The use of this method of advertising by record companies has grown steady in the past five years.

Direct Response

Direct response refers to a TV ad campaign aimed at selling music direct to viewers via toll-free telephone numbers. Major labels are doing more high profile direct response campaigns than ever before. What started as a business of poorly conceived genre compilations advertised on late night TV has turned into a very successful way to launch new superstar compilations and major artist releases. The first campaign to take full advantage of this potential was Capitol Records with the launch of the Beatles' Beatles 1 collection. The CD succeeded beyond all expectations selling more than 8 million units in the U.S. alone. A significant portion of this success is attributed to the brilliantly executed TV advertising campaign. More recent releases that utilized television advertising include:

- Elvis Presley – 30 #1 Hits
- Fleetwood Mac – The Very Best of...
- Barry Manilow – Ultimate Manilow

Most direct response campaigns are expected only to break even. The reason for doing them is more to drive traditional retail purchasing than to sell the record via TV alone. The thinking goes that if the direct response sales cover the cost of the advertising than they have funded an important part of driving demand for the project.

The most interesting recent direct response TV campaign was in support of Rod Stewart's 2002 release It Had to Be You...The Great American Songbook, a collection of classic pop standards. J Records ran a TV campaign that generated 115,000 units of sales in the one-week period prior to the album arriving instores, more than twice what the record company expected. Sensing a hit, J Records decided to devote more money and resources to promoting the record than originally budgeted.

MUSIC TELEVISION

Cable based music networks still play a major role in driving the demand of music consumers. Shows like MTV's Total Request Live can break a band all by themselves. Since it's early days as an all-music video network, MTV has changed its programming philosophy significantly. Based on the week ending 7 March 2003, only about 40% of the MTV schedule is devoted to current/recent music videos, and none of that time comes during the most watched prime time (8 pm to 11pm Monday through Friday). During that same week, VH1 devote less with 34% of their programming to current music videos with no current music during prime time. Black Entertainment Television (BET) carried music video programming for 50% of its programming week, though again, none during primetime.

MTV2, a spinoff of MTV, airs music videos almost constantly and is very adventurous. However, because it's availability to American viewers is so much less than that of MTV and VH1 it has little or no impact. The same can be said about Much Music USA, the American version of the long running Canadian video channel.

Census of Basic Cable Networks (As of 31 December 2002)

Households (millions)

Network	Oct-02	Oct-01	Oct-00	Oct-99
BET	74.5	71.4	63.4	58.6
CMT	66	56.8	44.7	38.2
MTV	85.1	83.4	77.3	73.6
MTV2	47.6	36.7	21.2	11.7
Much Music	29.5	18.3	12	8
VH1	83.8	81.7	74.2	69.2

(Source: Cable Program Investor, 17 January 2003, Kagan World Media)

RECORD CLUBS

Two companies dominate the business of mail-order catalogue sales commonly referred to as record clubs. These companies are the BMG Music Club (owned by BMG) and Columbia House (jointly owned by Sony and WEA). Each entices new customers into “joining” through deals in mass mailings and print advertising offering “Eleven CDs for a penny, in exchange for agreeing to purchase a number of full price CDs (\$15-20 plus “shipping and handling”) in the future. Ultimately these services result in customers paying more for their music, but the “free music” lure is very effective.

Record companies love the clubs because they can sell directly to consumers. Additionally, labels are contractually allowed to pay reduced royalties to the most artists for sales through this channel. Artists hate the clubs for this reason. Retailers oppose them because they bypass traditional retail and because they feel the clubs offers lessen the perceived value of the music to consumers at large.

Research in the mid ‘90s by the National Association of Recording Merchandisers (NARM) and BMG contradicted these complaints finding that the clubs actually encourage traditional retail sales by causing more music consumption in general.

According to the RIAA 2001 Consumer Profile, 6.1% of consumer purchases came via the clubs. This figure shows a continued decline in the percentage of business done by this avenue of sales from a high of 15.1% in 1994.

8. THE INTERNET

The Internet has changed the music industry. The development of new technologies has served music, but change is rarely simple and this transition has been particularly difficult: helping create the “crisis” in the news for the past years. File sharing has permitted customers to acquire music easily and freely over the Internet. To date, this is usually in the forms of illegal uploading and downloading. To face this problem music professionals have reacted, however slowly, and have worked to face the increased demand for music, which is the good news; (10,000+ songs on some MP3 players), by creating online music stores.

Institutions like the RIAA work to protect the copyright and intellectual property owners and administrators in many ways, among them litigation, education, new technologies and negotiation. This new market, among others brought on by new technologies, is growing quickly and many new services are entering the music market.

The legal download companies do not necessarily provide the same services, with the following main variations:

- The pricing structure is a fixed, free (promotional) or a variable price per track, per album and/or a subscription period/song quantity system.
- The file format varies generally between WMA, AIFF and MP3, and the quality of the sound files generally between 128kbps and 256kbps download time.
- The number of songs available on the site, and the presence of music from the majors and the independent labels, is considerably different from site to site.
- The operating system and the system requirements: The compatibility of a customer’s operating system with the downloaded songs (Mac, Windows, Linux), as well as “previewing” and portable player systems.
- The rights on the downloaded songs are different from format to format, including the right to burn the downloaded files on recordable CDs, to transfer them to portable devices, to play them on a number of different computers or different devices and for what periods of time.

For all the transitional disruptions brought on by file-sharing services, the Internet remains a big part of how record companies reach consumers and will continue to develop. Though online music sales were down during 2002, but up significantly since, the growth of broadband service, better computers, and the continued migration of everyday activities to the web has shown that this sales avenue to the music-buying public will only increase in value and use. The challenge and opportunity facing all music producers is to get their music distributed by the legitimate services and secondly, the promotion of their downloads for sale.

New sources of income and exploitation springing from the development of new technologies.

With the development of polyphonic ringtones, consumers are downloading more and more in order to customize their mobile phones, as evidenced by Billboard's recent launch of a Top 20

polyphonic ringtones chart. (The data is aggregated from each of the major ringtone distributors and wireless carriers in the United States)⁵

It was reported in Billboard that the leading weekly download sales in the last week of October 2004 was 25,000 sales of a new U2 song. The same article noted that the leading ringtone sales, another important new source of download sales and new technology income for copyright owners was over 90,000 sales in the same week. Less than a month later, Billboard launched its new Hot Ringtones chart.⁶

According to Billboard chart czar Geoff Mayfield, the magazine started tallying ringtone purchases because "it's a very important new revenue stream for the industry."

The mobile-music market adds up to roughly \$300 million in the U.S. so far, according to Mayfield. Four million consumers are said to be "active" users, meaning they switch their ringtone at least once a month. Tens of millions are "occasional" users - those who tend to stick with the same tone for a six-month period. Internationally, the market for ringtones is \$3.1 billion.⁷

DIGITAL RADIO

The rise of digital radio since the late 1990s is significant. In a recent study by market research and consulting firm Parks Associates, 4,000 Internet users in the US, 56% of respondents listen to internet radio on their PCs and 56% download music files.

Nominally, digital radio streaming is one way to address the customer's demand for internet radio. Here the consumer is not buying, collecting, trading or storing the music, just listening to it. This has given rise to the claim that music and video delivered via the internet is not able to be "stolen." (However, like with any new technology, savvy developers have invented methods – such as RadioSHARK – to store streamed files).

To face piracy, the solution is to provide the customers a real service, with customer satisfaction, added value (packaging options, information, speed and ease of delivery, artist/label interaction, fan and community development, reviews and recommendations, trend spotting, education, exclusive and new songs...), at a competitive pricing structure with a large choice of music at various options.

⁵ http://www.billboard.com/bb/charts/singles_index.jsp

⁶ **New Billboard Hot Ringtones Chart Confirms Mobile's Impact on Music Industry; Chart Recognizes \$300MM U.S. Mobile Music Market; Endorsed by Industry Leaders CTIA and MEF** (BusinessWire, October 26, 2004)

⁷ Interview by Jim Farber of the New York Daily News, November 2, 2004

LEGAL MUSIC DOWNLOAD SERVICES

Napster (owned by Roxio) has more than 700,000 songs. You can download songs for USD\$0.99 each and an entire album for USD\$9.95. You can then transfer the downloaded music to 3 different PCs, to compatible music devices, and burn it onto a CD. Napster also provides a way to meet people in the Napster community. Users communicate and discuss music, their collections, etc.

MSN Music, owned by Microsoft, recently launched and allows downloading the latest hits (for USD\$0.99) and music videos.

Musicmatch on demand offers more than 750,000 songs for USD\$8.00 a month. It was recently bought by Yahoo and functions on a downloaded Musicmatch Jukebox player.

MusicNet (owned by Bertelsmann AG, EMI Music, RealNetworks, Sony Music Entertainment and Time Warner, Inc). Musicnet provides music through its partners' websites. It enables them to offer their customers an easy-to-use interface, a very large music catalog, and to benefit from its experience in the music download business. The pricing structure of Musicnet partners' downloads varies from site to site. With 250,000 songs in its library, the basic package might offer 20 streams and 20 downloads for USD\$3.95 per month. The Standard package gives unlimited streaming and downloading for USD\$8.95 per month. Premium service allows unlimited streaming and downloading plus the ability to burn 10 songs to CD for USD\$17.95 per month.

Musicnet partners are:

- **Ctrax:** Ctrax is a digital media provider to the college marketplace which just entered the music store market. It is specialized in the student market and several hundred thousand tracks from all majors and dozens of independent labels are available for download.
- **Virgin Digital (owned by Virgin):** offers more than 1,000,000 songs at \$0.99 each and allows certain CD burning rights. Customers can also be part of the Digital music Club for \$7.99/month. Virgin Digital only supports Windows 2000 and XP for the moment.
- **F.y.e download zone:** Free 30-day trial with unlimited access to over 1,000,000 songs.
- **Musicnet@aol:** AOL members that sign up for MusicNet@AOL get unlimited access to over 500,000 songs and can buy songs for CD burning at a price of 99 cents each. Customer can get access to original and exclusive AOL Music programming including online concerts in the BroadBand Rocks(tm) series and Sessions@AOL in-studio shows.

Rhapsody (owned by Listen.com) has 820,000+ tracks as of September 2004 and is still growing. Their all-access package consists of unlimited streams for USD\$9.95 per month (24,95 per quarter), and USD\$0.79 cents per burned track.

RealPlayer's music store offers more than 600,000 songs at a price of USD\$0.49 each. RealPlayer is the least expensive music store among all music stores on the internet, although the pricing is subject to change at any time.

eBay: The giant of auctioneering has entered the digital music download market. Songs are sold at a price of \$99c each with a more limited choice; 193,323 songs as of November 2004.

iTunes (owned by Apple) is the current leader of legal music downloading on the internet. It provides the largest legal download catalog. Apple controls around 70% of the online music market through its successful US version of iTunes and runaway sales of its iPod player. Apple's service offers more than 1,000,000 tracks to preview, buy, download and burn at a price of USD\$0.99 each. Songs are from all five major labels and independent artists or record labels. You can burn as many CDs as you want and use them on multiple computers, or transfer them to an iPod. In order to use the service you must download the iTunes player, available for both Macintosh and Windows users. The iTunes US Music Store was introduced on April 28, 2003 and has sold more than 150 million songs since its creation.

Audiolunchbox.com provides songs coming from both independent labels and directly from artists. The site offers a choice of 250,000 tracks. They have a subscription option and you can buy music for USD\$25.00, USD\$50.00 or USD\$100.00 for various timing and quantity options.

Walmart.com applies its low price system to online music with downloads for USD\$0.88 cents each. Walmart offers more than 400,000 songs in Windows Media Audio format. For Windows users only (No Mac or Linux).

Buymusic.com offers more than 500,000 songs at an exclusive 256k sound quality. The price per downloaded song is USD\$0.79 and the price per album is variable.

Emusic.com offers a two-week free trial. The service provides more than 500,000 songs through a subscription system ranging from eMusic Basic: USD\$9.99 per month/40 downloads to eMusic Premium: USD\$19.99 per month/90 downloads.

This list is not meant to be exhaustive; new services occur and old services change often. UBL / ArtistDirect keeps an active list of Digital Download sites at

<http://ubl.artistdirect.com/music/ubl/dms/>

The **European Music Navigator** OMD system is another legal digital download system set to launch this year with open access for artists and composers and variable pricing set by the copyright owners. Servers set up directly in participating countries for an advantage in worldwide copyright royalty collections and distribution.

The online music store market is ever growing with numerous new entrants in the game. That being said, this market is more and more structured and competing services are all falling in line with regards to pricing. Larger companies benefit from their brand and existing customer base while the smaller players generally target the independent music market.

Digital Download Market forecasts (from 2001)

Between 2001 and 2006, the world music download market should grow a little more than nine-fold, increasing from 703.2 to 6,375.9 million euros. The most significant rise will take place in USA where the market will experience a tenfold increase. Online music download market (in millions of euros) from early projections:

2001	2002	2003	2004	2005	2006	
334.3	548.1	889.5	1,420.4	2,213.1	3,318.2	United States
202.2	320.2	507.2	799.7	1245.2	1,896.2	Europe
68.6	104.4	159.3	242.2	366.7	547.5	Japan
98.1	142.5	206.8	299.1	430.3	614.0	Rest of the World
703.2	1,115.2	1,762.8	2,761.5	4,255.3	6,375.9	World Market

Source: *Music on the web, Issues surrounding online music*, 5 September 2001
(www.idate.fr/an/qdn/an-01/IF189-20010905/index_a.html)

Market shares of online music stores from December 2003 and July 2004 were reported by the NPD Group, a market information company, in the fourth quarter of 2004.

iTunes	70%
Napster	11%
Real	6%
Musicmatch	6%
Walmart	6%

Source : *Reuters Internet Report*, October 12, 2004: 3:18 PM ET

JupiterResearch, a division of Jupitermedia Corporation (Nasdaq: JUPM), forecast that digital music sales will more than double compared to last year, reaching more than \$270 million in 2004, and will grow rapidly to \$1.7 billion in 2009, totalling 12% of consumer music spending.

Source : <http://www.jupitermedia.com/corporate/releases/04.07.26-newjupresearch.html>

9. COMMENTS IN CONCLUSION

This market analysis and guide to the United States music business was compiled so that even one piece of information, one contact utilized, one consultant/client match made, one idea suggested causes a spark, a fan, a light, a breath, so that European songs get played on the radio, placed in films, new tours happen and different music is heard more easily and more often in this ethnocentric, big business, tough, US music market.

With the internet, worldwide news coverage, expanded international travel and communication options, more efficient distribution systems, and thousands of songs in people's "pockets" and lives, the world is indeed "becoming smaller". Languages, rhythms, cultures, melodies, dances; modern and traditional, ethnic and cross-over, create a response-ability among listeners; ability to know and respond to new stimuli, in new ways and discover, learn, grow, respect, enjoy and be enlightened by the unexpected, the "other"; the world and all it's music.

This guide is just information, some perspective on what it can take to launch in the US. It's work; establishing a team, a network of dedicated colleagues, fans and maybe friends and ever expanding these for the purpose of meaningful communication. Like any guide, it can be used and studied, or put on a shelf, as one always makes their own way through their own instincts, abilities and resources, anyway. Have fun, ask questions, make friends, work hard, communicate well, create new methods and paths, love the process, use "mistakes", be persistent and realize that everyone shapes reality.