

Test Your Music Business I.Q.

By Joy R. Butler, Esq. (email via www.legaljungleguide.com)

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This article is excerpted from the audiobook,
*The Musician's Guide Through the Legal Jungle(TM):
Answers to Frequently Asked Questions About Music Law*

Toni Braxton, Biz Markie, 'N Sync, Shenandoah, and Michele Shocked have all enjoyed some degree of success as recording artists. But what else do they have in common? At some point, a business-related legal problem derailed the music career of each – at least temporarily.

Highly publicized cases like these illustrate how a one-sided contract, a band name dispute, or other legal problem can interrupt a musician's career momentum. After selling over seven million records, the three members of the hip-hop group TLC found their careers stalled for nearly five years while they fought to break their management and recording contracts in court proceedings that included each member filing for personal bankruptcy. The country band Shenandoah lost a recording contract and sat sidelined while it battled to reclaim its name in litigation costing the group millions of dollars and pushing it into bankruptcy.

TLC and Shenandoah were able to make come-backs. However, not all performers are lucky enough to recover from a lengthy hiatus brought on by a legal challenge. Musical artists frequently have only one shot at and a few years of star status. A little music business knowledge is the best defense against missteps that may lead to the abrupt end of a promising career.

Here are some basic music law facts that every musician should know.

1. Copyrighted Song v. Copyrighted Sound Recording. Understanding the difference is crucial to understanding any record deal or songwriting contract placed in front of you.

A song is the melody and any accompanying lyrics. A sound recording is the recorded performance of that song.

One song can have many sound recordings. Copyright law recognizes a separate copyright in the song and in each of the sound recordings. Although the copyright owner of the song and the sound recording can be the same person, it usually doesn't work out that way.

Typically, the songwriter or music publisher owns the copyright in the song, and the record company owns the copyright in the sound recording. If you're covering a song, you need a license from the music publisher. If you're sampling from an album, you need licenses from both the music publisher and the record company.

2. Band names are trademarked. They are not copyrighted or patented. You don't obtain trademark rights by just making up a name. You obtain rights in a name by being the first person to use that name in a commercial context in a particular geographic area.

The more distinctive your band name is, the stronger your rights in the name will be. While registration of a name with the U.S. Patent & Trademark Office makes it easier to enforce your rights, registration is not necessary to establish rights in a name.

3. Your record royalty rate is meaningless – unless viewed in the context of the deductions your record company takes before paying you any royalties.

You probably know that the record company deducts from your royalties all the money it has spent on your career including the album recording costs. What you may not realize is that deductions can vary significantly from one record company to the next. As a result, a 10% royalty at Big Time Records may ultimately put more dollars in your pocket than a 12% royalty at Uptown Record Label.

4. What's the exit strategy for your personal manager? Your personal manager is paid a commission of 15-25% of your gross income on contracts he helps you to secure. But what happens if the management relationship terminates before the contracts he negotiated terminate? He may be entitled to continue receiving his percentage commission for the length of the contract unless you've negotiated otherwise.

While it's fair for your personal manager to continue to earn commissions on income generated by contracts he helped you get, there should be some limits placed on such post-management commissions through a negotiated cut-off date, a gradual reduction over a period of time, a negotiated final payment to the manager at the end of the management relationship, or some combination of these or other methods.

The importance of negotiating the phasing out of commissions can't be overemphasized. After terminating a relationship with one personal manager, you will most likely retain another personal manager. You don't want to find yourself in a position where you're paying a commission of 15% or more to two separate personal managers on the same income.

5. Instant partnership. Have you and some of your friends formed a band which performs for money? Guess what? You've formed a business.

Every business falls into one of several categories.

If the band doesn't select a category for itself, it is automatically a general partnership. While partners can have a formal or written agreement, one is not required for a partnership to exist. But if your band doesn't have an agreement, your state's partnership law will impose certain conditions on the working relationship among band members.

This may be no big deal until there's a disagreement involving an issue such as whether the band can continue playing songs written by a member who ultimately leaves the group, or who gets to continue using the band name in the event the group breaks up. Without a formal agreement, you may not like the way these issues are resolved under your state's general partnership laws.

Joy R. Butler, Esq., is a principal and the in-house attorney of Sashay Communications, LLC, a publishing and media production company located in Arlington, Virginia. She is the author of *The Musician's Guide Through the Legal Jungle*, a 3-hour audiobook offering a faster, easier way to understand music law.

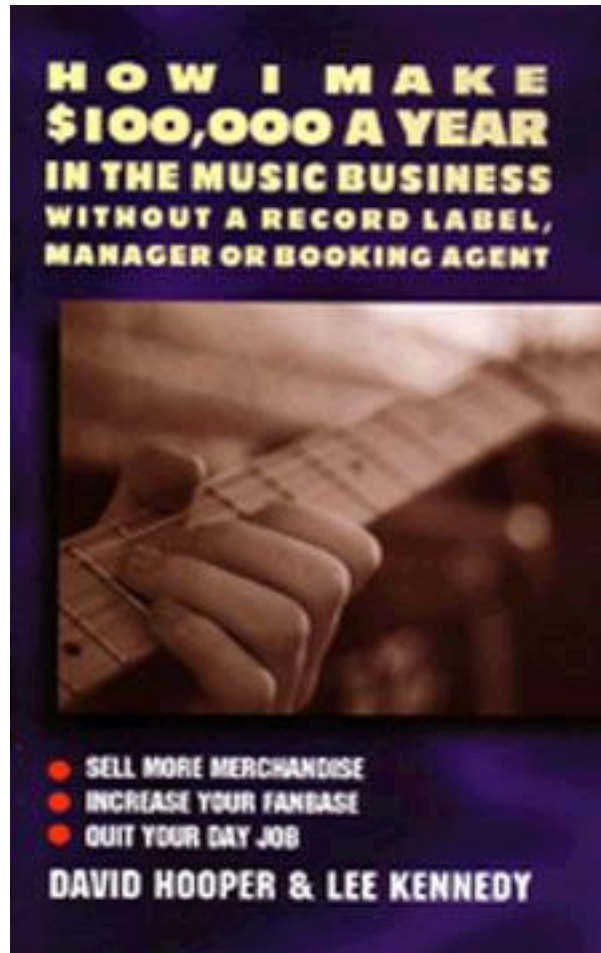
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