
Contents

Dedication	iii
Thanks	v
About the Authors	xv
Preface	xix
CHAPTER ONE	
What Is Music?	1
What is Digital Music?	3
CHAPTER TWO	
How Value in Musical Properties Is Created	7
Copyrights	8
Copyright Basics	8
Work for Hire	12
Assignments	13
Scope of Copyright Claim	13
Collaboration	15
Fair Use	16
Parody	18
Copyright Myths	19
Trademarks	21
Acquisition of Trademark Rights	21
Performing Group Names	23
Trademark Fair Use	26
Titles	26
Online Presence	27
Right of Publicity	28
Data	32

Interviews	34
Contractual Rights	35
Exclusivity	35
Right of First Negotiation/Refusal	36
Key Man	37
Credit	37
Most Favored Nations	38
Nondisclosure	39
Moral Rights	40

CHAPTER THREE

Music Publishing 41

Performance Rights Organizations	42
Mechanical Licenses	46
Synchronization Rights	49
Dramatic Rights	50
Publisher Agreements	52
Single Song Agreements	53
Exclusive Songwriter Agreements	62
Copublishing Agreements	64
Administration Agreements	69

CHAPTER FOUR

**How Bands Are Organized and Financed, and
Planning for the Eventual Breakup 73**

Treatment of Assets	74
Other Band Agreement Provisions	78
Leaving Members and Recording Agreements	80
Financing	81
Group Member Capitalization	81
Outside Financing	82
Settlements	86

CHAPTER FIVE

How Record Companies and Producers Work 87

Nature of the Relationship	88
Parties	91
Scope	91
Term	92
Production and Release Commitment	94
Obligation to Promote	95
Recording Budgets and Advances	95
Royalties	96
Royalty Basis	97
Royalty Rates	97
Licensing Income	98
Container Charges	99
Format, Territory, and Channel of Trade Adjustments	100
Free Goods	101
Digital Royalties	101
Royalty Calculation Example	102
Accountings and Audits	103
Approvals	104
Controlled Compositions	105
Merchandising	107
Videos	109
360 Deals	111
Alternative Recording Agreements	115
Producer Agreements	117
Production Company Agreements	120
Development Agreement	121
Established Production Company	124

CHAPTER SIX

Personal Representatives 125

Agents	126
Personal Managers	130
Business Managers	137

CHAPTER SEVEN

Personal Appearances **139**

Busking	139
House Concerts	140
Public Venues	141
Compensation	142
Hospitality and Benefits	143
Billing	144
Merchandising	144
Cancellations	145
Technical Riders	146
Exclusivity	146
Proceeds of Personal Performances	147
Ticketing	147

CHAPTER EIGHT

Distribution **151**

Distribution of Physical Products	151
Distribution Functions	153
Distribution Process	153
Scope of Distribution Agreement	154
Warranties and Representations	156
Advances	156
DIY Distribution	157
Digital Distribution	158
Digital Distribution Revenue	159
Webcasting	160
Music Services	162
Permanent Downloads	165
Ringtones and Ringbacks	166
Satellite Radio and Cable Music Services	167

CHAPTER NINE

Tax Considerations for the Musician **169**

By Heather Ryan Liberman

A Musician's Gross Income	171
Ordinary Income vs. Capital Gains	171
Capital Gains: Musical Compositions	172
Ordinary Income: Compensation for Services Rendered vs. Royalties	173
Unqualified Deferred Compensation: Advances	174
Emerging Income Streams: Crowd-Funded Income	176
Taxation of the Musician's Income	177
Deductions	177
Hobby-Loss	178
Ordinary and Necessary Business Expenditures	179
Passive Loss Deductions	182
Charitable Deductions	182
Abandoned Property	183
Crowd-Funding Considerations	184
Tax Credits	185
Tax Exemptions	186
Audit	186
Choice of Entity	187
Sole Proprietorship	189
Partnerships	190
Corporations	192
Personal Holding Companies	193
Limited Liability Companies	193
Conclusion	194

CHAPTER TEN

The Musician's Estate **195**

By Heather Ryan Liberman

What Comprises a Musician's Estate?	197
Inventory	198
Valuation of Assets	199

Generating Income for the Estate	201
Fiduciary Duties	201
Copyright	204
Trademark	209
Right of Publicity	210
Digital Assets	213
Updating Payors: SAG, AFTRA, ASCAP, BMI, etc.	214
Tribute Bands	215
Conclusion	216

CHAPTER ELEVEN

Music and the General Business Client 217

Advertising and Music Branding	217
Sponsorships and Endorsements	220
What the Artist Will Be Required To Do	220
Artist's Identity and Trademark Rights	221
Creation of Special Material	222
Scope of Exclusivity	222
Morals Clause	223
Non-disparagement	223
Music at the Work Site	224
Performance of Music in Customer Environment	224
Other Workplace Use of Music	226
Jukeboxes	229

CHAPTER TWELVE

Representing the Musician 231

Beauty Contest	232
Payment of Fees	233
Dealing with Representatives	234
Dealing with Groups	236
Shopping Groups	237
Alternative Fee Arrangements	238
Practical Issues	240

APPENDIX A	
Recommended Further Reading	243
APPENDIX B	
List of Dispute Resolution Service Organizations	245
Arts Mediation Group	245
California Lawyers for the Arts	245
JAMS Headquarters	245
JAMS International Headquarters	246
Lawyers for the Creative Arts	246
National Assn. of Record Industry Professionals (NARIP)	246
World Intellectual Property Organization (WIPO) Arbitration and Mediation Center	246
Index	247