

PUBLISHING AGREEMENT CHECKLIST

THIS IS A CHECKLIST OF KEY DEAL POINTS AND ISSUES IN A PUBLISHING (COMPOSITION WRITER) AGREEMENT. IT DOES NOT COVER EVERY ISSUE THAT MIGHT ARISE. EVERY DEAL IS DIFFERENT IN SOME WAY. YOU SHOULD GET LEGAL ADVICE ON LEGAL AGREEMENTS BEFORE YOU SIGN THEM. BUT THIS CHECKLIST IS A GREAT STARTING POINT.

Remember to check out the Publishing Agreement Fact Sheet for further information.

1. PUBLISHER'S DETAILS

- 1.1. Is the publisher a company or individual? Use the correct entity name, trading name (if any) and ACN or ABN.

2. WRITER(S) DETAILS

- 2.1. Contracting as group or as individuals? (Or both, e.g. "together and separately...")

3. TERRITORY

- 3.1. Is it the world? Australia? Australia and New Zealand? World (excluding Australia)?
- 3.2. If it's the world, what sub-publishing arrangements are in place?

4. RIGHTS OF PUBLISHER

- 4.1. Licence or assignment of copyright in the compositions?
- 4.2. Does the publisher get rights in every composition the writer creates during the Term (a "Term Deal")? Or only to certain compositions (a "Specific Works Deal")? Does the agreement cover pre-Term compositions?
- 4.3. Administration rights – collecting income only? Or full control of copyright?
- 4.4. What licences can the publisher grant to allow others to use the compositions? (All rights of copyright?)
- 4.5. In what situations must the publisher first obtain the writer's permission to licence compositions for use, or to permit compositions to be adapted? (Synchronisations, promotional uses, translations, "Grand Rights"/dramatic context use, etc.)

5. TERM AND MINIMUM COMMITMENT

- 5.1. How long will the publisher have the right to exploit and administer the compositions?
- 5.2. If it's a Term deal (i.e. covering everything the writer composes during the Term), how long will the writer's writing services be exclusive to the Publisher?
- 5.3. Is there a minimum number of release-quality compositions that the writer has to deliver each year of the Term? And who decides whether a composition is "release quality"?
- 5.4. Will the Term extend if the publisher hasn't recouped advances, or if the writer hasn't yet delivered the agreed minimum number of compositions?
- 5.5. Delivery requirements (timetable and format for delivery, composition titles, demo recording / manuscript, names and percentage shares of writers, APRA numbers etc).
- 5.6. Minimum percentage of "control" of compositions – how much of a composition must a writer have written for it to count against the minimum commitment? Will aggregate percentages (adding up smaller shares of more compositions) count towards the minimum commitment?
- 5.7. Does the publisher have any options to extend the Term for further periods? If so what, if any, are the conditions of exercise of options? Is there an increase in royalties, or an advance for option periods?
- 5.8. Retention Period – how long after the Term ends can the publisher "retain" control of the compositions? (Usually 5-15 years: rarely perpetual.)

6. COMPENSATION

- 6.1. Advances (see below): How much? Conditional on the completion of delivery commitment?
- 6.2. Royalty (domestic and international) rates for:
 - a) Print (including physical print and digital graphic reproduction).
 - b) "Mechanical royalties" for reproducing the compositions on recordings and sales and streaming income.
 - c) Flat-fee licensing for uses like synchronisation with media productions, advertising etc. Is the writer's royalty rate higher if the writer finds the licensing opportunity?
 - d) Performance and communication income (APRA) – does the publisher split the "publisher's share" of APRA income with the writer? If so, in what proportion?
 - e) Sundry/general uses royalty?
 - f) Escalations (based on sales or income targets?).
- 6.3. Royalty rates based on a percentage of income can range from 70% (new writers) to 90% (writers with a successful track record). 75% is common. In some genres and markets, 50% has been traditional.
- 6.4. Royalty "base" – what is the royalty percentage calculated on? "Net receipts"? How is that defined? Is the money counted "at source" or after sub-publisher and administrative deductions in particular territories?

- 6.5. Deductions – what sums can the publisher deduct from the “gross” income? How much can sub-publishers keep? (Commonly, there is a 20% cap.)
- 6.6. Accounting: frequency (usually half-yearly, sometime quarterly), what details are included in accounting statements?
- 6.7. Inspection of accounts: can the writer audit the publisher’s accounts and does the publisher pay the costs if a big enough mistake is discovered?

7. ADVANCES

- 7.1. Will the publisher pay an advance against writer's royalties? Cash advance or other goods or services (e.g. studio time, writing trip costs), timing, further advances?
- 7.2. Conditions of advances (repayable or recoupable?).
- 7.3. Does the writer have the right to pay out unrecouped advances and end the Term if it has been extended for non-recoupment? Is there an uplift margin for such a buyout to end the Term?

8. ARTISTIC CONTROL AND RESTRICTIONS ON PUBLISHER

- 8.1. Does the writer have approval over certain licences that may affect the reputation of the composition or the writer? (E.g. synchronisation with media productions, compilations, promotion of third-party products services, right of first release etc.)
- 8.2. Does the writer have approval over adaptations, translations, new lyrics?

9. TERMINATION RIGHTS

- 9.1. Can either party terminate for breach? If so, is there a cure period first?
- 9.2. Under what circumstances are advances repayable on termination?

For more information, you can speak to your local Industry Association, the Arts Law Centre of Australia or a legal practitioner.



This checklist is an initiative of the Australian Music Industry Network. For more information visit www.amin.org.au.