



Jackson, Etti & Edu

JEE Sector Thought Leadership Series

T H E F I N E P R I N T IN MUSIC RECORD CONTRACTS



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"Wait! What do you mean I get paid only Fifty
Thousand Naira a month?

I've been raking in millions of Naira for this
label. Plus, my single has been topping the
charts for the past 10 weeks.

This can't be all I get.

I deserve—"

"Well a deal is a deal. You signed the
record contract and that means you
agreed to the terms of the contract. A Fifty
Thousand Naira monthly pay is what was
stipulated as your royalty, after we have
recouped all advances
and expenses."



THE FINE PRINT IN MUSIC RECORD CONTRACTS

Most rookie artistes dream of getting signed by a record label. And this may come through only after the artiste has spent quite some time lobbying several radio stations to play his songs on air and performing at gigs for free all to get the attention of record labels. Finally, an established label recognises his talent and a recording contract is on the way. To the artiste, this is heaven on earth. His excitement is palpable. He drools from the thought of enjoying the usual perks that come with being signed up by an established record label, and poses, pen in hand, ready to sign whatever contract is placed before him. In this ecstatic state, the terms of the record contract mean nothing to the artiste.

But wait!! Shouldn't the artiste be concerned about what he is about to sign? - not reading the fine print before signing the dotted line on the record

contract can be injurious to the music career of any artiste. A record contract is beyond a mere piece of paper and by signing it, an artiste could be agreeing to terms that will potentially end his career, or one that will take him to a global platform.

The Nigerian music industry is arguably one of the most vibrant in the continent, attracting a wide range of talented artistes of various genres. Unfortunately, this sort of brag cannot be made about knowledge of record contracts. Oftentimes, up-and-coming recording artistes and even already established artistes looking to switch record labels, sign record contracts with little or no understanding of its legal implications. While record labels meticulously insert contractual clauses that will ensure that their investment in the artiste yields maximum profit, the artistes are usually too eager to hit the

limelight and therefore end up signing contracts without understanding the contract document or negotiating the terms to their advantage. This is one of the reasons why the Nigerian music scene is becoming rife with disputes between artistes and record labels.

Now, the question is - what are the elementary things artistes should know or look out for when reading or negotiating record contracts? Here are a few areas in recording contracts which artistes must pay attention to:

1. THE 'LEGAL FACE' OF RECORD CONTRACTS:

The first thing to note about record contracts is that just like other commercial agreements, they are guided by the legal principle that parties are bound by their agreement, artistes are therefore implored not to treat their record contracts lightly. Failure to perform the obligations in the contract will render the defaulting party liable unless the breach is waived

by the other party.

A good record contract should fairly apportion rights and obligations to both parties (the artiste and the record label) and where a party to the record contract feels the other party is not keeping up with the terms of the contract, the appropriate thing to



do is to terminate the contract in the manner contemplated by the contract itself and/or seek redress legally.

In the Nigerian music industry, it is often the record labels that institute actions for breach of contract. This is rather opposite to what is obtainable in other industries. For example, the

popular male band, Backstreet Boys sued their record label, claiming almost USD\$100,000,00 and release from their record contract on the ground that the record label was not pushing their career. In the same light, popular American singer Brandy, sued her record label for blocking her from releasing new music contrary to their record contract. Nigerian artistes are accordingly advised that equivalent rights accrue to them when their record labels breach record contracts, particularly with regards to recording their music and ensuring that it is commercially released.

2. ADVANCES, EXPENSES AND RECOUPMENTS:

The first enticement for artistes signing a record contract is usually the promise of an up-front cash payment popularly called “advance”. Record labels sometime offer advances to artistes in order to ensure that the artiste is in a financially-fit psyche to deliver “commercially” acceptable

music. However, just as a record contract is not merely a piece of paper, an advance is not a gift. Technically, it is an advance payment of royalties yet to accrue. It is therefore important that artistes understand that, unless it is agreed otherwise, the record label will recover the advanced sum from monies realized from the commercialization of their music. This is through a process called “recoupment”.

Aside from advances, other expenses in the form of rented apartments, cars, wardrobe allowances, as well as costs associated with producing and promoting the artiste’s music may also be deducted from the total revenue generated from an artiste’s music in order to ascertain the “net revenue” from which the artiste will get a cut, in the form of royalties, as stipulated in the record contract.

It is typical that before an artiste starts receiving royalties from the record company, advances and other costs expended on the artiste will be recouped by the record label. Given

this, it is always advisable that the artiste understands the advances and expenses that are recoupable under a record contract and the effect it would have on the payment of his royalties.

Since advances qualify as “risk money”, huge advances usually attract meager royalties. This is because if an artiste’s music does not generate much revenue, the record label may be unable to recoup all that it has advanced to or expended on the artiste, thereby making a loss. By giving a huge advance, the record label is heavily exposed to such risk and for this reason, would want to comfort itself with the prospects of a bigger share of the money the artiste’s music may make. On the other hand, negotiating a smaller advance may afford the artiste higher royalty rates and ease the pressure of becoming an overnight hitmaker, as the record label would expect if it gave out a huge advance.

A clause on recoupment of advances may be couched in the following words –

“No royalties shall be due and payable to the artiste until all advances and all sums given to the artiste or on his behalf or to any third party in connection with this contract have been recouped by or repaid to the record label.”

3. ROYALTIES:

Broadly speaking, royalty may be regarded as the payment made to an artiste for the use/commercial exploitation of the copyright in his music. Besides overseeing the production and promotion of the artiste’s music, the record label usually also commercially exploits the copyright in the artiste’s music by controlling a wide range of activities including - the reproduction and distribution of the music, public performance of the music by playing it on radio, television or at clubs, integration of the music in an advert or movie, digital sale of the music through downloads, ringtones, live



streaming, etc.

The record label is able to commercially exploit the copyright in the music recorded because in exchange for producing and promoting the artist's music as well as payment of royalties, the artist would have assigned his copyright in the music to the record label under the record contract. The royalties realized by the record label from commercially exploiting the copyright in the artist's music are shared between it and the artist in agreed percentages, after all advances and relevant expenses have been recouped.

There are different revenue streams from commercial exploitation of the copyright in an artist's music, some of which are: mechanical royalties from sale of an artist's recording on CD, cassettes, or tapes; synchronization royalties resulting from integration of the music in adverts, movies, audiovisual productions; and performance royalties. Other royalties include digital royalties from online streaming, and royalties from merchandising (income from sale of products branded with the artist's name, image or likeness).

In addition to understanding the

royalty calculation matrix, it is important to ensure that all relevant royalties are covered as this will help ensure that the artiste gets something from all sources of revenue for the exploitation of the copyright in the music recorded.

Generally, there is no fixed royalty rate across the music industry, as the rates differ widely based on years of experience, level of fame and the type of royalty in question. In many cases, an artiste would enjoy relatively higher rates for performance and synchronization royalties because the record label usually spends little to nothing for such royalties to be generated, as opposed to mechanical or digital royalties which may come through only after the record label has spent a fortune.

It is also important to ensure that the record contract contains an “accounting and auditing” clause requiring the record label to issue statements at agreed intervals detailing all revenue generated from the artiste’s music and specifying the recoupments

made and/or royalty payable to the artiste. The clause should also empower the artiste to appoint a third party to audit the accounts/books of the record label. This clause hands an artiste the chance to ensure that he is not short-changed by his record label and that proper royalties are paid.

4. RIGHTS:

As earlier noted, record labels are able to commercially exploit the copyright in an artiste’s music because of the assignment of the copyright in such music to them. For this, amongst other reasons, it is always important that when reviewing a record contract, the artiste understands the nature and extent of rights that would be transferred or assigned to the record label. This way, the artiste is well informed of what the record label can do with the music recorded, and for how long. Some record contracts could provide that the record label would own the copyright to all tracks/albums and the master records for a period which may be as long as

forever. Yes, forever.

It is pertinent to mention that when a music is made under a record contract, the copyright in the music recording is not automatically vested in the record label. Under the Nigerian copyright law, ownership of copyright



in a musical work vests in the artiste who delivered the work unless there is a written contract in which the artiste agrees that the copyright should be vested in some other person. Hence the need for assignment clauses in record contracts. In any case, artistes

are always advised to negotiate the insertion of copyright re-assignment clauses in the record contract requiring that the copyright and other allied rights assigned to the record label should revert to them after a certain period.

Asides pushing for reversion of rights assigned to the record label, it is beneficial to the artiste to ensure that the record contract contains a “release commitment” clause to the effect that the music recorded must be commercially released by the record label to the public within a certain period after its delivery, failure of which the artiste should be entitled to backout from the contract and/or purchase the master record from the record label for a specified fee.

The clause on assignment of rights in the music recorded to the record label is usually very broad and may take the form below:

“In consideration of this agreement, and without

further payment than as herein provided for the artiste, the artiste hereby grants and assigns to the record label all rights of every kind and the complete, unconditional, exclusive, perpetual, unencumbered title throughout the universe in and all results and products of artiste's services and performances hereunder, any and all master records, tapes, sound recordings, music videos, long form videos, and other material of every kind made or authorized by the record label hereunder or otherwise produced during the initial period and option period and which include the voice, instrumental or other sound and/or visual effects, services, or performances of

the artiste, including without limitation the right to record, reproduce, manufacture, broadcast, transmit, publish, sell, exhibit, distribute, advertise, exploit, lease, licence, perform, and use the same separately or in combination with any other material for any purpose in any manner, under any label, trademark, or other identification and by any means or method, whether known or not now known, invented, used or contemplated, and to refrain from all or any part thereof. The artiste further grants the record label the right to use his name and image if desired, in connection with the exploitation of the recordings."

5. EXCLUSIVITY:

It is difficult to find a record contract that does not contain an exclusivity clause. The exclusivity clause would typically define the “exclusive arrangement” which curtails the artiste’s ability to take up certain engagements without the consent of the record label. Usually, under an exclusive arrangement, the artiste cannot record for another label or with another artiste, or even engage in certain commercial contracts without the permission of their record label. In addition, the artiste would always be required to make himself available for all recording sessions and promotional activities. If an artiste considers these restrictions to be onerous, he can always insist that the contract be non-exclusive or at least, bargain for the right to engage with others as a Sideman/Side-Artiste. However, the possibility of the record label accepting such a counter-offer in the case of an up-and-coming artiste is doubtful.

An exclusivity clause may be drafted

as follows::

“During the term of this Agreement, the artiste shall furnish, exclusively to the record label, artiste’s services as a recording artist for the purpose of making master recordings, throughout the universe, and as otherwise set forth herein, and artiste shall not render services as a recording artiste for any other entity whatsoever. The artiste will, at mutually convenient times, come to and perform at the record label’s recording studio or at a separate studio, mutually agreed by the parties for the purpose of recording songs. It is mutually agreed that the artiste will not – (a) perform for the purpose of making records, for anyone other than the record label, and (b) authorize or permit the use of artiste’s name, likeness, or other identification for the purpose of distributing, selling, advertising, or

exploiting new original songs for anyone other than the record label. Furthermore, the artiste shall make no other new sound recording available to the public.”...

6. TERM:

Always look out for the term (duration) of the record contract because this tells how long an artiste would be tied to the record label. The term clause defines the recording commitment, which may be based on a specified number of years within which the artiste is required to deliver a specified number of tracks/albums or solely dependent on the delivery of a certain number of tracks/albums.

The term clause is related to the exclusivity clause in that the artiste would be disentitled from backing out from the contract until after the expiration of the years stipulated and/or delivery of the specified tracks/albums.

Record contracts commonly specify

an “initial period” within which the artiste is required to record. This period also gives room to the record label to commercially exploit the music recorded. The term clause may also contain a series of “option periods”. Option clauses grant the record label the right/option to extend the record contract for an additional period or periods upon the expiration of the initial period, as it pleases. The exercise of the option by the record label would largely depend on how well the artiste’s music did during the initial period.

An artiste who is not very confident about the ability of the record label to take his career far is advised to negotiate a shorter term, fewer tracks and avoid option periods.

The term clause may take this form::

“This agreement shall be for the commercial release of one (1) album, featuring twenty (20) tracks. The agreement shall commence as of the date hereof and shall continue for one (1) year from the date of

delivery of the master records and artwork to the record label (Initial Period). The artiste hereby irrevocably grants to the record label the option to extend this contract upon the same terms and conditions of the Initial Period for one (1) further consecutive renewal periods of one (1) year (Option Period)."

OTHER NOTEWORTHY POINTS

- **It's not over until the fat lady sings**

Artistes should always ensure that they are fully discharged from any prior record contract before entering a new one. In the event that they are still under a contract, the artiste should disclose same to the new record label which may elect to purchase your obligations under such contracts.

- **Arm yourself with a skilled Adviser**

Whenever an arrangement between two or more parties would involve the exchange of money and the creation of rights and liabilities, it is always advisable that each party seeks independent professional advice on the proposed arrangement. Artistes and record labels are therefore advised to engage the services of lawyers skilled and experienced in entertainment law and practice.

- **Know enough before you sign**

Appending one's signature to a contract is never a difficult task. The staggering bustle is appreciating the contents of the contract. Artistes should insist that they sign a non-binding memorandum of understanding before a final record contract. This gives the artiste the opportunity to be adequately accustomed with the terms of the proposed agreement before signing a formal engagement.

- **Some promises are better left unsaid**

Only promise what is within your capacity. Artistes are usually carried away by the big figures promised to them by record labels on the basis of which they promise to deliver an unreasonable number of tracks/albums. Halfway through the contract, it dawns on them that they cannot meet their recording commitment. This leaves them at the mercy of the record labels who may decide to keep them longer than stipulated in the contract, until the recording commitment is met.

- **Know your record label**

Research is key. Artistes should conduct due diligence on the record label to ascertain whether the record label has the capacity to fulfill its part of the bargain under the proposed record contract. There should be

an evaluation of the record label to confirm if it has the resources to invest in your music. It would not do you any good just being signed if the record label will not or cannot record your music and put it out there.

Conclusion

The advice to artistes is clear: always read the fine print; bringing out that magnifying glass might save your time, career, and a ton of money in the long run. Artistes must learn to read their contracts, because as they say, the devil is in the detail.

It is important to note that because all record contracts are hardly ever the same, the comments above are only general statements and should not serve as a substitute for professional advice. At the risk of sounding like a broken record, it is always advisable to have your lawyer- one with the necessary experience to guide you through the process.



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