



# 8

## Lawyers: Protecting and Serving

### The Role of Lawyers

In the chapters on playing live and on management, there was talk of people being paid by commissions and percentages. What is implied is that by signing, you are, in effect, entering into a form of agreement: a contract. Contracts are necessary anytime a significant amount of money changes hands for either a service you perform (e.g., playing at a club) or a service someone performs for you (e.g., booking a tour). While it may or may not be a sign of the apocalypse, we do live in an intensely litigious time. Whether lawyers are the cause or the antidote to this is an argument for another day. But as you begin generating income from your music, you will necessarily be confronted with agreements or contracts. Enter the lawyers. Additionally, a lawyer's role is not always limited to negotiating contracts for an artist. In fact, they often play an important role in an artist's career before the artist has an agent or a manager, much less a contract to negotiate. So what distinguishes the role of the lawyer versus the manager? Well, for these and other answers, read on.

### A Protocol Preamble

Know this straight away: in today's society, lawyers are necessary and will save your neck at various times during your career. Just please, please, remember one thing: your lawyer works for you. While you may be the lawyer's client, you are also the lawyer's boss. You can fire him, and more importantly, you can instruct him on how you would like a situation to transpire. At the end of the day, if a deal falls apart because the lawyers can't work out the details, the lawyers will move on to other deals. It may not,

however, be as easy (or even possible) for you to do the same.

No deals are perfect. Especially at the beginning stages of your career, it is often far more important to compromise in order to get a deal done, than to take too hard a stance and risk it falling apart. However ironclad a contract might appear, deals are open to re-negotiation. But if you walk away from a deal, it's hard—and frequently impossible—to get the negotiation process going again.

No record company wants to be seen as having some sort of draconian contractual stance. If you are forced to make compromises in order to get a deal done, but end up making money for the record company (or seem likely to do so in the near future), you will be able to go to them and say, “Let’s have another look at this piece-of-crap contract you’ve forced me to sign.” This is not to say that they will rush to change things, but there will potentially be room for negotiation. And even if you have the best contract in the world, if you aren’t selling any records, it won’t matter much, because there won’t be any money to be divided up anyway.

So, as a new artist, get the best deal you can, and then concentrate on selling records. Don’t lose the opportunity to sell records by over-negotiating a contract and having the deal fall apart.

### **How Lawyers Get Paid**

Let’s discuss the role lawyers will play in your career. Lawyers are able to spread the word about your music. In this, they are similar to managers, club bookers, booking agents, writers, and DJs. The more successfully your lawyer can do this, the greater chance he has to make more money from you. In other words, if a lawyer feels like you really have the ability to make money, either from selling tickets or records or whatever, he will take a much more acute interest in your career.

Like managers and booking agents, lawyers must get paid. But they are smarter than booking agents and managers, and therefore generally get paid in the form of billable hours, rather than as a percentage of your income. (Lawyers will say that managers and booking agents are smarter, since they are commissioned, because they don’t have to chase artists around to get them to pay their bills.... Probably, neither is smarter than the other.) Expect to pay anywhere from \$150 to \$500 (this high end is really only found at the elite firms) an hour for their services. Some lawyers *will* work on a percentage basis, and typically take 5 to 10 percent of the income generated from a deal. This includes personal advances paid to an artist from a label. (This payment *is* recoupable against your artist royalties.) Additionally, there is a hybrid arrangement, where the lawyers

will charge a low hourly fee with the understanding that, at the end of the deal, they will receive a percentage of the net money that the artist receives from the label. In this scenario, insist that any hourly fees billed to the artist be deducted from the attorney's take. Lastly, some lawyers will take a fee based on the size of the deal once it is concluded. This is referred to as "value billing." In this type of relationship, you pay a fee based on the ultimate "value" of the deal. The more value the lawyer helped you get, the more he gets paid.

In all of these cases, it is important to stress that lawyers should only draw their percentage from the net artist share and not the gross money received.

Lawyers can become incredibly creative when it comes to fees. There is simply no way to cover all the possible permutations out there. The above examples are meant to give you an overview of how the process works.

Whatever your fee agreement, one thing is for certain: the more money you are making, the more you will be paying to your lawyer. Therefore, just like managers and agents, lawyers want you to succeed. They are going to try to use their contacts—be they with record companies, managers, booking agents, advertising houses, or anywhere else potential money might be found—to aid you in growing your career and income.

## **When to Get a Lawyer**

Many artists ask whether or not they should get a lawyer or a manager first. It really is a moot point. Believe me, when you need a lawyer—whether you even know that you need one or not—they will find you.

We A&R people get pitched on new artists by lawyers at least as often as by managers. At the early stage of your career, it is not unusual to have a lawyer, rather than a manager, representing you. As your career grows, you will need both.

A lawyer and a manager provide very different services, once an artist has a record deal. The manager is involved in the day-to-day strategizing and planning aspects related to developing an artist, as well as interfacing directly with the artist's label about all aspects of promoting and releasing the artist's records. The lawyer, on the other hand, takes a back seat in terms of day-to-day artist/label relations, once the deal is negotiated. Unless some contractual issue comes up or a deal needs to be renegotiated, the lawyer will largely stay in the back seat. The lawyer may also be active with other issues involving the business workings of an artist: publishing, foreign rights, and so on.

In effect, the only time that managers and lawyers do the same job is when they are pitching a band to a label. To me, there really is no distinction between getting a package from a lawyer or a manager. If I'm interested in the artist, I will ultimately ask the question to the manager, "Who is the lawyer?" And conversely, to the lawyer, "Who is the manager?"

On rare occasions, I will negotiate a deal with an artist who has a lawyer and no manager (only if a manager is imminent), but I will not make a deal with an artist who has a manager and no lawyer. I just do not think it is ethically right for an artist to enter into a binding contract without getting the expertise that lawyers provide.

Of course, this is an easily solved dilemma. At the point that I'm ready to enter into a deal with an artist, if that artist doesn't have a lawyer, I tell them to go get one. As I said before, lawyers aren't hard to find. In fact, I have recommended lawyers to artists who I am about to sign. As a rule, try and find yourself a lawyer who does not come referred by the record label. Understand that the A&R person's goal is to get the contract signed and put away—hopefully, never to be looked at again. So, the lawyer that an A&R person would recommend would be one who we know can get the deal done quickly, and will avoid a lot of tedious, insubstantive negotiation. These may be different than your own goals.

We A&R people know lawyers who are able to work well with labels, and get deals done quickly, so that we can move on to the more exciting, and ultimately, more important aspects of working together: getting people to hear your music. I personally don't see any problem with this. However, it is impossible for you to know the ethics of the label you are signing with until you have worked with them. So try to find a lawyer who doesn't have too tight a relationship with your label. This is not to say that there is anything wrong with your lawyer knowing the label or the people at the label. In fact, most good lawyers are going to be familiar with employees of the better known labels. Just find someone who is going to put your interests ahead of the label's.

Before you get an offer, a lawyer, like a manager, can help you by using their contacts and reputation to cut through some of the barriers that an unknown artist without representation faces. A&R people are much more apt to open and listen to a package that has been sent by a lawyer—even if it's not a lawyer they know. Once the package is opened and listened to, all of the other rules that we have discussed will apply. The lawyer's representation may get you in the door faster, but if you don't come bearing wonderful party gifts, you won't be asked to stay.

## Finding The Right Lawyer

A logical question is, “How do I get myself one of these lawyers with door-opening powers?” As in the case of club bookers, managers, booking agents, and labels, you will have a far easier time attracting a lawyer if you have already done some work on your own.

At this point, you should know very well what I’m talking about. You must have developed aspects of your career, beyond just being a talented artist, that will give the lawyer some hope that he will be able to pique the interest of a record company. Good lawyers will not risk damaging their reputation by submitting a demo to a record company if they don’t feel that there is some chance that the record company will be interested. The reason that they will not do this, once again, has to do with professional courtesy. Most good lawyers know that A&R people will open a package from a lawyer they don’t know once. If the enclosed demo is appropriately prepared and targeted, the lawyer will be perceived as understanding the process. His future packages will also be opened, business may be referred to him, and a holiday card will likely be forthcoming.

Lawyers also know that the inverse is also true. If, out of professional courtesy, an A&R person opens a package from a lawyer whom they don’t know, and the demo within satisfies few or none of the requirements that it should, then there is little likelihood of future packages from that lawyer being opened. This is why lawyers, like everyone else in the biz, are going to be very selective about who they represent. They know their reputation and ability to generate revenue for themselves is contingent upon the artists they choose to work with.

You will have a far easier chance of securing a lawyer to shop your demo if you can present a good package. Once you have your demo package, submit it to lawyers in the same way you submit it to prospective managers, labels, and booking agents. Some lawyers may sign on early in your career and help you develop yourself, in order to give you a better chance to get signed. Just don’t expect a lawyer to come in and simply, by his connections, allow you to leapfrog all the steps that artists must go through to get signed. In fact, if a lawyer contends that he can help you skip any of these steps, I would be very leery of him.

## How Lawyers Differ from Managers

Once you have secured a lawyer, he will likely work with you to find management, if you don’t have it in place already. They will do this for two

reasons. First, they know that most labels are going to be more likely to sign you if you have a manager, and second, because they don't want to be your manager themselves. Managing you would keep them from doing what they are genetically predisposed to do: make deals.

Given this genetic predisposition, your lawyer will become incredibly important, once you are presented with a contract. We will take an in-depth look at the types of contracts you might be presented with later in the book. For now, understand that a lawyer can play a very important role in your career prior to deals needing to be negotiated. In fact, they can frequently be the catalyst to getting these deals presented to you in the first place. Like managers, lawyers work closely with labels and others in the industry who can play a role in helping your career. Think of them as being another member of your team who can give you more exposure and connections. They come with the added advantage of being versed in contracts and negotiating, which is always useful. Additionally, they can frequently aid you in setting your business affairs in order early on in your career and thereby help you avoid pitfalls that could come back to haunt you later. Like all the members of your team, lawyers must be chosen carefully.

## Summary

Try to develop a relationship with a lawyer so that he can serve your various needs throughout your career, rather than having to hire new ones as you develop. Ideally, the same lawyer who helps you expose your music to record labels and performs other more managerial functions at the early stages of your career will also be the one who negotiates your record deals, publishing deals, and so on. This means assessing the landscape and ascertaining what possibilities are out there. How do you do this? It can be done by talking to other bands about who represents them, looking on CD sleeves for people with “Esq.” behind their names in the credits, asking promoters, and other kinds of similar research. Additionally, there is a legal directory available both in libraries and online called *Martindale-Hubbell Law Directory*, which lists lawyers by state and the field in which they practice. (Focus on those who practice in the entertainment field.)

Remember, loyalty breeds loyalty, in this business. You will need a lawyer at some point, so it is in your best interest to find someone who you trust and feel can represent your needs as your career grows.