Composers publishing checklist

Checklist of key issues for composers to consider before signing any publishing agreement.

This checklist is intended to give you some suggestions as to the kind of issues composers should look out for when considering a publishing agreement. It is not a substitute for legal advice and composers are strongly advised to take legal advice before signing any publishing agreement. ISM members can obtain legal advice on publishing contracts direct from the ISM’s in-house legal team (Telephone: 020 7221 3499 or email: legal@ism.org)

1. Assignment or licence of rights
Composers must be clear whether the publishing contract they are being asked to sign is an assignment or a licence. In broad terms, a licence will allow the composer to retain greater control over their work than an assignment. A licence simply gives a publisher permission to deal with the copyright work in various specified ways. An assignment transfers rights previously held by the composer to the publisher (either permanently or for a fixed term – see point 2 below). The template agreement in this Pack is in the form of an exclusive licence of rights.

2. Term of the agreement (plus the Rights or Retention Period)
A key question to be asked is how long the contract will last and, where there is an assignment of rights to the publisher, how long the publisher’s rights in the composer’s work will continue (sometimes called the Rights or Retention Period). Sometimes the term of the contract will coincide with the Rights Period. However, in an exclusive publishing deal, (where a composer typically assigns all the rights in his or her work over to a publisher for a fixed period of say 3-5 years) the Rights or Retention Period may be considerably longer than the term of the contract – and may even be for the whole term of copyright (meaning that the rights in the work may never revert to the composer).

3. Royalties/percentage of revenue to be retained by publisher/advance payments
A key element in any publishing contract is how revenue derived from the work will be split between composer and publisher. This is principally a matter for negotiation between composer and publisher. The ISM strongly advises composers to take expert advice to ensure that they are getting a fair deal. Composers should also be aware that PRS rules ensure that at least 50% of royalty income from PRS must be paid directly by PRS to the composer. How the remaining 50% of PRS income is split between composer and publisher is a matter for negotiation. Sometimes composers are offered an advance by the publisher at the point that a publishing deal is agreed, which is then recoupable from the composer’s share of revenue. Whether an advance is payable and how much that advance will be, will form an important part of the negotiations.

4. Calculation of revenue (‘at source’ or ‘receipts’ basis)
It is preferable that the composer’s royalties should be based on revenue ‘at source’ rather than calculated on a ‘receipts’ basis – this will avoid the composer’s royalties being reduced by fees paid to overseas sub-publishers. If the ‘receipts’ basis is used, composers should ensure that there is a limit on the percentage of revenue that can be paid to overseas sub-publishers (typically 10-20%).

5. Accounting provisions for payment of royalties
Composers need to consider when they will receive income from their works. It is clearly preferable that payments should be made on a quarterly basis, supported by a detailed account of revenue received and any deductions made.
6. Composer’s consent to certain types of exploitation of the work – for example:
   a) any material alterations or adaptations to the work
   b) any synchronisation licence for film/music/tv
   c) any licence to sample
The composer may want to include provisions in the publishing contract stipulating that certain types of exploitation of the work are not permitted unless the publisher has first obtained specific authorisation from the composer. Clauses of this kind will give the composer greater control over the use of the work. However, publishers may be reluctant to give the composer a veto over uses that could prove to be commercially lucrative.

7. Publisher’s obligations: “best endeavours to exploit the Compositions for the benefit of the Composer”
A good publishing contract should make it clear that the publisher is going to do everything it can to promote the composer’s work. The ISM recommends that, in addition to any specific contractual provisions, an obligation to use “best endeavours to exploit the compositions for the benefit of the composer” should also be included, to make it absolutely clear that the composer can expect the publisher actively to promote the work throughout the lifetime of the publishing agreement (and during any Rights/Retention Period, if that is longer).

8. Re-assignment/reversion of rights where no exploitation/no royalties
The ISM recommends that, in any publishing agreement, there should be a provision allowing the composer to terminate the agreement and for all rights to revert to the composer in the event that agreed goals are not achieved by the publisher (for example a recording contract or synchronisation licence) within an agreed timescale or where no (or very low) income is being generated by the publisher. Obviously the precise drafting of a re-assignment/reversion of rights clause will vary from contract to contract. This is another area where the composer should seek detailed legal advice.

9. Right to assign to a different publisher
Publishing contracts sometimes include a clause providing that the publisher’s rights under the contract can be assigned to a third party publisher. Often there is no requirement that the composer consent to such an assignment. Composers need to pay careful attention to any clauses of this type – such a clause could result in the composer ending up with a publisher very different to the one they originally contracted with.