

COPYRIGHT, LEGAL AND MANAGEMENT

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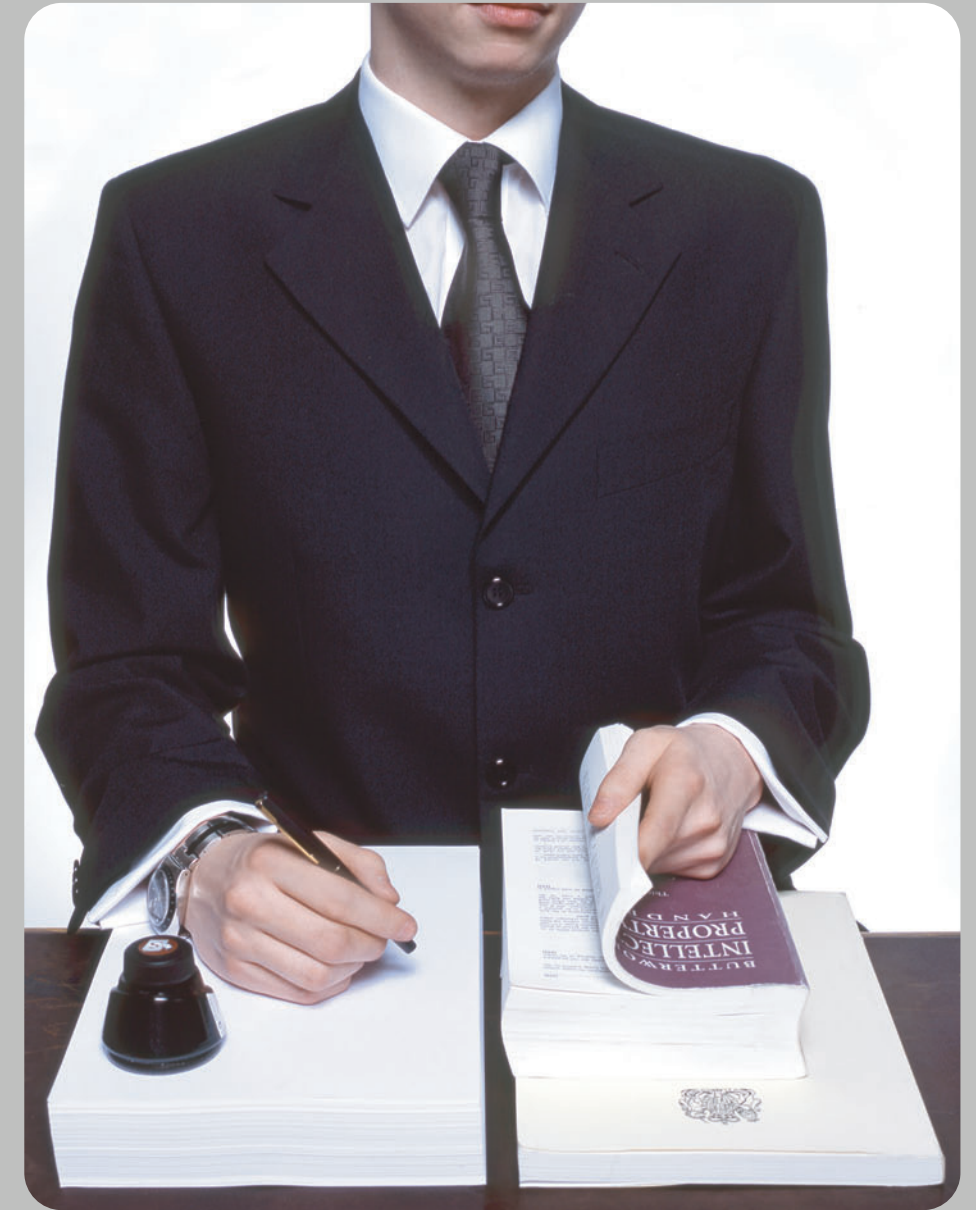
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- Chapters that are essential to this workbook.
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DEALING WITH INTERMEDIARIES



WHAT IS IT?

Intermediaries are business people that you will come into contact with as your music career develops. They can be people such as managers, lawyers and accountants, but they could also be development agencies and business support organisations.

WHY DO I NEED TO KNOW ABOUT THIS?

As a musician or performer it is entirely understandable that your primary focus will be making and performing music to be proud of. It is not realistic however to believe that talent is all you will need to be successful in the music industry. You will need to find experienced and trustworthy business advisers to work with.

Many musicians, artists and writers make the big mistake of not thinking enough about who they need to target – either to get the most out of their talent and material, or to make sure that they don't end up getting things wrong.

Musicians are often unsure about dealing with these professionals. This chapter gives you a better understanding of who these people are and what they do.

YOU MUST HAND IN YOUR WORK BY TO



HOW LONG
should this assignment take?

Every person works at his/her own pace.
As a guide, this should take you 1 hour to read and research and another 2 hours to write your answers and discuss them with your tutor.



HOW
will I be assessed?

Your tutor will assess your work. He / she will give you feedback on how you have done. If your work needs further work to be passed, then you will be given the chance to do further work to bring it "up to scratch". For more details, please refer to your MOLP's own guidance.



WHAT
do I do now?

Read the TASKS section below to get an overview of this project.
Then read the NOTES AND GUIDANCE section for help.
Carry out the TASKS.

TASKS

1 Read these statements - which business person can help you? Tick one or more boxes.

MANAGERACCOUNTANTLAWYER

Finding gigs			
Negotiating a recording contract			
Preparing your accounts			
Filing your tax return			
Looking for a publishing deal			
Getting distribution for your recordings			

2 MANAGEMENT

This is a list of considerations about management. Grade qualities on a scale of 1-10 (10 being high) you think are important in a manager :

Grade 1 - 10

Experience in making deals of every description	
Enough money to invest in you and support an act until it is developed	
A manager who is a fan of your music and understands your needs	
A manager who will dedicate all of his / her time to you in your career	
Reliable, trustworthy and dedicated	
A provider of sound advice and financial planning	
A business-like friend whom you can place trust in	
A manager who has had a lot of success	
Travels and experiences new events and opportunities	
Adapts to change and has new ideas	
Has knowledge of different markets and possibilities	

Discuss the outcomes of your scoring system with your MOLP.

3 Research 3 potential managers

MANAGER	Address, Tel and e-mail	Current Roster (Who do they already manage?)



Try and find an established manager first, by searching on the internet for a well known artist you like and trying to identify their management company. You will often find management details on the inlay card of a CD. For local managers, you may need to do some local research and speak to local artists as well as your MIC or MOLP adviser.

4 Research 3 potential lawyers

LAWYER	Address, Tel and e-mail	What type of law do they specialise in?



Use the internet to search for music directories and organisations that have lists of business professionals. Also, speak to your MIC or MOLP adviser and local artists who may have had a recording or publishing deal.

5 Research your local area to see if there any music industry support services that can help you.
Use the internet to find any local schemes that may be of use to you:

Is there a Music Development Agency in your region? If so, write the details here.

Search for any local music projects that may be looking to help you move forward. Write the details here.

Speak to your Music Industry Consultant about this (if appropriate).



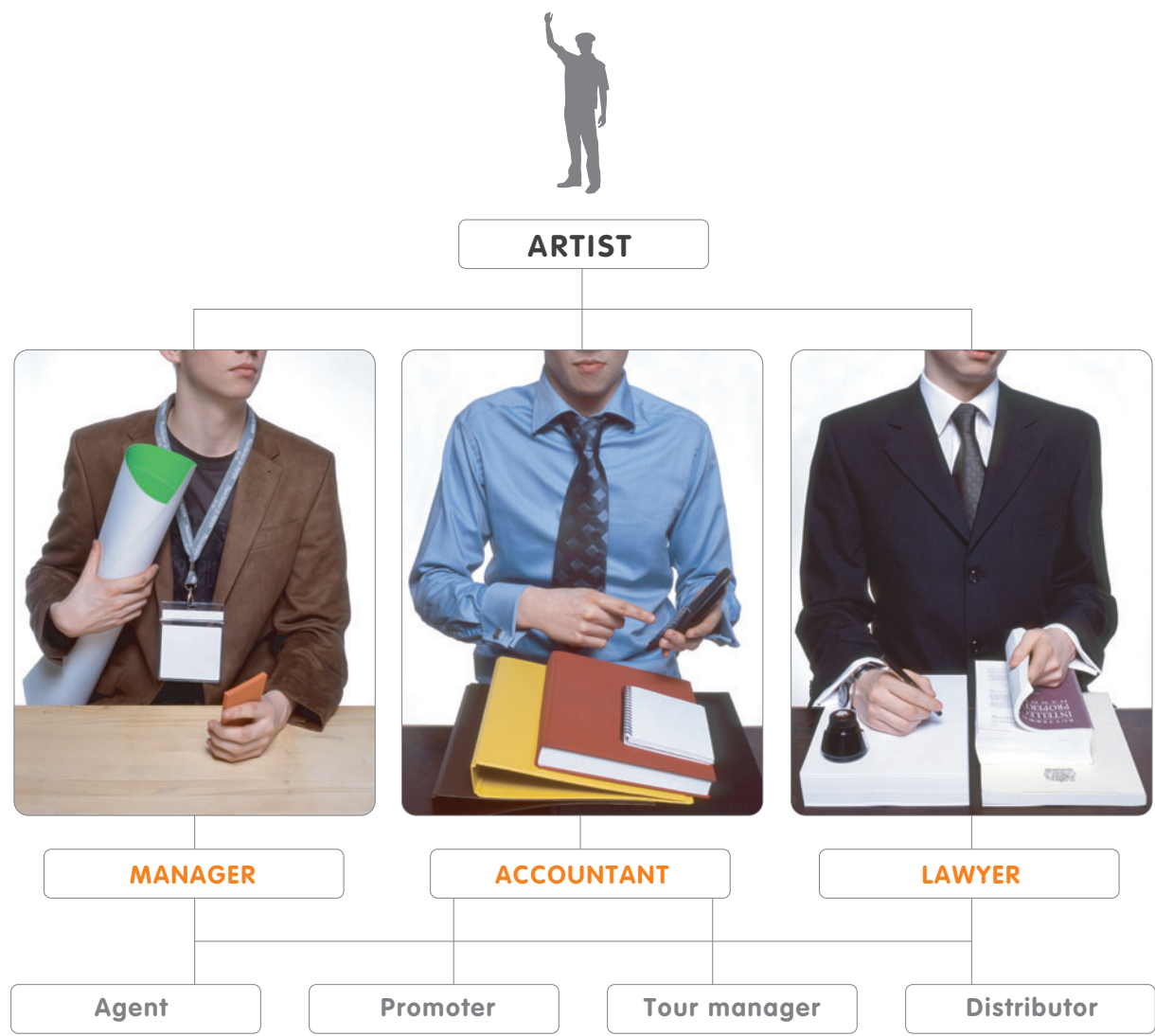
Look for your RDA (Regional Development Agency) to see if they support any music or arts development agencies across their region.

NOTES AND GUIDANCE

DEALING WITH INTERMEDIARIES

The Management Team – **MANAGER, ACCOUNTANT, LAWYER**

This diagram shows an example of the business relationships required for an artist who records, writes and performs music for a living.





MANAGER

The **MANAGER** represents the artist in all business environments and interests. The manager will negotiate all contracts in collaboration with the artist and with advice from his / her business advisers (lawyer and accountant). The manager generally takes around 20% (gross) of all monies earned. They can also act as personal counsellors, nannies and nursemaids.

➤ See P64 Chapter 3 Frequently asked Questions on Artists Management' for more information.

Managers fall into different categories:

Friends and relatives of an act or group of musicians. This manager may help out in the early stages of the artist's career, and learn his / her trade at the same time.

A manager at the next stage, they may be an established manager with one or two acts. This manager may make a living solely by generating work and income for their acts.

Major and professional management companies may have a roster of acts, You may find that this type of manager would only be interested in you when other offers (such as a recording or publishing deals) are in place.



LAWYER

The **LAWYER** is responsible for advising the manager and artist on all offers / contracts.

Lawyers (also called solicitors) fall into different categories, for example

Specialist music industry
Litigation
Property

Large record companies generally have their own in-house lawyer, often referred to as 'business affairs'.



ACCOUNTANT

The **ACCOUNTANT** is required to prepare financial statements, annual tax returns and oversee all transactions.

For more on Accountants, book keepers and financial advisers, see Chapter 1 in Workbook 8.

Other intermediaries may include:

TOUR MANAGER

The **TOUR MANAGER** (TM) is responsible for the musicians while the act is on tour. This includes hotels, transport, instruments, crew, punctuality and behaviour.

AGENT

The **AGENT** is responsible for booking live appearances on behalf of the artist they represent. They charge a commission, which is typically 15% of the performance fee or tickets sales. An agent may work with many local promoters to set up a tour, or they may book individual one-off gigs for their artist, in settings as diverse as the local pub to 20,000 seat venues.

When do you need an agent?

When you have a record deal in place with a projected promotional campaign (for example a record release), or a recognised following that has built up on your reputation, you need an agent. An agent may also grant you occasional ‘warm-up’ dates, even support slots on a major tour.



PROMOTER

The **PROMOTER** is responsible for coordinating all elements of live performances: sound and lighting equipment, tickets, posters, advertising and venue. The promoter effectively takes the financial risk of putting on a gig, and can lose money as well as make it!

A local promoter in your area may put on local bands and artists at small venues – but there are also larger companies that promote huge musical events such as the summer music festivals.



DISTRIBUTOR

This is the person who gets your music distributed out to the public. If you have a record deal, then the record company will probably have their own distributor. But if you want to release your own music, you will need to find your own distribution. There are digital distributors who will sell your music online in return for a share of the income.

MUSIC DEVELOPMENT AGENCIES

In the last few years, specialist Music Development agencies have sprung up all over the UK, in cities such as Manchester, London, Cardiff, Newcastle, Belfast, Glasgow, Liverpool and Inverness. You can also find music development agencies in smaller towns and regions.

Their job is to develop the local music industry infrastructure by offering advice, guidance, information, workshops, training and sometimes money. Often they are funded by the local council as well as European funding or Regional Development Agency money.

They often hold networking events where you can meet up with similar-minded people, and they can put you in touch with managers, promoters, labels and other intermediaries.

There are also local funding bodies who may be able to help you with setting up a business in music, for example a record label or publishing company.



CASE STUDY

SAM

Successful artist manager

Sam is a director of a management company that looks after one of the biggest artists in the UK. She co-manages the artist and has dealt with all matters personal and professional. She started work with the management company through a conversation in a local recording studio where her sister worked.

What attributes/qualifications do you need?

There are lots more qualifications available that are relevant now, but I came in from a musical background. As a singer I knew the venues and gig circuit, promoters etc. I wasn't very familiar with record companies, publishers and lawyers but common sense and enthusiasm go a long way.

Best thing about the job...

The opportunity to work with famous people and to follow something through from its conception to the final result. Listening to your artist on the radio when you have a big hit - that and going to the Top of The Pops studios.

TIP

Believe in what you're working with. Don't just take something on with a view to making a load of money out of it, that's a bonus if it happens. And don't think that London is the be all and end all. Every town and city has its' own scene.



CASE STUDY

STEPHEN

Music Lawyer

Stephen is a well known music lawyer with a wealth of experience. He has worked for many bands, artists and remixers over many years. His main work now centres on Independent and European labels.

Initially, Stephen had no intention of entering into entertainment law, though he had always been a fanatical music lover. His accountant asked him if he'd like to invest in a recording studio. This attachment led to a few bits and pieces of legal work, spare time stuff.

He picked up more and more work, being one of the few music lawyers who were based outside London in the 1980's.

Down

Boredom. Negotiating 100 page contracts with Major Record labels is 'the most tedious job on earth. They're heavyweight, complex documents and they all say the same thing in different ways. Everyone has this romantic notion that, if you're a famous Pop Star, it's wonderful, forgetting all the crap and tedium of recording, touring and all the rest of it. Meeting people, hearing their music, believing them to be hugely talented and watching them get shafted by their record company who don't put any marketing behind it. Then they get dropped. That's the hardest part. They usually end up working for the Gas Board'.

Up

'Historically, travel. It gave me the opportunity to travel around the World (3 or 4 times now) which was fantastic. Being part of a team and helping develop that success, particularly on the business side'.

TIP

If there's a moral, this is not the way to get rich quickly but it could be. If you are successful you should ultimately be wealthy. But it takes forever for the money to come through. Persevere if immediate success doesn't come your way. Believe in yourself.



WHEN DO YOU NEED A MANAGER?

Are you:

ready to make contact? (for example, rehearsed enough to play a live set)

sure that you have enough quality material for a manager to help promote your career?

aware of the long term effect of having a management agreement (if for example you are in a band or a collection of musicians – see chapter 4 in this workbook, Band Agreements)

sure as to why you might need a manager and what that manager might do for you?

Some initial considerations might include you asking

Is the manager established?

Will the manager have enough time to look after my affairs?

Is the manager in a position to promote my career without any income in the initial term?

Do I know anything about the manager?

Remember that a good manager will be devoting time and cost to your development, so you have to be in a position where it is worth their time to get involved. A professional earns a minimum of £25 per hour for advice and guidance, so are your plans realistic and are you happy to pay for management to help and guide you?

WHAT QUALITIES SHOULD I LOOK FOR IN A MANAGER OR MANAGEMENT COMPANY?

Someone who is reasonably established, has enough experience to take on the day to day duties and has a good reputation. He/she/they should be interested enough to put in time and effort until things develop and have the resources to provide adequate personal representation on your behalf.

Cross-reference your potential manager with his/her artists, ask yourself why you have chosen that particular manager.

WHERE CAN YOU FIND MANAGERS?

You need to do your research!

Once you have decided that you are at the right stage to look for a manager, then start producing a target list.

This list may include high profile established managers, or less experience local managers who perhaps don't have years of experience but are passionate and enthusiastic about your music.

You will probably need to have a promotional package together (➤ see Workbook 6 for more information on how to do this) if you are looking for an established manager.

Local networking is really important, you should discuss with your Music Industry Consultant (MIC) or your MOLP adviser about who to go and see.

There is an international organisation called the Music Managers Forum which represents the interested of music managers. Their website contains a very useful section on 'How to Find a Manager'.

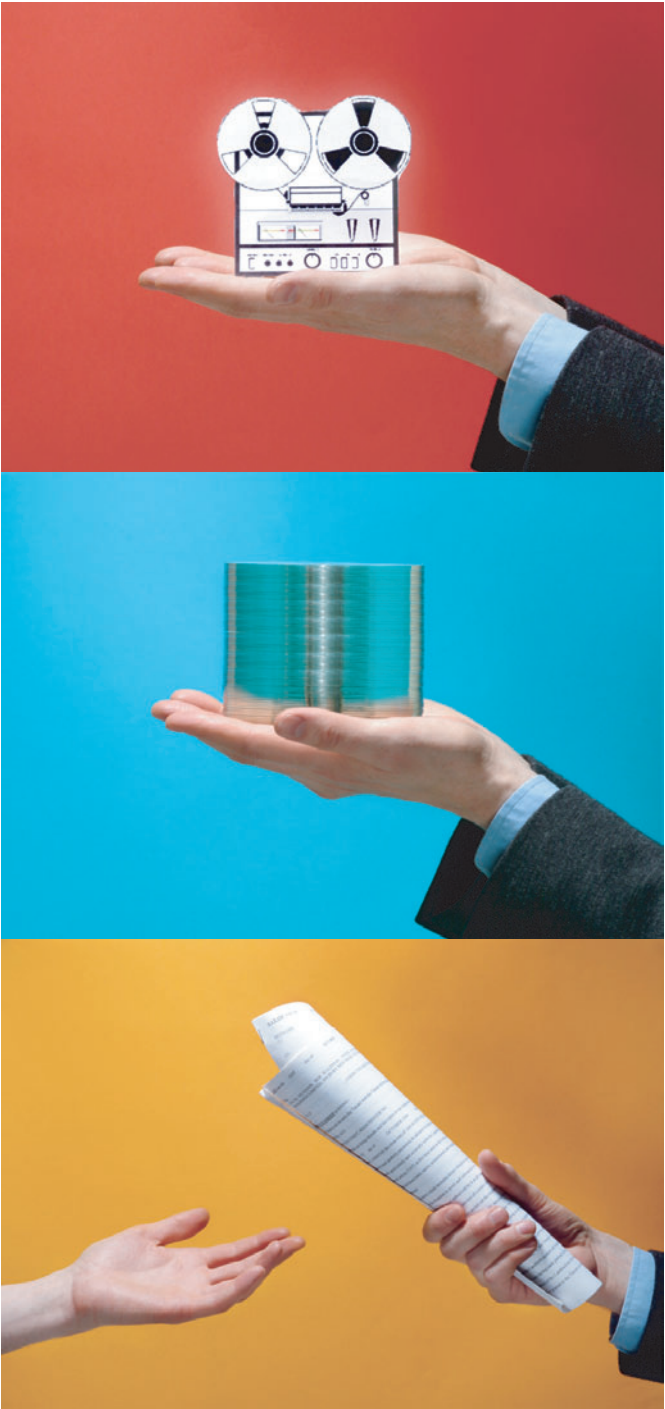
WHEN DO YOU NEED A LAWYER?

If you are in a position where you have been offered a recording, publishing or management deal, then you almost certainly need a lawyer.

Specialist music industry lawyers will normally charge between £150- 250 per hour for their services, so you can rack up a large bill quite quickly! However, if they are negotiating a substantial contract for you, worth thousands of pounds, it is definitely worth employing them, as they will be able to properly assess the contract and potentially get you a better deal.

Sometimes, a lawyer will do a small amount of up-front work for nothing, on the basis that they hope to get some paid work from you at some time in the future. Other times, you can negotiate a fixed price in advance for the work they do for you.

As most of the music industry is based in London, you will find a lot of music lawyers there, However, many of the larger cities across the UK have at least one or two reputable music lawyers who may be more convenient (and possibly less expensive) to do business with.



TIP

You should also assure that the advice you are given is independent. So for example, if you are signing a Management Agreement, you should not really be taking advice from your Manager's lawyer. It is important that you have your own solicitor who will look after your own personal interests.

Specific occasions when you need a lawyer include:

Deal-making (Management, publishing, recording)

Releases abroad

All your extended business (merchandise, synchronisation, appearances, endorsements, book rights)

Litigation

WHERE CAN YOU FIND MUSIC LAWYERS?

Free advice can be obtained from the Musicians Union, if you are a member.

Speak to your MIC (Music Industry Consultant) or MOLP adviser, who should be able to give you some advice.

Speak to people within the industry and see if they recommend someone. Personal recommendation is always good.

If there is a Music Development Agency near you, they will have lists of established music lawyers that you can research yourself. It is also important to shop around and make sure you are dealing with professionals that you feel comfortable with and that speak your language.

WANT TO KNOW MORE?

LINKS

New Deal for Musicians has no responsibility for or control of the following sites. The inclusion of any site does not necessarily imply New Deal for Musicians approval of the site. To access any of the sites please click on the link or search using keywords from the name of the link.
www.dfes.gov.uk/ukonlinecentres Find Internet access that's close to you. Also look at weblinks in workbooks 1 and 2.

GENERAL INFORMATION	MANAGERS
<input type="checkbox"/> www.bbc.co.uk/radio1/onemusic Loads of relevant information about moving forward in the music business, tips on careers, getting advice from managers, agents and lawyers.	<input type="checkbox"/> www.ukmmf.net MMF (Music Managers Forum). Represents the interests of Managers in the music industry and provides training.
<input type="checkbox"/> www.bbc.co.uk/radio2/soldonsong/guide/manage.shtml The Sold on Song pages tell you what to look for in a manager.	LAWYERS
<input type="checkbox"/> www.getsigned.com Tips and advice on the music industry – US based site.	<input type="checkbox"/> www.lawsociety.org.uk/choosingandusing/findasolicitor.law The Law Society
<input type="checkbox"/> www.musicjournal.org Music Business Journal A collaborative online resource about the entertainment and music industry	<input type="checkbox"/> www.iael.org International Association of Entertainment Lawyers List of music and entertainment lawyers in the UK and abroad and publications available
	<input type="checkbox"/> www.icclaw.com International Centre for Commercial Law A directory of UK legal firms plus legal news.
	<input type="checkbox"/> www.chambersandpartners.com Chambers and Partners A searchable online directory of UK legal firms with an indication of their speciality, success rates and what they charge.

MUSIC DEVELOPMENT AGENCIES/
SUPPORT NETWORKS

The following are examples of agencies which exist – search for your local agency using a search engine or by finding links from sites such as these	<input type="checkbox"/> www.mormusic.net More Music In Morcambe (MMM)
<input type="checkbox"/> www.manchester-music.org.uk Manchester City Music Network	<input type="checkbox"/> www.seta.org.uk Southern England Touring Agency (SETA)
<input type="checkbox"/> www.cids.co.uk Cultural Industries Development Service (CIDS) – Manchester	Arts Councils across the UK
<input type="checkbox"/> www.emmnet.org East Midlands Music Network (EMMNET)	<input type="checkbox"/> www.artscouncil.org.uk - England
<input type="checkbox"/> www.mmda.org.uk Merseyside Music Development Agency	<input type="checkbox"/> www.scottisharts.org.uk - Scotland
<input type="checkbox"/> www.welshmusicfoundation.com Welsh Music Foundation (WMC)	<input type="checkbox"/> www.artscouncil-ni.org - Northern Ireland
<input type="checkbox"/> www.hailmusic.com Highlands And Islands Labels (HAIL)	<input type="checkbox"/> www.artswales.org - Wales
<input type="checkbox"/> www.musicwestmidlands.co.uk Music West Midlands (MWM)	<input type="checkbox"/> www.directgov.uk Look under your local council for music projects and arts development.
<input type="checkbox"/> www.generator.org.uk Generator supports music enterprise in the North East	
<input type="checkbox"/> www.nemis.co.uk New Music In Scotland (NEMIS)	
<input type="checkbox"/> www.nimusic.com Northern Ireland Music Industry Commission (NIMIC)	

REGIONAL DEVELOPMENT AGENCIES

- ☐ Find your local RDA through www.englishsrda.com
- ☐ In Scotland – Scottish Enterprise through www.scottish-enterprise.com
- ☐ In Wales – Welsh Development Agency through www.wda.co.uk

BOOKS & MAGAZINES

- ☐ **Guide to Survival & Success in the Music Business**
The Association of Independent Music's guide to the business in an interactive CD-Rom format.
Available from www.musicindie.org - free to members
- ☐ **The Guerilla Guide to the Music Business**
Sarah Davis, David Laing
An introduction guide for artists and managers, covering most aspects of the music business, such as a 'Contracts & Agreements' section, which reproduces standard contracts.
Publisher : Continuum International Publishing Group - Academi
ISBN : 0826447007
- ☐ **Music : The Business - The Essential Guide to the Law and the Deals**
Ann Harrison
Publisher : Virgin Books
ISBN : 1852270136
- ☐ **The Music Management Bible**
Music Managers Forum
Publisher : Sanctuary Publishing
ISBN : 1844920259
- ☐ **I.M.F. (International Managers Forum) Handbook : A Guide to Professional Music Management**
Andy Allen, Andrew Forbes, Jef Hanlon, et al
Publisher : Sanctuary Publishing
ISBN : 1860742572

MORE TASKS

- 1 Find out how much a lawyer would charge to advise you on a simple management contract (10 pages long).
- 2 Find the name and contact details for a local manager who can help you find gigs, make contacts with record companies and maybe get you support slots with touring bands.
- 3 Find the name and contact details for a tour manager for a newly signed national artist.
- 4 Read at least 2 of the books from the recommended reading list.
- 5 Find the name and contact details for an agent who books artists for either
 - a. the club and pub circuit.
 - b. jazz events
 - c. weddings / functions
 - d. festivals
- 6 Investigate what training is available for managers via the MMF website



**WHAT
IS
COPYRIGHT?**



WHAT IS IT?

The music business is first and foremost a business like any other. Whilst it is fair to say you do need talent, that is not all you need. In order to succeed it is important for you to understand the nature of the rights that you are creating and how those rights can then be exploited in order to make money.

The types of copyright most relevant to you as a musician, songwriter or producer are

1. literary works (i.e. the lyrics of a song)
2. musical works (i.e. the music itself)
3. sound recordings (i.e. the Master)

WHY DO I NEED TO KNOW ABOUT THIS?

Copyright is an essential aspect of the music industry. If you write an original piece of music, then you have created a copyright work, which belongs to you and can be bought and sold.

If you know more about copyright, it will help you as a writer, producer or performer to understand the value of what it is you are creating and you can make money from your music.

Cautionary Note!

It is likely that you will not be able to understand everything in this chapter, certainly in the first reading.

Don't worry! Even seasoned industry professionals have difficulty with copyright and contracts. This is one of the reasons why musicians, managers, record companies and publishers all use lawyers and other professional business advisers.

Do not rely solely on information provided in this workbook! It is always advisable to seek independent professional legal advice when entering into any legal agreements.

YOU MUST HAND IN YOUR WORK BYTO



HOW LONG
should this assignment take?

Every person works at his/her own pace.
As a guide, this should take you 3 hours to read and research and another hour to write your answers and discuss them with your tutor.



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will I be assessed?

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WHAT
do I do now?

Read the TASKS section below to get an overview of this project.
Then read the NOTES AND GUIDANCE section for help.
Carry out the TASKS.

TASKS

1 What is the name of the legislation that governs copyright law in the UK?

2 Fill in the gaps.

What type of copyright work is this?
(Tick one or more boxes)

MUSICAL WORK

LITERARY WORK

SOUND RECORDING

The words to a hit musical

The theme music for ‘Eastenders’

Any album by the Beatles

The song ‘Brown Sugar’ by the Rolling Stones

3 Answer the following questions.

I can protect my copyright by writing © on the label.

True / False

I can protect the copyright in my song by posting a copy of it to myself in the post.

True / False

As soon as I have written down or recorded my song, the copyright is created.

True / False

4 What do the ‘restricted acts’ mean in practice?

5 Answer the following questions. Is this an example of copyright infringement? Why?

Someone takes a CD from their home collection, makes 1000 copies and sells them on the local market.

A remixer uses a small sample of a well known 1990’s recording in their dance remix. They have not cleared the sample with the copyright owner / s.

You upload all the music you have written in MP3 form onto your own website to sell downloads.

6 Give a practical explanation of how you should go about clearing a sample.

7 What do you understand by ‘Moral rights’. Write your explanation here.

8 If you have written the music and lyrics for a song, how long after your death does the copyright in your music and lyrics last?

NOTES AND GUIDANCE

COPYRIGHT - WHAT IS IT?

Here is the **LEGAL DEFINITION**:

"Copyright is a proprietary right given to the creator of an original literary, dramatic, musical or artistic work. Copyright is also granted to the creator of original sound recordings, films, broadcasts, cable programmes and typographical arrangements".

UK copyright legislation is found in the Copyright, Designs and Patents Act 1988 ("the Act").

What does this mean in practice?

If you have written a piece of original music, you have created a musical work

If you have written some original lyrics, you have created a literary work

If you make an original recording or 'master', you have created a 'sound recording'.

All these are examples of copyright works. Other examples of copyright works to be found in music include:

The libretto to an opera (a literary work)

An album by a pop group (a music work AND a literary work AND a sound recording)

The lyrics that you find reprinted in pop music magazines (literary work)



When does my work become copyright?

In the United Kingdom, copyright exists as soon as a work is set down in a “fixed” form - that means written down on paper or recorded onto tape / CD. There is no copyright in an idea, it has to be in a fixed form. If you have written an original piece of music, as soon as you put the music into a written form or recorded form, copyright is created at that moment.

Some countries such as the USA offer greater copyright protection if the song is registered, however in the UK there are no formal registration requirements.

It is a common misunderstanding amongst musicians that copyright is in some way "created" by posting a recording/manuscript of your music to yourself by Recorded and Signed For mail. This does not create the copyright but it is a useful way of proving (should you need to do so) the date upon which you created your work.

Another misunderstanding surrounds the use of the © symbol. The use of the symbol itself does not create the copyright. It simply acts as a notice to tell people that you are the copyright owner and should warn them not to copy your music without your approval.



How do you protect your copyright in a sound recording?

Your copyright is created as soon as you have set your music down in a fixed form. However you may want to prove that you are the copyright owner if there is a problem later on. The easiest way to do this is to send a copy of your music by 'Recorded and Signed For' mail to yourself or a professional person (such as a solicitor or bank manager) who can store it safely for you unopened. Use the © symbol with your name and date, only put one work in the envelope and mark that work outside the envelope.



You have a band name that you want to protect? What do you do?

Check with www.thebandregister2.co.uk or www.bandregister.co.uk. They will check to see if your name already exists. In general, a name would be awarded to a band who perhaps have traded for some time and who might suffer most on a financial basis. Example, a working cabaret band, who are performing three or four times a week and have been together for twelve months, would be favoured against a new act who have not as yet, started gigging.

Although copyright does not exist in a single name, the actual value in a band’s name and logo can be quite significant. Considering how much bands make from the sale of merchandise, it’s not surprising that an artist may wish to **trade mark** a name and logo to offer better protection.

You can register your band name and logo as a trade mark in the UK, but remember that this may cost hundreds if not thousands of pounds.

For more information on trade marks go to www.patent.gov.uk/tm/

It is important to understand that several copyrights can exist in a single piece of music or a song.

If you are the writer of the music and the lyrics: → You will be the first copyright owner of the musical copyright work and the literary copyright work.

If your song is then recorded and a master sound recording created, a third copyright is created: → The copyright in the sound recording. This is owned by the person "who made the arrangements necessary for the making of the sound recording."

Who owns the copyright in a demo sound recording? → Whoever ‘made the arrangements necessary for the making of the sound recording’. This may be the musicians themselves, or it may be the manager if they have made all the recording arrangements and paid for the studio. It could be the record company if they have paid for the recording, or a publishing company if (for example) they have paid for some demo recordings.

Who owns the copyright in a recording made by an artist under contract to a record company? → The copyright owner in the sound recording will almost certainly be the record company.

It is important to remember the distinction between the music and literary copyrights in the song and the copyright in the sound recording. Each of the copyrights can be owned by different people and generate different revenue streams.

**AS THE COPYRIGHT OWNER
- WHAT ARE MY RIGHTS?**

As the copyright owner, you have certain exclusive rights. These rights are referred to as the "restricted acts". The law allows you to prevent other people from copying, performing, broadcasting or adapting your work without your consent. If a person does copy a substantial part of your music without your consent this may constitute copyright infringement.

In practice, this means that if you have written a song (or part of a song) then your permission is required before anyone wishes to perform, record, copy or sell your music in any way.

COPYRIGHT INFRINGEMENT

If anyone copies or uses your work without your consent then this may constitute copyright infringement.

Infringement is when a substantial part of the work has been copied. There are no hard and fast rules about exactly what "substantial" means.

A popular example of copyright infringement is the use of samples. When sampling music, you should seek the consent of all the copyright owners regardless of the length of the sample. If the sample is recognisable from the song or recording that it has been taken from, it is likely that this will be copyright infringement even if it is just a few seconds long.

If someone has infringed your copyright, you will be entitled to a number of legal remedies:

an **INJUNCTION** to prevent the infringer from continuing to use your music or recording

an order for **DELIVERY UP** of the infringing copies (i.e.) you will be able to take possession of all records, tapes, demos, CDs that contain samples of copies of your music or recording

DAMAGES

However remember that you will need to spend money on a lawyer to do this.

THINK ABOUT THIS IF YOU INTEND TO USE SAMPLES!!



Many people frequently say "the rule is you can use 30 seconds for free". This is wrong.

PRACTICAL GUIDE TO CLEARING SAMPLES

If you want to release a recording commercially, it is vital that you clear the use of any sample that you have included.

You will need to get clearance from the owners of the copyrights in both the sound recording and the song itself. If a record has been released in the UK, you can contact MCPS who will have up to date information about the copyright owners and can also talk you through what steps you need to take to get your sample cleared.

You could also pay a specialist sample clearance company to do this for you, but it will cost several hundred pounds.

When you do contact the copyright holder(s), send them your track with details of where the sample is - tell them how and where you are going to release it and how many copies are being released. Make it easy for them to get back to you and make a decision. You will need to agree how any royalties will be split and they may ask for an advance

Don't leave it too late – if you release a record with an uncleared sample in it, the copyright owners may sue you for copyright infringement, stop the record from being released (an injunction) or demand a substantial part of your income from that release.

See 'More Information' for links to useful websites.

MUSIC ON THE INTERNET

With the advent of mobile phones, MP3 files, Napster, iTunes and other online music services, the way people consume music has changed forever.

In the digital world, the same rules of copyright apply. The downloading or other use of music from the Internet must be authorised by the copyright owner in the same way as any other distribution method. Unauthorised copying is a "restricted act" under the Act and will constitute infringement if "substantial" Any use of copyright works on a web site should be licensed (authorised) by the copyright owner.



In 2003, The Recording Industry Association of America (RIAA) took legal action against hundreds of individuals who had been using internet file-sharing programs such as Grokster and Kazaa. They did this in an effort to deter the entire population from using these services and getting music for free.

Also, a number of highly successful artists separately pursued file share users as they were concerned about the impact on their record sales.

RELATED RIGHTS

There are other ‘related rights’ that you need to be aware of.

MORAL RIGHTS

As the creator of the copyright, the law also gives you further rights which are referred to as "moral rights".

The right of paternity is simply the right to be credited as the composer of the work.

The right of integrity is the right to prevent any derogatory treatment of your work. For example, if someone sampled your work without your consent, you may also consider they had in some way prejudiced your reputation. In this case, you may be able to bring a claim for breach of your moral rights. If the sample is substantial, you may also be able to bring a copyright infringement claim.

Eminem sued Apple Computer in a copyright infringement lawsuit filed in Detroit in February 2004, claiming that it used one of his hit songs, "Lose Yourself", in a TV advertisement without permission.

PERFORMANCE RIGHTS

The law also gives rights to performers in respect of their live performances and also in relation to the recordings made of their performances. As a general rule a recording of a performance cannot be exploited without the consent of the performer. Performance rights are separate and different from copyright or moral rights. Performance rights are in addition to and independent of any copyright in or moral rights relating to any work performed or any sound recording of the performance.

There is a distinction between:

- 1. the right that a performer has in his performance;
- and
- 2. the right of a copyright owner to prevent the public performance of his work.

The legal definition of a "performance" is:

- (a) a dramatic performance
- (b) a musical performance
- (c) a reading or recitation of a literary work
- (d) a performance of a variety act or similar presentation

Examples of those who have rights in their performance:

- musicians
- actors
- dancers
- singers
- news presenters

The Rental Directive has introduced the right for performers to receive payment for the exploitation of their performance when it is broadcast or shown to the public.

The Rental Directive “requires that performers are remunerated for broadcasting or other communication to the public of commercially published sound recordings of their performances”

CASE STUDY

A Session Musician who plays on a track in the studio

Performance rights are particularly important to session musicians who are unlikely to have any copyright in the music they perform. A session musician actually has rights in his/her performance.

Session musicians are able to sign up directly with the PPL (or a Performer organisation such as AURA and PAMRA) and collect income from the exploitation of their performance on the recording.

For more information on claiming payments from PPL, AURA and PAMRA

➤ WORKBOOK 8 – BUSINESS AND MONEY
– CHAPTER 3

DURATION OF COPYRIGHT

For musical or literary work, copyright lasts for 70 years after the end of the year of the death of the author.

Sound recording copyright lasts for 50 years from the year the recording was made or released.

Once copyright has expired, a work or recording becomes ‘out of copyright’ and falls into the ‘public domain’. This means that the work or recording is no longer protected and can be copied freely by anybody.

There are different durations in different countries.

EXPLOITING YOUR COPYRIGHT MAKING MONEY OUT OF YOUR MUSIC

Once you have created a copyright work, copyright law allows you to control the exploitation of your music. As the first copyright owner you are able to exploit your rights by entering into either licence agreements or assignments with third parties.

It is the rental or sale of your copyright that will make you money and entitle you to the payment of royalties. Even if you are not a writing member of a band, the law gives you rights in your performance which allows you to prevent or restrict the exploitation of your performance and entitles you to fair compensation in the event that your performance is commercially exploited.

When you assign your rights, you sell them

An assignment is a complete "buy-out" of your rights. You sell all your rights. You will cease to have any rights.

When you license your rights, you rent them

A licence on the other hand can take many different forms and is basically an agreement where you allow somebody else to use your rights for a limited purpose and for limited time. With a licence you maintain ownership of the copyright at all times.

In practice, this means that you may deal with one or more of the following organisations:

**PUBLISHING COMPANY
RECORD COMPANY.
COLLECTION SOCIETY**

Go to CHAPTER 3 Workbook 8 and find out more about the ways in which you can work with business organisations and collection societies to exploit your copyrights.

WANT TO KNOW MORE?

LINKS

New Deal for Musicians has no responsibility for or control of the following sites. The inclusion of any site does not necessarily imply New Deal for Musicians approval of the site. To access any of the sites please click on the link or search using keywords from the name of the link.
www.dfes.gov.uk/ukonlinecentres/ Find Internet access that's close to you.
Also look at weblinks in workbooks 1 and 2.

GENERAL COPYRIGHT AND INTELLECTUAL PROPERTY

- ☐ **www.bmr.org**
British Music Rights
Campaigns for the protection of music copyrights at national and European level, particularly in relation to new technologies.
- ☐ **www.bpi.co.uk**
British Phonographic Industry
BPI represents the UK record industry and campaigns against piracy.
- ☐ **www.ifpi.org**
International Federation of the Phonographic Industry
Represents the recording industry worldwide and campaigns against piracy and for trade.
- ☐ **www.wipo.org**
World Intellectual Property Organisation
The 'General Information' section of this massive web resource on Intellectual property features a useful section dedicated to SMEs.
- ☐ **www.patent.gov.uk**
The Patent Office
The official body for the granting of patents and for the registration of designs and trade marks in the UK.
- ☐ **www.iapu.org**
International Anti-Piracy Tool - SONGBIRD
Free, anti-piracy internet software that helps music copyright owners find out how their music copyrights are being infringed in the online world.
- ☐ **www.musictank.co.uk**
Music Tank – keep up to date with news plus links to helpful sites.
- ☐ **www.musiciansunion.org.uk**
Musicians' Union – advice on copyright issues.

COLLECTION SOCIETIES

- ☐ **www.prs.co.uk**
Performing Right Society
Collects monies from the broadcast and public performance of music, on behalf of its members who are songwriters, composers and publishers.
- ☐ **www.mcps.co.uk**
Mechanical Copyright Protection Society
Collects monies from record companies and any other business that embeds music in a sound bearing device (eg. toys, computer games, greeting cards, films and TV programmes) on behalf of members.
- ☐ **www.ppluk.com**
Phonographic Performance Limited
PPL collects a royalty for the broadcast use and public performance of recording.
- ☐ **www.vpluk.com**
Video Performance Limited
VPL is a sister company of PPL. It licenses and collects royalties from the use of music videos for broadcast and public performance.
- ☐ **www.pamra.org.uk**
Performing Artist' Media Rights Association
PAMRA is the collection society for performers, collecting monies from the public broadcast of their recordings in the UK and qualifying territories overseas.
- ☐ **www.aurauk.com**
Association of United Recording Artist
Represents and advises UK professional recording artists, performers and studio producers.
- ☐ **www.era.org.uk**
The Educational Recording Agency Ltd
ERA licenses, and distributes revenue from, the recording and use of radio and television programmes for teaching and educational purposes.
- ☐ **www.cisac.org**
International Confederation of Authors and Composers
CISAC is an international organisation regrouping authors' societies in 103 countries (UK music industry members are PRS and MCPS). It aims to improve the collective administration of authors' rights worldwide
- ☐ **www.biem.org**
International Bureau of Societies Administering the Recording & Mechanical Reproduction Rights
BIEM is an international organisation representing the interests of mechanical rights administration societies in 38 countries. Its UK member is the Mechanical-Copyright Protection Society.

- ☐ **Sample Clearance**
You can clear samples yourself – find the copyright owner through www.mcps.co.uk or search for a specialist clearance company using a search engine.
- ☐ www.bbc.co.uk/radio1/onemusic/legal/sample01.shtml
Advice on sample clearance from the BBC One Music site.
- ☐ Information on trade marks
www.patent.gov.uk/tm/
- ☐ Register your band name
www.thebandregister2.co.uk
- ☐ www.bandname.com
- ☐ www.bandregister.co.uk

BOOKS AND MAGAZINES

See those listed in chapter 1 and in workbook 1, chapter 2.

- ☐ **M Magazine**
The magazine of the MCPS-PRS Alliance – available to members.
See www.mcps-prs-alliance.co.uk
- ☐ **Music and Copyright**
Simon Frith, Lee Marshall
Publisher : Edinburgh University Press
ISBN : 0748618120
- ☐ **All You Need to Know About the Music Business**
Donald S. Passman
Publisher : Simon & Schuster
ISBN : 0743246373
- ☐ **Making Music with Samples: Tips, Techniques, and 600+ Ready-to-use Samples**
Daniel Duffell
Publisher : Backbeat UK
ISBN : 0879308397

MORE TASKS

- 1 You want to use a sample from an established recording artist. Follow these steps to find out how it's done.
Choose a recording which you want to sample
Read the One Music guide to clearing samples
- 2 Read workbook 8, chapter 3 to learn more about how to use copyright to earn you money.
- 3 Find out more about licensing works for specific purposes –
Where can you find information about licensing music for an educational film for children?
Where can you find information about licensing music to put to an advertisement video?
Where can you find information about covering a friend's track on your demo album?
- 4 Find out how the following legal download sites work and what their terms and conditions are:
Napster
MP3.com
Apple iTunes

How many copies of each track you pay for can you make?
What are the restrictions on using, playing or storing the track?
- 5 Research Intellectual Property in other artistic works – for example, in:
A logo you design for your band or business
A t-shirt you have printed up to sell at gigs
A video you have made of a recent gig which features other bands as well as your own

MUSIC INDUSTRY CONTRACTS

PUBLISHING
AGREEMENT

PRODUCTION
AGREEMENT

TELEVISION
AND RADIO
APPEARANCES

LICENSING
AGREEMENT

MERCHANDISING
AGREEMENT

MANAGEMENT
AGREEMENT

AGENCY
AGREEMENT

VENUE OR
PERFORMANCE
AGREEMENT

PRODUCERS
AGREEMENTS

SYNCHRONISATION

RECORDING
AGREEMENT



WHAT IS IT?

A music industry contract is like any another contract. It is a formal business agreement between two or more parties. This chapter offers an overview of the various types of music industry agreements.

WHY DO I NEED TO KNOW ABOUT THIS?

As you progress through the music industry it is likely that you will enter into legally binding contractual relationships with other parties. A contract could be oral or written. It could take the form of a 50 page complex agreement or a simple one page letter.


If you are entering into business agreement with other people, it is important that you have a basic understanding of the different types of agreement and the broad range of issues that are involved.

Cautionary Note!

It is likely that you will not be able to understand everything in this chapter, certainly in the first reading.


Don't worry! Even seasoned industry professionals have difficulty with copyright and contracts. This is one of the reasons why musicians, managers, record companies and publishers all use lawyers and other professional business advisers.

Do not rely solely on information provided in this workbook! It is always advisable to seek independent professional legal advice when entering into any legal agreements.




HOW LONG
should this assignment take?

Every person works at his/her own pace.
As a guide, this should take you 3 hours to read and research and another 3 hours to write your answers and discuss them with your tutor.



HOW
will I be assessed?

Your tutor will assess your work. He / she will give you feedback on how you have done. If your work needs further work to be passed, then you will be given the chance to do further work to bring it "up to scratch". For more details, please refer to your MOLP's own guidance.



WHAT
do I do now?

Read the TASKS below.
Then read the NOTES AND GUIDANCE section in Chapters 3 and 4.
Carry out the TASKS.

1 Write down 6 examples of contracts (or agreements) used in the music industry.

2 Fill in the gaps, using some of the words below.

A RECORDING AGREEMENT is between		and	
A MUSIC PUBLISHING AGREEMENT is between		and	
A MANAGEMENT AGREEMENT is between		and	
A PRODUCTION AGREEMENT is between		and	

Record label, management company, writer / composer, music publisher, venue, production company, artist, producer, promoter.

3 Answer the following questions.

If I am offered a recording contract, I should use the same lawyer that represents the record company.	True / False
I can get free legal advice if I am a member of the Musicians Union.	True / False
I should use a lawyer who is experienced in the music industry.	True / False

4 Answer these questions about **MANAGEMENT AGREEMENTS**:

What is meant by 'The Term'?

If you are signed 'exclusively' to a manager, what does that mean in practice? What is a typical management commission?

When should you not pay any management commission?

5 Answer these questions about **RECORDING AGREEMENTS** :

What is a recoupable cost?

Give three examples of recoupable costs?

What is a royalty?

6 Answer these questions about **other types of agreements** :

Name the two parties that sign up to a music publishing agreement.

What is a license?

What does a synchronisation deal involve?

TASKS CHAPTER 4 GROUP AGREEMENTS

7 Give three examples of partnership assets.

1)

2)

3)

8 Answer these questions about band agreements :

Name one benefit of incorporating a company rather than creating a partnership as the business vehicle for a band.

Name one drawback of forming a limited company.

NOTES AND GUIDANCE

WHAT IS A CONTRACT?

Generally contracts are in writing but this is not necessary. Terms that have been agreed orally also form a valid legal contract - however oral contracts are more difficult to enforce as it is usually a case of one person's word against the other. This is why it is always better to get something in writing even if it is a simple letter setting out the key points of what has been agreed.

There are many agreements that as a musician, writer, producer, DJ or performer you may have to consider and enter into. These include:

1. **MANAGEMENT**
2. **RECORDING**
3. **PUBLISHING**
4. **AGENCY**
5. **VENUE**
6. **MERCHANDISING**
7. **PRODUCTION**
8. **TELEVISION AND RADIO APPEARANCES**
9. **SYNCHRONISATION**
10. **PRODUCER**

The more successful you are, the more likely it is that you will encounter all of the above types of agreements. When entering into any kind of contractual arrangement that you do not understand, you should take specialist advice.



TIP

Free advice can be obtained from The Musician's Union (if you are a member) and the various collection societies such as the PRS and MCPS are usually happy to explain how things work.

If seeking legal advice from a solicitor, you should ensure that you choose a solicitor that is experienced in the music industry. Your MIC (Music Industry Consultant) or MOLP adviser should be able to help you with this. Ask people within the industry to recommend someone. The Musicians Union, the PRS, the Law Society, and the Music Week Directory are all sources that will be able to give you details of specialist music solicitors. Personal recommendation is always good. It is also important to shop around and make sure you are dealing with professionals that you feel comfortable with and that speak your language.

You should also assure that the advice you are given is independent. So for example, if you are signing a Management Agreement, you should not really be taking advice from your Manager's solicitor. It is important that you have your own solicitor who will look after your own personal interests.

MUSIC AGREEMENTS

Outlined in the following pages is an explanation of the most popular types of agreement. These are explained in more detail together with an explanation of some of the key industry terms and jargon frequently used.

SYMBOLS USED



ARTIST



MANAGER



RECORDING
COMPANY



PUBLISHING
COMPANY



PRODUCTION
COMPANY



AGENCY



MERCHANDISE
COMPANY



PRODUCER

MANAGEMENT AGREEMENT

BETWEEN ARTIST & MANAGER



This is an agreement between you (The Artist) and the person or company who agrees to develop and guide your career. The management of your affairs will include the negotiation of all other music contracts and the engagement of other professionals to assist you such as agents, promoters and tour managers. In return for managing your affairs, your Manager will expect to be paid a commission based upon your earnings.

The Manager will usually require a commission of about 20% of the artists "gross earnings" (This is your total earnings).

From an artist's point of view here are the key things to look at when considering your management deal:

How long you are committed for?

The length of the contract is referred to as the "Term". You need to make sure that you are happy with the length of the deal and what provisions are in the contract to allow you to get out of it, if you are not happy with the representation you are getting. As a general rule, particularly if you are unsure as to the experience of your manager, it is best to try and limit the contract to a few years. So for example, you could have a one year term with an option to extend it for future years. A key point here is that if the management failed to achieve anything for you within a specified time period, you should be able to get out of the deal and go elsewhere.

Is it exclusive?

It is important to understand that when you sign an exclusive management deal with a Manager or management company you are making a legal commitment that allows those Managers to represent you exclusively for a stated period of time. Whilst it may be possible to get out of the contract at a later date, this is not always easy and can often involve a great deal of expense. This is why it is best to have a short term which can be renewed so that both parties can see how it goes and get out if they are not happy.

What will the manager do for you?

It is also important to establish in writing what the Manager says he/she will do for you. So for example, if you meet a potential manager who claims he/she will be able to sign you up with a major record company without any problem, you should include this in the terms of the contract. You could agree the management contract on the basis that if the manager fails to secure a recording contract for you with a major record company within the first 6-12 months, you will have an option to terminate the Management Agreement.

Can the manager spend money in your name?

Many management contracts allow your manager to freely spend money in your name. If you are not careful a rogue manager could end up spending a great deal of money on your behalf, perhaps even without your knowledge, that you will ultimately be liable to repay. It is therefore important to ensure that the clauses within your contract relating to expenditure include some kind of provision to ensure that you are kept regularly informed as to what money your manager is spending on your behalf. You should also be able to have the right to approve expenditure over an agreed amount.

CHECKLIST FOR MANAGEMENT AGREEMENTS

	COMPLETED
Seek independent professional legal advice	Yes / No
Check how long you are committed for.	Yes / No
Make sure you specify exactly what the manager gets a share of and the extent of how they will be representing you.	Yes / No
Seek to limit this particularly if you have potential income from a variety of other sources (for example acting, teaching, producing, and so on).	Yes / No
Check whether your manager is entitled to a continued commission after he ceases to manage you.	Yes / No
Consider a limit on the amount of money your manager can spend on your behalf (the expenses) and consider joint signatures between members of the group / act and the manager, if you have any serious doubts.	Yes / No

FREQUENTLY ASKED QUESTIONS ON
ARTIST MANAGEMENT

Would I sign a management contract for the UK or world-wide?

Established major management companies would want world-wide representation. If the manager is inexperienced in international music business dealings or if you are at an early stage in developing your career, you may wish to contract for the UK only (possibly extending to Europe – based on performance).

What is the manager’s role and what are management responsibilities?

To administer your day to day business affairs, get work for you and negotiate contracts in an effort to develop and promote your career and maximise your income

How long should a management contract last?

In general, contracts vary from between one and five years. Normally an established manager may start with three years and have the option to extend to five. A trial period is recommended. You may wish to include some performance targets (for example, a recording agreement to be found within eighteen months of start-up)

What is a reasonable management commission?

Depending on what the manager does for you, the common rate is 15-20%, this may be reduced to 15%, even 10% if the job entails administration for an already established act (say as their second manager).

What happens when the agreement expires or is prematurely terminated?

If the agreement comes to a natural ending, the manager may still be entitled to a continued commission, in respect of contracts signed or recordings made within the duration of the management agreement. Sometimes the continued commission is at a reduced rate. You should ensure that any right to continuing commission has a cutoff date when the commission stops.

TIP

Managers should keep separate bank accounts for band income and a proper set of books relating to money received and spent. You should have the right to inspect these accounts.

Managers normally charge 20% of gross earnings – but there are times when it is appropriate to pay a manager based on net earnings.

Income from live performances:
If the Manager was to take 20% of gross, this may leave you in debt should the tour run at a loss. It is best to pay the manager a share of net profit in respect of tour income.

Also there should be no management commission payable upon record royalties which are retained by the record company in recoupment of any recording costs, the same would apply in connection with costs paid by the artist towards videos or tour support, all of which would be recoupable expenses by the record company.

If you have any doubts over who pays for the many goods and services such as travel, hotels, backstage drinks, taxis, accountant bills, promotional videos and guitar rigs, assume it's on your tab!

FANCY A CAREER AS A MANAGER?

You may find that your skills are suited to management. You may be business minded, have good communication skills and can find solutions to problems. You will also be adept at dealing with creative people like musicians and songwriters, and have clear ideas and vision about which directions to take.

The Music Managers Forum is a membership organisation that offers benefits such as training, information, advice and networking opportunities. They lobby on behalf of artists and managers in the music industry and they also publish an excellent book on music management.

➤ See the links at the end of this chapter for more details.

RECORDING AGREEMENT

BETWEEN ARTIST & RECORDING COMPANY



The parties to the Agreement will be a record company and a recording artist. The agreement provides that the artist should provide its exclusive recording services to the record company for a specified period of time. The record company will own the sound recordings produced and will be entitled to exploit the rights in the recordings.

The artist usually receives an up front payment known as the "Advance" and an ongoing royalty (share of revenue) based upon the number of records sold. The type of record deals available differ hugely depending on the track record of the artist and record company involved. The principles however are the same.

Duration or ‘Term’

As with the Management Agreement, look to see what the duration or ‘Term’ of the contract is and what your commitment to the record company is. The "minimum commitment" clause sets out how many albums or singles you will be expected to deliver to the record company. The company will expect you to assign all your rights in the recording to the company.

Advance

The advance that is paid to the artist will be offset against record royalties earned under the contract, therefore the artist will not receive any royalty payment until his advance has been fully recouped. This is known as recoupment and the advance is usually referred to as a "recoupable advance". It is important to note however that the advance should only be recoupable from the artists record royalties. There should be no liability on the artist to repay the advance if the artist does not generate enough royalties to repay the advance.

➤ See P70 ‘Advances and Recoupment’

Recoupable costs - What do I have to pay back to the record company?

Recoupable costs are those costs that have to be paid back to the record company from any royalties earned by the artist.

➤ See P70 ‘Advances and Recoupment’.

CASE STUDY

In the George Michael case against Sony one argument George Michael raised against the alleged unfairness of his contract with Sony was the fact that although he had repaid Sony the recording costs of his albums in full, under the terms of the contract Sony were entitled to retain full ownership of the copyright in the sound recordings. George Michael was unsuccessful and the industry “norm” is still that all of the major record companies will insist on retaining all of the copyright in the sound recording for the full term of copyright (see previous chapter – Duration of copyright’) even if the recording costs have been fully recouped.

Royalties

A royalty is a payment based on a share of the income that your work has generated. For example, if you signed to a record label as an artist, you would be entitled to a share of the income from those record sales. A recording agreement specifies what level of royalty to expect, which is usually expressed as a percentage of the dealer price of every record that is sold. More on this in workbook 8.

Release commitment

A recording contract should include an obligation on the part of the company to release the artists recordings, otherwise the artist may be obliged to deliver recordings that could then sit on the shelf if the record company decides not to release them. The contract should therefore state that the recordings should be released within a stated time period after delivery and if the recordings are not released within the specified time the rights in those recordings should be given back to the artist. This is known as "reversion of rights".

CHECKLIST FOR RECORDING AGREEMENTS

Key points to check if you are offered a record deal	COMPLETED
Seek independent professional legal advice	Yes / No
Check the duration or ‘term’ of the deal Recording contracts are often made up of an initial period, usually one year or one single/album, followed up with a number of options for further years/albums. Options give the company 'first refusal' on further product. Advances and royalties should increase as each successive option is taken up.	Yes / No
Minimum Commitment Check what your minimum commitment to the record company is. (For example, how many recordings you have to ‘make for release’ per year).	Yes / No
Check what your advances and other recoupable costs are. (see P70 – advances)	Yes / No
Royalties Check your percentage royalties on sales. Are you getting paid against 100% of sales or less?	Yes / No
Check which territories you have signed for.	Yes / No
Release commitment It may seem obvious but check that the record company actually has a commitment to release your recordings.	Yes / No

FREQUENTLY ASKED QUESTIONS ON RECORDING CONTRACTS

Does the record company have to release the records I make?

Generally yes, if you have a guaranteed release commitment in the contract. However, if they are not completely convinced of its viability, they are unlikely to want to spend money putting out a record which in their opinion has no chance of success. In this case, they may elect not to accept the master recordings.

Will the record company want worldwide rights?

In most cases, yes. Major labels and many independents will want the rights for the world. This situation changes when you sign to a smaller independent without an international track record or when you are an act that is already established. If this was the case, you might give UK rights only. (The record companies make money by signing your rights for the world, then licensing to different territories such as Germany, Japan and the USA)

Should I sign for one album or more?

Do not be fooled into thinking a six album deal is better than a one album deal. If the first release flops or does not make money for the company they will have the option to not record the subsequent five.

If I get dropped by a label, is my career over?

Not at all. There are many examples of recording artists who are dropped by one label only to be picked up by another and go on to great success. There are numerous factors involved when an artist is dropped from a label. One of the most common reasons is that a key member of staff leaves the record company and the act no longer has its flag bearer within the organisation.

Each recording agreement is different. For example, it could be an exclusive deal, A licensing deal (see later) or a development deal. ➤ See the links in ‘More Information’.

PUBLISHING AGREEMENT

BETWEEN ARTIST & PUBLISHING COMPANY



This is a contract between a writer or composer and a music publishing company. The music publisher is responsible for

Finding, developing and supporting writing talent

Registering works with the royalty collecting societies

Tracking, collecting and distributing royalties

Promoting and marketing the music in its catalogue

Licensing and monitoring all uses of the music in its catalogue

Editing and producing performance materials and printed music or licensing others to do so

Commercial exploitation of the copyright in the music and lyrics of the song.

Whilst the MCPS and the PRS collect this income in the UK and it is possible for an artist to simply become a writer member of those particular organisations and receive their income directly from the collection societies, there are several reasons why an artist usually engages a publishing company.

Publishers often pay annual advances to a songwriter against future royalties.

Many songwriters are not also performers and in this case the publishing company will use their industry contacts to sell the songs to well known artists who will perform the songs or place the music in a TV advert or TV programme.

If the songwriter is a performer but does not yet have a recording contract the publishing company will then be able to use its contacts to help secure a recording deal.

Each deal is different but a writer could expect to sign up with a publisher for 1- 6 years. A typical deal might be where you receive 70-80% of your publishing income and have to sign your copyrights away for up to 15 years.

CHECKLIST FOR PUBLISHING AGREEMENTS

Key points to check if you are offered a publishing deal

COMPLETED

Seek independent professional legal advice Yes / No

Check how long you are signed as a writer to the publisher and how long your copyrights are retained for. Yes / No

Check if you have to make a minimum commitment, for example, how many songs you have to write per year. Yes / No

Check what your advances and other recoupable costs are. Yes / No

Royalties Check on your 'split' of the earnings. (for example 70 / 30 or 80 / 20) Yes / No

Check which territories you have signed for. Yes / No

**FREQUENTLY ASKED QUESTIONS
ABOUT MUSIC PUBLISHERS**

Do you need a publisher?

If you have written or co-written any music which appears in recorded form or is broadcast or performed to the public, it is worthwhile thinking about a publishing deal. Remember that you can receive royalties directly from MCPS and PRS in the UK - you do not need a publisher to do this for you.

What does the publisher do?

The publisher should register your work with the appropriate collection agencies and generally promote your songs. Promoting your songs may include ‘placing’ them with other artists, getting them recorded (covered) by other artists, getting them synchronised to film or TV commercials, and helping to promote any recordings released by the writer. A publisher may also help the writer find a recording deal if they are also a performer.

There are other types of publishing deal, for example the administration deal, the sub-publishing deal, the single song assignment – as well as the exclusive publishing deal. See in the More Information section for links.

**INDEPENDENT
RECORD LABELS**

There are many hundred of independent record labels in the UK. They range in size, from tiny one-man-band operations to quite large businesses. They offer an alternative to the 'majors' and the bonus often perceived by the artist includes closer contact with the label in his or her development.

It is worth noting that some independent labels are often funded by, and ultimately controlled by major companies. They will, however, not have as many artists on their roster and will usually provide a more focused and personal approach. Independents are unable to offer large advances and often suffer a financial handicap in terms of marketing spend and perhaps the wealth of contacts that a major label enjoys.

Major record companies tend to favour artists who already have some success and an established fanbase. Sometimes, a major label will buy an independent label to get hold of their artists – the independent label does the development work to build up the act, then the major comes in with greater resources.

The Association of Independent Music (AIM) looks after the interests of independent labels in the UK and is a powerful lobbying organisation for the independent music industry.

**MUSIC
PUBLISHING COMPANIES**

British music publishers come in many shapes and sizes – there are a small number of majors (which operate quite separately from their ‘sister’ record labels), independent pop publishers, publishers specialising in production / library music or printed music and classical publishers. The type of agreement and relationship that a writer or composer has with his / her publisher will vary according to the individual and company concerned and it is not unusual for a publishing deal to be secured in advance of a record contract.

The Music Publishers Association [MPA] looks after the interests of all music publishers based or working in the UK and exists to safeguard and improve the business and legal environment within which its members are operating.

CASE STUDY

ROB

Indie label manager

Let's look at someone who became an Indie label manager.

Rob is the manager of an independent record label based in Manchester. From science graduate to club promoter, he landed in the job by accident and with little experience. But by involving himself in the local scene and though a ton of musicians and industry folk, he gained some valuable insight. After taking a web design course he took some work experience at a label, created his own job there and soon decided to branch out on his own.

Now his days are filled with updating the labels website, mail orders, shipping to distributors, liaising with distributors, getting stock manufactured, dealing with press enquiries, organising press for artists and arranging live shows. As with all small labels the lack of funding means limited resources and doing a bit of everything is common practice, mailing out 600 hand-filled envelopes of promo CD's can also be a label managers responsibility. But on the other hand hearing new music first hand makes up for all the tedious work.

TIP

Experience is key

You should be willing to work for free for a small period of time. Don't write to a bunch of labels and hope one of them will employ you. Find out EVERYTHING you can about someone you want to work for, the personal touch looks far better.



LICENSING AGREEMENT

USUALLY BETWEEN ARTIST AND RECORDING COMPANY OR BETWEEN TWO RECORDING COMPANIES



What is a licence?

A license is an agreement to loan the rights in your recording to another company. They will market and distribute your recording and in due turn, pay you a share of sales. An international license is when you loan your rights to a company in another territory (country or group of countries).

How will it differ from a distribution deal?

The licensee (company) will normally give you an advance (usually a small loan against future sales) and they will manufacture and market your recordings based on the masters and artwork you licence to them. With a distribution deal, you would supply all finished product and even help with the marketing.

How long will a licence last for?

A license can last any period of time.

What are the benefits?

The principal benefit is that you retain ownership of the sound recording. If you are licensing internationally, the benefit is that you have local companies which will work your product in their own territory because they want to (rather than being obliged to do so). Effectively your possibilities are extended with so many countries to exploit.

And another thing! (exclusive/non-exclusive)

You can demand non-exclusive licences for your product on-line and in traditional release format, this leaves you in control, with ownership of your rights and with greater freedom of choice.

What’s the norm?

A licence for a recording might fetch an average £1000 advance (often less) and an average 20% earned from retail sales. It is though, completely negotiable!

AGENCY AGREEMENT

BETWEEN ARTIST & AGENCY



This is an agreement made between the artist and a company to find live work including tours. The agent’s fee will range from to 10-20%. The contract might run for a year with an option to extend. The territories may also be split (i.e. you can contract with an agent to represent you only in the UK, whilst you may employ other agents for different territories of the world).

VENUE OR PERFORMANCE AGREEMENT

BETWEEN ARTIST & VENUE



When you organise a live gig, you may be asked to sign an agreement to perform at a certain place, date and time in exchange for an agreed fee. The formula may include a guarantee (i.e. a fixed payment) plus a percentage of ticket sales, a straight fee or an agreed split of the door takings. Negotiated extras may also be included in a "Rider". This ranges from specified free food and drink, free admission, guest lists, hotels and bonuses for a large audience to flowers and sweets etc. The Rider is usually an integral part of the venue contract, often negotiated via the agent.

PRODUCTION AGREEMENT

BETWEEN ARTIST & PRODUCTION COMPANY



A production agreement can resemble a recording agreement in some ways.

A production company may develop an artist, getting them to the stage where they can secure a record deal. They are doing part of what a record company does, but not taking all the risk involved with marketing and promoting the music.

Another type of production deal may be offered by a recording studio or manager, offering the act free studio time and/or expertise in return for a share of future success. Some production deals extend to making and releasing records in the form of an independent record deal.

The production company will earn money through a royalty or one off payment (also referred to as a finders fee) if they introduce a recording or publishing deal.

The rights in the master recordings will remain with the production company. Studio owners may also ask you for a reasonable undertaking to re-record with them when successful.



Agree the recording bill in advance, get a copy of the recording and agree a contingency for the safe return of masters in the event of no deals being struck.

MERCHANDISING AGREEMENT

BETWEEN ARTIST & MERCHANDISING COMPANY



Artists in the early stages of their career tend to create and sell their own merchandise (for example, T-shirts) at gigs as a valuable source of additional income. Profit margins can sometimes outsell records many fold. Later on, a group may wish to either set up a merchandising company to make and distribute goods or to contract with an official merchandising company. A contract would normally be negotiated for a fixed period and would involve the merchandiser advancing a sum to the group (to be reclaimed at future sales) and sharing the profits from sales having first paid the manufacturing costs and distribution.

TELEVISION AND RADIO APPEARANCES

BETWEEN ARTIST & TV OR RADIO PRODUCTION COMPANY



If you are performing on a television or radio programme you will be asked to sign a short contract which is known as a “Release and Consent”. This document basically gives your consent to the television or radio company to record and broadcast your performance.

SYNCHRONISATION

BETWEEN COPYRIGHT OWNERS (SONGWRITER, PUBLISHING COMPANY, COPYRIGHT OWNER OF SOUND RECORDING, RECORDING COMPANY) & FILMS, TV, VIDEO COMPANIES etc. - WHO WANT TO USE THE MUSIC



“Synchronisation” is the combining of recorded sound with visual images, for example music used in films, TV programmes or videos. Before the music can be used with the visual images a synchronisation licence must be obtained from the copyright owner/s of the music and lyrics (the writer/s or his/their publishing company) and the copyright owner of the sound recording (the record company)

Synchronisation deals offer writers and indeed artists a valuable income and promotional boost when the music is linked to a credible commercial or film.

PRODUCERS AGREEMENT

BETWEEN PRODUCER AND RECORDING COMPANY



Record producers use agreements in the work they do for record labels and artists. Important points in the contract would include :

Who will pay costs and when?

‘There are two types of Music Producer deals. These are generally referred to like this:

‘Costs deal’ – with this type of deal the producer is paid an advance fee, which is generally recoupable against royalties. The record company will pay all of the studio, musician and equipment hire costs. This type of deal is common in the Rock and Jazz genres.

‘All-in deal’ - with this type of deal the producer is paid everything as one lump sum and the Producer has to pay themselves and all other costs incurred. Only part of this fee will normally be recoupable against royalties. This type of deal is common in the Pop and Dance genres.

These fees are normally paid by the Record Company, 50% on commencement of recording and 50% on completion and delivery.

How many tracks, with what versions and on what format?

In the Rock and Jazz genres the Producer will generally record and mix the whole album. In the Pop and Dance genres, Producers will often only record and mix 4 songs. The main versions delivered to the Record Company are the Radio version, a Backing track version with no lead vocal and an Instrumental version. Formats vary from half-inch analogue and DAT through to all types of stereo audio files on data cd’s and DVD’s.

What is the deadline?

Deadlines are negotiable and flexible, they are rarely written down or contracted.

Who will sort out contracts and label copy?

Contracts are normally negotiated between the Producer’s Manager and the Record Company A&R Executive. These negotiations are then passed onto the Producer’s Lawyer and the Record Company business affairs to finalise contracts. Full contracts are normally preceded by 2 page deal memos or ‘Heads Of Agreements’ which lay out the main points of the contract. Label copy is usually organised by the Record Company A&R administrator in co-ordination with the Music Producer and the Artist Manager

Label Copy is the credits on the album artwork, listing everyone who was involved. The information is also required for royalty payments. This could apply to anyone who works on the project, such as programmers or engineers.

A producer would normally be expected to get signed agreements from session musicians, giving away any rights, in return for their fee.

Payment for a producer will nearly always be as a fee plus royalties based on sales. The fee may be recoupable against the royalties. Producer royalty points can range from 1- 6%, the average is 3% of retail price. Always be sure as to whether the deal is on retail or dealer price, clearly there is a big difference. 3% on retail is roughly equivalent to 4% on dealer.

Cautionary Note!

As in normal business practice, your scope for negotiations in contracts depends on the strength of your bargaining position.

You can over-play the deal and effectively ruin it by making unrealistic demands. At the same time, you may not be aware of your true potential and give your rights away for next to nothing! This is why it is important to have experienced and trustworthy business advisers.

WANT TO KNOW MORE?

LINKS

New Deal for Musicians has no responsibility for or control of the following sites. The inclusion of any site does not necessarily imply New Deal for Musicians approval of the site. To access any of the sites please click on the link or search using keywords from the name of the link.
www.dfes.gov.uk/ukonlinecentres Find Internet access that's close to you. Also look at weblinks in workbooks 1 and 2.

- ☐ www.bbc.co.uk/radio1/onemusic/legal/
BBC Radio 1 'One Music' site – essential guides on various issues, look here for in-depth guides on the main terms of all sorts of contracts, remixing agreements, group agreement issues. Don't forget to look out for
- ☐ www.bbc.co.uk/1xtra/1xmusic/
as well, BBC's Urban site for more 'how to...' guides.
- ☐ www.bbc.co.uk/radio2/soldonsong/guide/
Fantastic BBC site on songwriting, full of information on various contract and group agreement issues, look here for advice on contracts for management, recording, publishing and on working with others and who gets what.
- ☐ www.businesslink.gov.uk
Advice on a full range of business issues, including choosing the right legal structure (partnership, company etc.)
- ☐ www.leeandthompson.com
Look here for a guide to Music Industry Agreements, written by this firm of solicitors who specialise in media and entertainments law, written for The Music Managers' Forum publication listed below.
- ☐ www.musicjournal.org
The Internet Publication for the Global Music Business. Legal updates and loads of resources for musicians on a range of issues.

BOOKS AND MAGAZINES
Please see those recommended in chapters 1 and 2.

- ☐ **The MMF Guide to Professional Music Management**
Music Managers Forum
Publisher : Sanctuary Music Publishing.
ISBN : 1860743552
- ☐ **Music Business Agreements**
Richard Bagehot
Publisher : Waterlow
ISBN : 0080369057

A WORD OF WARNING...
Remember that different laws and legal systems apply in different countries. When you're researching on the Internet, make sure that you are looking at appropriate advice for, say, the law relating to England and Wales. US sites refer to US law. Scotland has its own legal system although there are many similarities with the English legal system.

MORE TASKS These apply to both chapters 3 and 4

- 1 You've decided that you and the other members of your band are working in 'partnership'. You don't want to set up as a limited company at this stage.
Draw up a simple agreement between you and the other members of your band, setting out what you agree on the following issues.

Group Name – what is it, who owns it and what you can use it for.
Partnership Property – what do you currently own and how will you decide who owns things like new equipment and what happens to it if you split up.
Sharing of Royalties, Profits, Losses and Expenses – it's presumed that you share these equally in a partnership unless you make it very clear what the split should be.
New and Departing Members – when someone leaves, what are their liabilities and rights?
Voting – what do you need to vote on? It's presumed that you will go with a majority decision.
Expulsion – in what circumstances can you break up the band and get rid of a member?
Dispute Resolution – how will you resolve things you disagree on?

Follow the notes and guidance on P90 - 91.
Now discuss this with your MOLP tutor.

- 2 Find an example of a music contract (management, recording, or publishing) from one of the suggested books or websites listed in this book. Try and find a reference to these terms as described in notes and guidance.

Look for a reference to...	What does the contract say about this?
Exclusivity	
Royalty	
Commission	

- 3 These clauses are taken from a music contract. Choose from the following words to describe what each clause deals with: royalties - term - exclusivity
"This agreement will last for a period of two years from the date hereof"
"Fifty per cent (50%) of Net Receipts arising from exploitation in the UK of Masters comprising the First LP"
"The Manager will be solely entitled to act as a manager for the band"
- 4 You and a friend have written a track, which you now want to send off to radio stations to try to get airplay. Write a simple agreement between you and your friend which deals with the following:
- How the track will be credited to you both.
- What you agree will happen to any money which the track makes for you.

GROUP AGREEMENTS



location : The Bay Horse, Manchester

WHAT IS IT?

This chapter covers:

The legal implications for a band governed by partnership law

The pros and cons of setting up a limited company

The type of issues that need to be addressed between band members

WHY DO I NEED TO KNOW ABOUT THIS?

Most artists and managers would be extremely alarmed to find out that even without signing any documentation, when a band is formed, there is a presumption in law that a partnership has been formed. Even more alarming is the fact that UK partnership law is governed by the Partnership Act 1890, legislation which is over 100 years old and considered by many lawyers to be antiquated and unnecessarily complex.

An alternative option is to operate the band through a limited company where each band member becomes a Director and Shareholder of the company. Many musicians may be put off at the thought of becoming a company Director and as a result of this, many bands simply do nothing unaware that antiquated partnership laws could have serious and far reaching effects upon the internal administration of the band.

FOR THE PROJECT, PLEASE SEE CHAPTER 3 PROJECT

NOTES AND GUIDANCE

PARTNERSHIP LAW

Where several people are carrying on business together with the same purpose, the presumption that a partnership exists arises. In reality this means that unless there is a specific agreement in writing to the contrary all bands and groups are legally a partnership.

This is very serious for band members because band members rarely realise that they are actually in a "partnership situation".

Partners share things equally

If you do not have an express partnership agreement to the contrary, it is an established provision of partnership law that all partners share the partnership assets in equal shares.

Partnership assets will include such things as:

The band name itself

All of the band's income
(this can include the songwriter's royalties)

All of the band's losses and expenses.

A band with four members may have only one song writing member. Even if it is understood within the band that the song writing member is entitled to the royalties from the exploitation of those songs, if there is no express partnership agreement confirming this, the Partnership Act provides that all four members of the band should share all income equally. The songwriting member may not want to share his songwriting royalties (which he is personally entitled to) with the other members.

Another example is the ownership of the group name. Frequently, there may be one or two founder members in a band that have actually thought of the group name and consider it their property. However, if the band splits up and there is no express partnership agreement that specifies who owns the band names, all members of the band would be equally entitled to the use of the name.

The Partnership Act basically provides that all partners share everything equally. If this is not the general intention within your band, it is crucial that you seek advice and arrange for a Partnership Agreement to be drafted which sets out your agreement with all of the other band members. This is less important if the philosophy of the band is to share everything equally.
See more on Partnerships in chapter 5.

IMPORTANT NOTE

Partnership law is very old (the original act dates back to 1890) and the Government is currently working on a new Partnership Act. You will need to keep abreast of any changes to the law if you intend to form a partnership.

LIMITED COMPANY

Some bands prefer to form (or ‘incorporate’) a limited company.
All band members will then be Directors and Shareholders of the company. The actual cost of setting up a company is only a few hundred pounds, however, many musicians may be put off by the idea of what would appear to be such formal arrangements.

Is the membership of the band relatively stable?
Generally, it would not be advisable to incorporate a company unless the membership of the band was relatively stable.

Limited liability

One benefit of incorporating a company is the protection of limited liability. Generally speaking, with a limited liability company the band members do not risk their own personal assets, if the company goes into liquidation. On the other hand however, if the band is operating as a partnership, all partners are jointly liable for group liabilities and there is no limit to that liability, so for example it is possible that band members could lose their home, cars etc. if the band falls into debt.

Resolve your key issues first

Whether a band decides to operate as a partnership or as a limited company, it is important that key issues are resolved between the band members at an early stage and reduced to writing either as a inter band agreement or a partnership agreement. In most cases, a partnership agreement will be the appropriate document as most bands that have taken no steps to formalise their legal arrangements will be governed by partnership law.

POTENTIAL ISSUES OF CONCERN TO MUSICAL PARTNERSHIPS

Group Name

The ownership of the group name must be agreed and what happens to the name if the band splits up or if various members leave.

Partnership Property

The band members need to agree what they consider to be partnership property, so for example a new guitar is bought for the guitarist, does that become the guitarist's personal property or is it a joint partnership asset which he has to return to the band if he leaves.

Sharing of Profits, Losses and Expenses

Remember that the presumption will be that all profits, losses and expenses are to be shared equally. If this is not the intention of the band members, any agreement should state very clearly how profits and losses are to be distributed.

Drawings (Salary)

If the band is in a position to pay each band member a salary then this should be specifically agreed in writing in the agreement.

New and Departing Members

It is usually when there are changes in the membership of a band that disputes arise. A good partnership agreement will set out clearly what the liabilities of a departing member will be and what right they have to future income (if any).

Voting

Partnership agreement should set out which types of decisions within the band need to be determined by a vote. The Partnership law assumes that each partner will be given one vote and that a group decision should be reached by a majority vote.

Expulsion

It is important for a partnership agreement to state exactly upon what basis band members can be expelled from the group. Many musicians would be surprised to realise that the Partnership Act provides that a partner may not be expelled, the only way to resolve this is for the partnership to split and a new partnership to be formed.

Royalties

In addition to a provision setting out how profits and losses should be distributed, it is advisable to include a provision setting out how publishing royalties are to be divided amongst the band. Again without an express provision clarifying this, all band members will share publishing royalties equally.

Dispute Resolution

Last but not least, a good partnership agreement should include a provision setting out how disputes within the band are to be resolved.

Things to consider about partnerships

Will your partners contribute to the business?

Who will do what?

How will you share the profits?

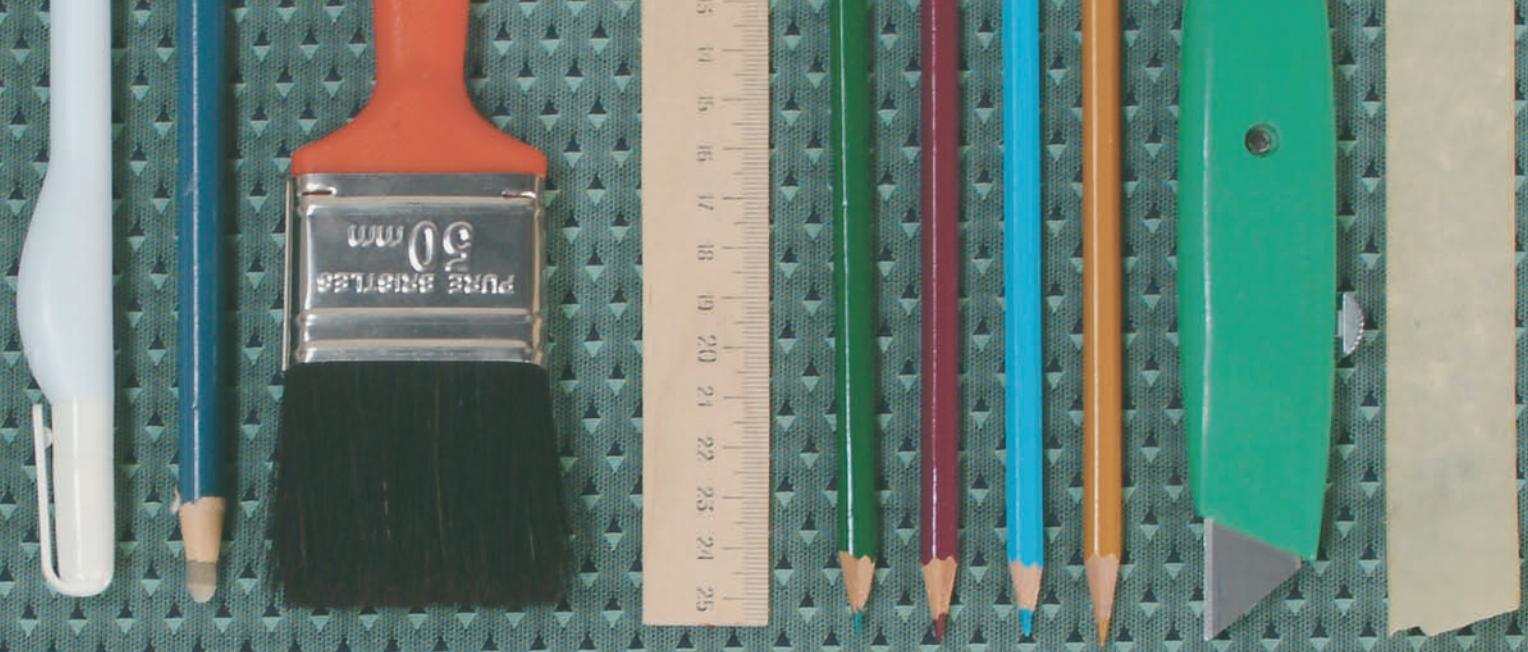
How will you make decisions?

What happens legally if you disagree with policies?

What will a leaving partner get from the business?

Want to know more?
For more information and more tasks,
look at P84-85.

LEGAL AND BUSINESS ISSUES



WHAT IS IT?

Legal issues affect almost every part of life:

What does the law entitle you to do?

What does the law say you cannot do?

What do you do to protect yourself and your interests?

What can you do when things go wrong?

Business matters are important for you to understand when you are working in the music industry.

What is your business status: employed or self employed?

You need to know how to deal with your tax status if you have any self employed income.

WHY DO I NEED TO KNOW ABOUT THIS?

When you work for yourself you have to take responsibility for the things that employers would usually look after, such as keeping accounts and sorting out contracts. In this chapter we will look at the main legal and business issues that are likely to affect you in your work in the music business, as follows:

Trading entities (how you will trade in business)

Business Premises

Raising finance


Keeping Basic accounts

Legal requirements

Insurance


YOU MUST HAND IN YOUR WORK BY

TO




HOW LONG
should this assignment take?

Every person works at his / her own pace.
As a guide, this should take you 2 hours to read and research and another 2 hours to write your answers and discuss them with your tutor.



HOW
will I be assessed?

Your tutor will assess your work. He / she will give you feedback on how you have done. If your work needs further work to be passed, then you will be given the chance to do further work to bring it "up to scratch". For more details, please refer to your MOLP's own guidance.



WHAT
do I do now?

Read the **TASKS** below.
Then read the **NOTES AND GUIDANCE** section.
Carry out the **TASKS**.

TASKS

1 Write down the three main ways of trading in business, with a simple explanation..

Type of business	Simple explanation
1)	
2)	
3)	

2 Fill in the gaps, using the words below.

jointly and severally liable tax limited liability accounts national insurance

As a sole trader, you will have to keep and pay your own and .

In a partnership, each member would be for any debts.

The main legal benefit of a limited company is .

3 Answer the following questions.

I can search for company information by going to www.companieshouse.gov.uk on the internet.	True / False
You can limit your personal liability by forming a limited company.	True / False
Self employed people pay two types of National Insurance contributions.	True / False

4 Answer these questions about tax :

What is income tax payable on?

Search the inland revenue website and find the section on Class 4 National Insurance contributions.
Write the website address here:

If you are self employed, how much per week are Class 2 National Insurance contributions?
Can you apply for exemption if you earn under a certain amount?

£

5 Answer these questions about the difference between PAYE and being self employed:

What does PAYE stand for?

If you are self employed, when do you pay your tax?

What tax code are self employed people under?

6 Answer these questions about deductions:

Give three examples of a deductible expense

What kind of information should you keep in your financial records?

What are allowances?

NOTES AND GUIDANCE

TRADING IN BUSINESS

Before you make a business plan or look for finance for your business, you should decide how you're going to operate. The options are:

SOLE TRADER (also referred to as the **PROPRIETOR**)
PARTNERSHIPS
LIMITED COMPANIES

Let's look at what each of these options offers.

SOLE TRADER (SELF EMPLOYED)

This just means being your own boss, and making your own decisions about how you organise your business. You will have to keep accounts and pay your own tax and national insurance (NI) contributions; this is different from the PAYE system which applies if you work for someone else, where tax and NI are taken out of your wages before you get them. You should notify your local tax office as soon as you start trading, or, if you have an accountant, get them to do it for you.

You might indicate on business stationery that you are the proprietor or sole trader, and you should always check the legal requirements if you are trading from home or rented accommodation. (See Premises)

Things to consider about sole trading

As a sole trader you will be personally responsible for any business debts you run up, and if you are unable to pay your debts, creditors might be entitled to seize and sell your personal possessions - such as your car, house, furniture and musical equipment - to meet outstanding debts.

Remember that even as a sole trader, if you earn money by working with other people you could be considered a partnership in legal terms.

Working freelance

Freelance means working for yourself – in other words, being a sole trader.

However, many musicians and DJ's have another normal job as well as their music job, so they are a combination of things!

For their freelance work, they will have to prepare an annual tax return which declares their earnings. But if they have a normal daytime job working for someone else, the chances are that the tax relating to their work will be paid directly by the employer.

PARTNERSHIPS

Partnerships are set up every day in the music business. Musicians, DJs, producers, managers and many others perform together, record together and earn income together without any real thought that they are business partners. Many never understand the liabilities they may be held to. An example might be a group of musicians who work together on an amateur, semi-pro or professional basis. Any money they earn would be accountable for tax purposes and each member would be ‘jointly and severally liable’ for any debts.

A partnership has similarities to sole trading (in terms of the personal liability) and you should give think very carefully before trading in partnership with a person you do not know well.

» WORKBOOK 7 – COPYRIGHT, LEGAL AND MANAGEMENT – CHAPTER 4

LIMITED COMPANIES

The decision to form a limited company will depend on what business you have in mind and how you want to run it. Trading as a private limited company is totally different to trading as a partnership or on your own.

In a limited company, you become an employee of your own company. The company structure may include a Company Secretary, Directors and Shareholders, but it is only necessary to have either two directors or one director and one company secretary to set up a company.

The main legal benefit of a limited company is limited liability. For example, should a company fall into difficulties, creditors can only claim against that the company owns. The personal assets of its employees will be unaffected, unless a personal guarantee has been given by them.

For example, some lenders insist on ‘personal guarantees’ when financing a limited company with little or no trading history..

Limited companies can be formed with the help of an accountant, and a cost effective way is to buy a ready made company ‘off the shelf’. This involves paying an agency a fee for the necessary documentation and proper registration of a business that has not yet traded, but is already formed.

Things to consider about limited companies:

The business will have to be registered with Companies House as a legal requirement
Annual returns will have to be made (updating information on the business itself)
Audited annual accounts will have to be made (only if the company is above a certain size)
A different method of calculating tax will apply (this will not have the same benefits as partnerships or sole-traders)
As an employee, you would pay tax as you earn (PAYE)
Shareholders and company directors will make most decisions about business matters.

If you form a limited company, the directors are employees and are taxed on a PAYE basis on any salaries or bonus paid to them. The company will pay corporation tax on its annual profits retained in the business after deducting capital allowances.

Take expert advice when considering the formation of a limited company. You can get plenty of information on this matter from local business links and books listed in the reading list.



Finding a company name
If you want to see if another limited company exists with the same name, search for it on www.companieshouse.gov.uk

You can also buy information about that company, such as details of their accounts and directors.

Liabilities

If you are running a business, you may be potentially liable for all sorts of things that you haven’t even considered. For example :

You own a recording studio and a customer falls over a piece of equipment and breaks their leg – you could be threatened with legal action.

You’ve borrowed some equipment from a friend and it gets stolen – and you have no insurance.

You share your PA system with other bands at a gig and someone gets an electric shock due to a fault.

Even when you don’t think you are acting formally, you can still be liable – you need to consider this.

NATIONAL INSURANCE, INCOME TAX AND VAT

NATIONAL INSURANCE

Self employed people pay two separate forms of National Insurance Contributions (NIC)

Class 2

Can be paid monthly by Direct Debit, or quarterly at a rate of £2.10 per week (2003-04) This covers basic state pension and other benefits, but not unemployment benefit. You can apply for exemption if your net earnings in a tax year are not expected to exceed £4095.

Class 4

contributions are calculated as a percentage of annual profits and are payable with income tax following the end of your financial year at the rate of 8% on business profits above £4615 up to £30940 (tax year 2003-04).

If you employ people you may need to deduct NIC and income tax from their gross wages under the PAYE scheme. You will also have to pay additional employers contributions. Contact your local Contributions Agency Office for further details.

INCOME TAX

Income Tax is payable on business profits before your drawings (wages) are taken out. You are allowed to deduct allowable business expenses, the current personal allowances and capital allowances set by the Inland Revenue.

Car expenses, telephone bills and other items that are partly used for business, and for private use, have to be apportioned (in other words, the costs need to be split between private and business use). The ratio can be agreed with your tax office. For details about current personal and capital allowances, contact your local tax office.

You will also need a copy of booklet CWL1 to let the Inland Revenue know you are starting your business.

VAT (Value Added Tax)

VAT registration is compulsory if your ‘taxable supplies’ exceed a certain figure (around £58,000 per annum) The rate at which you pay and charge VAT is currently set at 17.5% in the UK, although some supplies are zero rated. You cannot reclaim any VAT you have paid on purchases or expenses unless you register for VAT.

Once you have registered, VAT must be charged (except on goods and services not subject to VAT) and paid quarterly to Customs and Excise less any VAT you have paid on business purchases and expenses in the same period.

Customs and Excise operate a couple of current schemes such as the flat fee scheme which offers a reduced VAT rate you would pay to them if your supplies are generally charged to others and your purchases are low.

For further information, contact your local Customs & Excise office.

Business Premises

Many businesses are actually run from home. The benefits include convenience and a saving on the cost of renting other premises. The down-side includes distractions in the home, the difficulty of switching off between business and your personal life, and the scope of being able to display your products.

Making a decision to move into commercial property needs thought and planning. You would have to sign a lease or rent agreement in most cases and would have to rely on enough business income to meet the payments.

Rent & Lease agreements

Commercial workspace is often let on the basis of a formal agreement. The contract will usually have a variety of conditions that range from repair clauses to annual rent increases. You should always consider the cost of good legal advice against costly disputes with a landlord!

It is worth researching and planning a budget with the help of an accountant, solicitor or professional adviser before making a commitment.

➤ For more on business premises, see
WORKBOOK 8 – BUSINESS AND MONEY
– CHAPTER 2

GENERAL TAX ISSUES

Tax laws are complicated and often the subject of review in terms of music industry income. It is advised that you employ an accountant or firm who specialise in music industry financial affairs, if you are generating revenues from music. The advice and service is vital when touring abroad or generating large sums of international income.

PAYE and SELF EMPLOYED

PAYE

This is called ‘Pay as You Earn’ (PAYE). Your employer deducts income tax and National Insurance at source and pays the Inland Revenue direct. You are left with the remainder. (If you formed a limited company, you would become an employee of your own company and pay yourself this way). This is called Schedule E tax code. Most people pay their tax this way.

SELF EMPLOYED

If you are registered as Self Employed, you receive the gross income and account to the Inland Revenue against profit and loss on income generated in a financial year (often running from April to April). In other words, you don’t pay tax immediately on your income, you work out your profit and loss every year and pay your tax in big lumps to the Inland Revenue. This is called Schedule D tax code.

TIP

Save a reasonable reserve to pay tax bills that may arrive up to two years into your business start-point. There is a great tendency for musicians to spend income as it arrives in the belief that the next pay cheque is always around the corner. You will find many well know artists who are a testament to this very same comment, some are still working hard to pay tax debts a decade old!

FULL AND PART TIME

There is a huge difference between being an employee and being self employed. If you want to be a full time musician or DJ, then you generally have no option but to go self-employed. A lot of part time musicians, DJs and performers have regular day jobs, which they combine with music work in the evenings and weekends. In this case, they would pay tax through the PAYE system for their regular job, but they would have to declare the extra income in their tax return.

➤ See WORKBOOK 8 – BUSINESS AND MONEY – CHAPTER 2 (Preparing for Self Employment) for more information on this.

DEDUCTIONS AND ALLOWANCES

Allowances are the amounts you are allowed to earn before being taxed and are set by the government each budget. Expenses can be deducted from your overall profits before tax is calculated. These are items or services paid for (and receipts kept) without which you would not be able to carry out your work. A good accountant will advise you as to what constitutes a “deductible” expense, but the obvious include:

Travel and accommodation expenses relating to your work (hotels, trains, planes, van hires etc.)

Instrument maintenance (equipment servicing, spares, strings, and so on)

Telephone/fax/e-mail costs incurred when arranging work

Advertising and hire charges

Personnel hired for recordings and tours

Other services such as commissions, legal and accountancy charges.

Equipment purchase (including Instruments) and vehicles are classed as 'capital allowances' that can be carried over and used partially over several years if you wish.

National Insurance contributions are payable on a weekly stamp basis (see previous section on National Insurance). You are advised to pay the maximum contribution allowed as soon as possible.

KEEPING RECORDS

Keeping records of accounts can be as simple as a small book purchased in the high street with amounts received on the left hand side of a page and expenditures on the right hand side, together with an envelope or box containing payslips, bills and receipts filed by date.

You will need to keep records of all tour income and expenditure, so try to start the process as soon as possible.

➤ WORKBOOK 8 – BUSINESS AND MONEY – CHAPTER 5 for more information on book keeping and accounts.

WANT TO KNOW MORE?

LINKS

New Deal for Musicians has no responsibility for or control of the following sites. The inclusion of any site does not necessarily imply New Deal for Musicians approval of the site. To access any of the sites please click on the link or search using keywords from the name of the link.
www.dfes.gov.uk /ukonlinecentres / Find Internet access that's close to you.
Also look at weblinks in the previous chapters, for example at the list of development and support agencies in chapter 1 for more links, plus the links in workbooks 1 and 2.

INFORMATION ON BUSINESS AND LEGAL ISSUES

- ☐ **www.businesslink.gov.uk**
Advice on a full range of business issues, including choosing the right legal structure (partnership, company etc.), tax, premises etc. Start at this site before you look at the others!
- ☐ **www.startups.co.uk**
Lots of information about business issues, from finance to premises to liabilities and business structure.
- ☐ **www.companieshouse.gov.uk**
Everything you need to know about registering and trading as a company, includes forms and guidance booklets. You can also search here for company names and limited details about companies which are trading.



Internet trading names
A topic in itself, but remember to check out available domain names (www. addresses which are available for you to buy) before looking at available company names or deciding on a trading name. You can do this by looking searching for 'domain names' with a search engine.

- ☐ **www.hse.gov.uk**
Health and Safety Executive – information on health and safety in business.
- ☐ **www.shell-livewire.org**
Shell livewire helps young people 18-30 with business start ups.

- ☐ **www.adviceguide.org.uk**
Citizens Advice Bureaux website – Welsh and Scottish links are available from this site. Aimed at advising normal people about everyday issues, such as money, housing and legal rights, it also contains some information about self employment. You can speak to your local Citizens Advice Bureau free of charge.
- ☐ **www.hmrc.gov.uk**
HM Revenue and Customs is the new government department which has taken over from the duties of the Inland Revenue and Customs and Excise departments. Information on setting up in business, tax, national insurance and VAT. Includes on-line forms. Also includes information on a range of issues such as tax credits, PAYE and Stamp Duty.
- ☐ **www.princes-trust.org.uk**
Princes Trust offer financial help and practical advice in starting up a business for 18-30s (England and Wales) and 18-25 (Scotland).

A WORD OF WARNING...
Remember that different laws and legal systems apply in different countries. When you're researching on the Internet, make sure that you are looking at appropriate advice for, say, the law relating to England and Wales. US sites refer to US law. Scotland has its own legal system although there are many similarities with the English legal system.

BOOKS AND MAGAZINES

See those previously recommended in other chapters and in workbook 8.

Many guides and information packs are available through suggested websites listed above.

Most banks also publish guides to self employment which discuss various issues raised in this chapter.

- ☐ **Law for the Small Business: An Essential Guide to All the Legal and Financial Requirements**
Patricia Clayton
Publisher : Kogan Page
ISBN : 0749441496
- ☐ **The Complete Small Business Guide: Sources of Information for New and Small Businesses**
Colin Barrow
Publisher : Capstone Publishing Ltd
ISBN : 1841120790
- ☐ **The "Which?" Guide to Starting Your Own Business: How to Make a Success of Going It Alone**
Anthony Bailey
Publisher : Which? Books
ISBN : 0852029306
- ☐ **Starting a Business for Dummies**
C. Barrow
Publisher : John Wiley and Sons Ltd
ISBN : 0764570188

MORE TASKS

- 1 Some company directors have to give a 'personal guarantee' to investors. What is this?
- 2 You're operating as a sole trader – a freelance entertainer. Write down the topics you need to research, under the following categories of potential legal and business issues you have to be aware of. Discuss your answers with your tutor.

Registering my business	
What I might be liable for	
Getting paid	
Paying tax and national insurance	
Claiming benefits	

- 3 What licence might you need to trade as a busker or street entertainer?
- 4 What is public liability insurance and how can you get it?
- 5 What can you do if a venue refuses to pay you under the terms you agreed?
- 6 Do you need a work permit to do a gig in Spain with your band?
- 7 Questions about tax and national insurance
 - 1) How much are Class 2 national insurance contributions per week?
 - 2) If you don't earn much self employed income, do you have to pay tax?
 - 3) If you don't earn much self employed income, do you have to pay national insurance?
- 8 Look at a copy of a self assessment tax return – is this just for self employed people?

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NEW DEAL FOR MUSICIANS

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Sound Advice

MU Musicians' Union

MPG Music Producers Guild

AIM Association of Independent Music

PRS Performing Right Society

MCPS Mechanical - Copyright Protection Society

MMF Music Managers Forum

BPI British Phonographic Industry

MPA Music Publishers Association

PPL / VPL Phonographic Performance Limited / Video Performance Limited

MIA Music Industries Association

PAMRA Performing Artists' Media Rights Association

BBC Radio 1

British Music Rights

British Academy of Composers and Songwriters

