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# MIDEM ACADEMY 2015

## MUSIC & TECH 101 MODULE

Dealing with Music Contracts in a Digital Era:  
10 Things to Know

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# BACK TO BASICS

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1. Copyright legislation has *basically* always been the same for the music sector

## Same rights owners

writers

performers

phonogram producers

## Same rights

reproduction (Sheet Music -> Gramophone -> CD -> K7 -> Digital File)

distribution (Physical shops -> download stores -> streaming platforms)

performance/broadcasting right (Radio -> TV -> On Demand Streams -> Periscope)  
& Meerkat

2. The Digital Era?

Applying 'legislation' and 'contracts' to new technology & new business models

The contracts are still the same... but must be applied to new tech and business



# **(DIGITAL:) MUSIC CONTRACTS**

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1. Duration
2. Options
3. Territories
4. Advances
5. Royalty's
6. Passive shares
7. Exclusivities
8. Marketing



# DURATION

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1. Artist- and License Deals have an Exploitation Period and a Contract Period

2. Exploitation Period

What's this

this is the period during which a label can exploit the recordings made under the agreement (much longer than contract period)

Artist deals

often copyright lifetime

License deals

often 5 - 15 (singles), 10 - 25 years (albums), BUT **getting longer** because (i) playlist streammodel (ii) catalogue advances (Sony😊), (iii) bidding market on social media marketing

Distribution deals

much shorter (even immediate take down e.g. Zimbalam)



# DURATION

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## 3. Contract Period

What's this	period during which artist/licensor is exclusively bound by label
Practice:	6-12 months after last release of last recording (getting longer)
Reason:	avoiding competition from other releases of same artist
Why important:	there's another reason: beside release exclusivity, label often has also a passive share on live income, merchandising income and sponsoring and advertising revenues





# DURATION & OPTIONS

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1. A Contract Period is often defined in “firm” releases and “optional” releases. A firm release means “obligation” of label to release, option means “first right” of the label to release;
2. Before = more firm releases, longer periods (album lifecycle = ~ 18 months)  
Today = less firm releases, shorter periods (single lifecycle = ~ 6 months)
3. Do we negotiate on the number of options? Absolutely: same terms and conditions apply ; artist development ; advances remain quite important as regards options
4. And not only that: also on the moment when the option must be taken...(1) within defined period after last release (6-9 months), (2) after receipt of demo’s for next release (3) after receipt of masters for next release.



# TERRITORIES

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1. Before: releases in other territories were very risky undertakings for labels
  - label must pay mechanical rights upfront
  - packaging & shipping... so each copy was an additional investment
  - local marketing & promotion campaigns (get it in press - on radio & tv)
  - so there is a serious investment from label/licensee, which label must regain
  - that's why it was easy to determine if and when a label has 'released' there
2. Today in digital era: release in other territories don't impose risks for the label
  - no upfront mechanical rights
  - no packaging & no shipping
  - international marketing & promotion (getting it in press - on radio & tv)
  - that's why it's difficult to determine if and when a label has 'released' there
3. What should an artist do when a label wants the whole world as territory?



# TERRITORIES

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4. Old mechanism: revert of rights: “if track has not been released in another territory within 9 months after release in first territory, all rights for the other territory revert”.  
--> easy to proof: sufficient physical copies in shops to meet a reasonable demand for these records
  
5. New mechanism: revert of rights:
  - ? local marketing and promotion budget & plan: very difficult
  - ? guarantee from local CEO & A&R: very difficult
  - ? Chart results (singles/albums charts – airplay charts: very difficult

approval for sub-licensing with third parties (other than local affiliates)
  
6. Question: other mechanisms?





# ADVANCES

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1. An advance is an upfront payment on royalty's by the label to the artist (or the licensee to the licensor) that can be recouped on later royalty's due to the artist, but that must not be paid back by the artist (or the licensor) if the advance has been higher than the royalty's finally earned
2. Purpose: (1) get money as a security (2) push the label to work more: the higher the advance, the more the label will spend and invest to support and promote the release
3. Today: not high because (1) often single-based (2) production costs are lower (3) difficulty to calculate revenues (before: advance of 10000 Euro and royalty of 20% = total earnings of 50000 Euro x PPD of 10 Euro = 5000 albums);
4. We don't negotiate too much on advances for starting artists: (1) high advance makes a label think twice before taking an option, (2) smaller labels don't have much cash and their resources are limited, while they are good in developing starting artists, (3) more advance means less budget for marketing and promo
5. It's about balancing between freedom and money. What's your opinion? (publ.)

# ROYALTY'S (STREAMING)

- Example: Spotify has 60 MIO subscribers of which 15 MIO paid subscribers
- Pay-out until now = over 2 BILLION \$ to rights holders
- Income based on advertising and subscriptions (average user value = 42 \$)
- 70% of income goes to rights holders (publishers + master rights)
- **No fixed price per stream:** < country, < n° paid subscribers, < month
- Average pay-out per stream = 0,006 \$ (6000/MIOs) ~ 0,0084 \$ (8400/MIOs)
- Pay-out based on “**market share per platform**”: artist’s Spotify streams / total Spotify streams. Why not on “**market share per platform user**” (= just like CD & download), where 70% of the money paid by the user goes to the artists that the user consumed; in today’s streaming model, 70% of the money paid by the user goes to the artists that the Spotify community consumes.

# ROYALTY'S

	D.I.Y.	
User	0,01	
Platform (~ 30%)	0,007	
Publishing (~ 10%)	0,0063	
Distribution (~ 10%)	0,00567	
Artist	0,00567	
1 Million Streams	5.670,00 €	



# ROYALTY'S

	D.I.Y.	MAJOR
User	0,01	0,01
Platform (~ 30%)	0,007	0,007
Publishing (~ 10%)	0,0063	0,0063
Distribution (~ 10%)	0,00567	
Record Label (~ 70% - 50%)		0,00189
Artist	0,00567	0,00189
1 Million Streams	5.670,00 €	1.890,00 €

# ROYALTY'S

	D.I.Y.	MAJOR	INDIE
User	0,01	0,01	0,01
Platform (~ 30%)	0,007	0,007	0,007
Publishing (~ 10%)	0,0063	0,0063	0,0063
Distribution (~ 10%)	0,00567		0,00567
Record Label (~ 70% - 50%)		0,00189	0,00170
Artist	0,00567	0,00189	0,00170
1 Million Streams	5.670,00 €	1.890,00 €	1.701,00 €

# ROYALTY'S

	D.I.Y.	MAJOR	INDIE	WORLD
User	0,01	0,01	0,01	0,01
Platform (~ 30%)	0,007	0,007	0,007	0,007
Publishing (~ 10%)	0,0063	0,0063	0,0063	0,0063
Distribution (~ 10%)	0,00567		0,00567	0,00567
Sublicensing (~ 70%)				0,00170
Record Label (~ 70% - 50%)		0,00189	0,00170	0,00085
Artist	0,00567	0,00189	0,00170	0,00085
1 Million Streams	5.670,00 €	1.890,00 €	1.701,00 €	850,50 €





# PASSIVE SHARES

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## 1. Live Overrides

Artist must pay percentage of live revenue to label during contract period

Understandable, but problematic if live overrides to label > royalty's from label

Several Methods of Calculation

Percentage of net income - Percentage of gross income - Fixed fee (1\$) per ticket

Average

e.g. “5% on gross income - less 10% default costs - in territories of release - with an artist fee (exclusive of booking agent fee) > 1000 Euro”

## 2. Merchandising - Sponsoring & Advertising

Artist pays percentage of income from sponsoring/endorsements (eg 15%)

recommended to give share for active contribution



# MARKETING

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1. After production, reproduction, distribution, broadcasting, the remaining cost is... marketing

But very difficult to put in a contract: in house vs out-of-pocket, smart marketing

## WIM SCHREURS, MUSIC ATTORNEY, UBILEX

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