higher education & training

Department:
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MARKING GUIDELINE

NATIONAL CERTIFICATE

MUSIC BUSINESS AND STYLES N5

2 DECEMBER 2019

This marking guideline consists of 8 pages.

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SECTION A

QUESTION 1

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	1.1.2	I
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	1.1.4	A
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	1.1.11	D
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	1.1.13	F
	1.1.14	E
	1.1.15	K

(15 × 2) (30)

1.2	1.2.1	False
	1.2.2	False
	1.2.3	True
	1.2.4	True
	1.2.5	True
	1.2.6	True
	1.2.7	True
	1.2.8	True
	1.2.9	True
	1.2.10	True
	1.2.11	False
	1.2.12	True
	1.2.13	True
	1.2.14	True
	1.2.15	True
	1.2.16	True
	1.2.17	False
	1.2.18	True
	1.2.19	False
	1.2.20	False
	1.2.21	True
	1.2.22	False
	1.2.23	True
	1.2.24	True
	1.2.25	False

(25 × 2) (50)

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1.3	1.3.1	C
	1.3.2	A
	1.3.3	B
	1.3.4	D
	1.3.5	D
	1.3.6	B
	1.3.7	A
	1.3.8	A
	1.3.9	B
	1.3.10	C
	1.3.11	B
	1.3.12	A
	1.3.13	D
	1.3.14	C
	1.3.15	C
	1.3.16	A
	1.3.17	A
	1.3.18	C
	1.3.19	B
	1.3.20	A
	1.3.21	D
	1.3.22	B
	1.3.23	D
	1.3.24	A
	1.3.25	C

(25 × 2) (50)

1.4 1.4.1 The personal manager is in charge of the tour.

1.4.2 He or she is the one who gets you onto the right tour.

1.4.3 He or she ensures that your agent is making the best possible deals for you.

1.4.4 He or she has to coordinate the transport of people and equipment.

1.4.5 He or she has to coordinate hotel bookings.

1.4.6 He or she has to coordinate collection of money on the road.

1.4.7 He or she has to deal with and supervise the 'promoters' (the people who hire you, rent the hall, advertise the event, etc).

1.4.8 He or she has to deal with challenges that crop up during the tour (such as missing equipment, improper advertising, dates that are not selling well, lapses in security, etc).

1.4.9 He or she has to coordinate the hiring and smooth functioning of crews.

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1.4.10 As the chief executive officer of the professional team, once the tour is set up, mechanically he or she has to make it happen.

(10 × 2) (20)
[150]

TOTAL SECTION A: 150

SECTION B

QUESTION 2

2.1 Merchandiser's royalties

The computation of merchandising royalties is a lot easier than record royalties. For the most part, they are just a percentage of the gross sales. Gross sales are a term of art, meaning the selling price to the public, less only taxes, whether sales tax, value added tax, excise, and similar taxes, and credit card fees. Value added tax, or VAT, does not apply in the United States, but it is common in other countries. It is tax on goods at each stage of creation, based on the value added at that point.

The range of royalties, for sales at concerts in the US and Canada, is generally 30% to 40% of gross sales.

There are higher deals for superstars. It is common to escalate your royalties based on sales, which can either be on a per-night basis, or a cumulative basis for the entire tour. This is a good thing to remember if you are getting stuck with a low royalty.

Foreign royalties come to around 80% of the US rate, but if your US rate is not that high, you can try for the same foreign royalty. However, you are probably going to end up with at least 80%.

More and more, foreign deals are moving toward a split of net profit. In other words, the merchandiser takes the gross selling price, deducts the cost of the goods, and divides up what is left. The usual split is somewhere between 75/25 and 85/15.

Stadiums and festivals are also starting to implement profit splits. This is because stadiums are more expensive to set up and service. Furthermore, festivals do not sell as much individual artist merchandise, because people want an event T-shirt (for example, a Family Values tour shirt, as opposed to the specific performers). The split on stadiums is usually 80/20 to 85/15, and on festivals, 70/30 to 75/25.

The souvenir programs sold at concerts are also based on a percentage of net profits, regardless of how everything else is calculated. This is because the merchandisers finally figured out they were not making much or any money on programs, but they were paying the artist a lot of royalties. Programs are expensive to print and they have to be designed, laid out, set up for printing, and so forth. Thus the profit split evolved, and it is now the norm.

Artists will sometimes have designer goods, such as an expensive ($60 plus) sweatshirt. Because a designer is paid a fee (or royalty) on these goods, your royalty is negotiated separately and is lower. Usually it's around 70% of net profits. (30)

2.2 Hall fees (give examples):

Over the last few years, as artists have pushed royalties higher, the merchandisers have built in limits on hall fees. Your merchandiser does not actually hire people to sell products in each of the venues. Instead, they make a deal with the hall to supply the personnel, display racks, et cetera. It is the artist's agent who makes the deal with the hall, although the merchandiser may assist.

It works like this: The merchandiser pulls up its truck early in the day, checks in a certain quantity of merchandise to the hall personnel, and at the end of the evening, gets back the unsold merchandise plus cash for what has been sold or otherwise disappeared. From the money that has turned over, the venue keeps a percentage, and this is the hall fee. It covers the cost of hiring people who actually sell the stuff at the venue, the venue's profit, and even includes a charge for bootleg security.

A standard hall fee ranges from 30% to 35% of the gross monies collected for the merchandise, and superstars can knock it down to about 25% or even lower in rare instances. If you sold $10 000 of merchandise, the hall would keep 30% to 35%, which is $3 000 to $3 500, and pay the balance to the merchandiser.

Historically, the royalties paid by merchandisers to the artist were based on gross sales, regardless of hall fees. So the hall fees never affected the artist. However, as artists demanded higher and higher merchandising royalties, the merchandisers finally had their profits squeezed so tightly that they began making the artists responsible for hall fees above a certain percentage. Therefore today's deals set a limit on the hall fees, and if you go over it, the excess comes out of your royalties. For example, a merchandise deal might say that you have a royalty of 37% and that the hall fee cannot exceed 30%. Under this deal, if your hall fee for a particular date was 35%, the extra 5% would come out of you royalty, and instead of 37% you would only get 32%.

Unless you ask, you will not get any part of the savings made from keeping hall fees below the maximum level. If you ask, you can usually get a percentage (50% to 75%) of the savings. In the above example, if you got 50% of the hall savings below 30%, and if you pushed the hall fee down to 25%, your royalty would increase from 37% to 39,5% which is 37% plus 2,5 for 50% of the 5% hall fee. Your argument to win this point is that if you don't share in the decrease, you do not have any incentive to do it.

Another deal which is becoming more common, is simply to pay the artist a combined royalty/hall fee percentage of, say, 65% to 70%. Under a 65% deal, for example, if the hall fee was 30%, the artist would get a 35% royalty; if the hall fee was 25%, the artist would get 40%; et cetera. In other words, the artist gets 100% of the hall fee savings, as well as 100% of the burden for higher fees.

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As noted above, hall fees are negotiated by the agent. Meanwhile, they make the overall deal for the guarantee and split. Ironically, the agent does not get paid for this – the agent's commission is based on the earnings of the artist from the performance only, and not from merchandising. So the agent is in the position of negotiating a part of the deal that gives him or her no benefit. However, their incentive goes way up when the artist glares daggers at them, and so they have become quite good at muscling down the hall percentages. (30)

2.3 Advance repayment:
Unlike record and publishing deals, a tour merchandise contract requires repayment of the advance, generally with interest, under circumstances such as the following:

- The tour doesn't start on time.
- You are unable to perform all or part of the tour. This is based on the same theory as the tour not starting on time, and also protects them from the responsibility that you might not tour for years, after which the public has forgotten you exist.
- You do not meet a performance minimum. This means you agreed to play before a certain number of people and fell short.

Most companies want back the entire advance if you fall short of your performance minimum, but you should try getting a pro rata formula based on how many people you actually played for. For example, if you agreed to play for 200 000 people, but played before 100 000, you would only want to pay back one-half (100 000/-200 000) of the advance.
A compromise is that the merchandiser agrees pro rata if you achieve a certain percentage of your performance guarantee. (20)
[80]

QUESTION 3

3.1 The term *songwriter agreement* means the same as a record deal, except that, instead of making records, you agree to give the publisher all the songs you write during the term. It is also like a bunch of song agreements hooked together, because you sign a single-song agreement for each composition when it is created. (4)

3.2 A term of agreement is the period during which you sign everything you write to the publisher, which is usually a period of one year. The publisher will have options of two to four years in addition to the one year you have. If it is tied to your recording agreement (i.e., if it is publisher affiliated with your record company), it may simply adopt the same term as the record deal. If it is tied to delivery of songs, it may have a flexible term ending after delivery of the required songs, just like record deal terms. (8)

3.3 Advances are sometimes geared to delivery of songs. The problem with this structure is that songwriters have been known to throw together a batch of poor songs for the sole purpose of satisfying a delivery requirement and getting an advance. This made publishers come up with ways to protect themselves. One approach is for the publisher to approve each song before they allow it to satisfy the delivery requirements. Another way is gearing the payment of advances to a certain number of songs being recorded and released.
As noted above, if you are a recording artist, your advances may be specifically tied to how many of your own compositions end up on your album, and the advances (at least the bulk of them) may not be payable until your album is released.

There will also be a requirement that you have a minimum number of songs on the album, or else the advance gets reduced. For example, if your deal requires you to have ten songs on the album, and you only have five, you will get 50% of your advance, which is the ratio of the five songs you actually have to the ten songs you were supposed to have. If you have a song-delivery requirement, be sure to add a formula saying that fractional compositions count towards the delivery requirement in proportion to your ownership. (18)
[30]

QUESTION 4

4.1 4.1.1
- The name of the group is the most important asset of the group. Therefore, you must think ahead and plan for circumstances such as the following:
- The lead singer and songwriter leave the group.
- The drummer, who doesn't write music or sing, leaves the group.
- Three out of five members leave the group to form another group.
- The group breaks up totally and everybody leaves. (5 × 2) (10)

4.1.2 As a band you can do anything you want; however; these are the most common solutions to apply:
- No one can use the name if the group breaks up, regardless of how many of you are still performing together.
- Any majority of the group members performing together may use the name. For example, if there are seven people in the group that breaks up, any four of them together may use the name.
- Only the lead singer may use the name, regardless of who they perform with.

Only the songwriter who founded the group and thought of the name, may use the name, regardless of whom they are performing with.
- The songwriter and the lead singer may use the name as long as they perform together, but if they do not, no one may use the name. (10)

4.2 The music supervisor's job is to coordinate all the music for the picture (except the underscore). He or she first sits down with the producer and director of films and works out the types of music needed, ideally before the film production. If the film is either a musical or relies heavily on music (such as a dance film), the music supervisor must be involved in advance. This is because songs performed on camera must be pre-recorded, meaning, they are made in a recording studio before commencement of photography of the film and merely lip-synched or danced to on film. As you can imagine, it is difficult to dance to a song not yet recorded. After meeting with the director and producer, the music supervisor comes up with suggestions for artists, songwriters, et cetera, for the film. The director and producer make the final decisions, and the supervisor then oversees the whole process of making it happen. He or she contacts the creative people, arranges for meetings with the film personnel, negotiates and structures the deals or oversees the negotiation and structuring, depending on the supervisor and the film company, and then supervises the recording sessions. Done properly, being a music supervisor is one of the most difficult jobs. (14)

4.3 Music supervisors get fees of $150 000 to $300 000 per picture (sometimes even more). The top supervisors also have royalties on the soundtrack album, usually in the range of 2% to 3% of retail, non-pro-rated. There may also be escalations of ¼ or ½ percent at 500 000 and 1 million units. These royalties are payable prospectively after recoupment of all costs, at the same time that the film producer recoups. In addition, there may be box-office bonuses based on what the picture grossed. (6)
[40]

TOTAL SECTION B: 150
GRAND TOTAL: 300

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