



**THE CALIFORNIA COPYRIGHT CONFERENCE
AND
WINOGRADSKY/SOBEL PRESENT:**

PITCHING AND PLACEMENT AGREEMENTS

By

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FEBRUARY 4, 2012
CENTURY CITY, CALIFORNIA**

PITCHING AND PLACEMENT AGREEMENTS

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WINOGRADSKY/SOBEL
GLOBAL MEDIA SOLUTIONS

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BIOGRAPHICAL INFORMATION

RON SOBEL is a nationally recognized entertainment attorney (admitted in Michigan), with expertise in New Media, digital monetization, and copyright asset protection.

Ron's experience and international relationships across all sectors of the industry provides Winogradsky/Sobel with a unique opportunity to develop strategic business alliances and deliver comprehensive music services.

Ron also served as President of North Star Media, a music publishing company founded in 2001, providing music placement and artist development services. Prior to serving as President of North Star Media, Ron was V.P./Creative Affairs and head of the L.A. office at ASCAP, having held various positions over the course of 16 years. While at ASCAP, Ron was a member of the New Media Council, served as Director of Business Affairs, and signed Lenny Kravitz, Pearl Jam, Alice In Chains, Soundgarden, Dave Mason, among others.

Ron has published several music industry articles, and his latest book, "Music Publishing: The Roadmap to Royalties", has just been released by Routledge Books. Ron served as Chair of the Music Business Division at McNally Smith College of Music (St. Paul, MN) from 2009 – 2010, was on the Board of Directors of the California Copyright Conference for 18 years, and is a frequent speaker at USC, Cal State Northridge, and UCLA.

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BIOGRAPHICAL INFORMATION

With thirty years experience as an attorney in the music industry, Steven Winogradsky is a partner in Winogradsky/Sobel in Studio City, California, providing global media and music business affairs & legal support for composers, songwriters, music publishers, recording artists and television, film, video and multi-media producers. In addition to an entertainment law practice, the company handles music clearance and licensing in all media for many production companies, worldwide administration of the publishing catalogs for a number of clients and New Media strategies and Revenue Modeling.

Prior to being in solo practice with The Winogradsky Company from 1992 to 2009, Mr. Winogradsky had served as Director of Music Business Affairs for Hanna-Barbera Productions, Inc., Managing Director of Music, Legal & Business Affairs for MCA Home Entertainment, Director of Music Licensing and Administration for Universal Pictures and Universal Television and Vice President of Business Affairs for The Clearing House, Ltd.

He was twice elected President of the California Copyright Conference, after spending nine years on the Board of Directors, and also served for four years as President of The Association of Independent Music Publishers.

Mr. Winogradsky was named as one of the Outstanding Instructors in Entertainment Studies and Performing Arts at UCLA Extension, where has taught since 1997. He has written numerous magazine articles on the subject of music for motion pictures and television and has lectured on a variety of music-related topics at MIDEM, University of Houston Law Foundation (1993, 1994, 1997), Texas State Bar Entertainment Law Seminar (1994 - 2011), American Bar Association Entertainment & Sports Law Conference, University of Southern California Entertainment Law Institute, *The Hollywood Reporter* Film and Television Music Conference (1997-2000), *Billboard* Film and Television Music Conference, NARAS, The Society of Composers and Lyricists, Loyola Law School, Southwestern School of Law, California Lawyers For The Arts, The American Film Institute, LMNOP (New Orleans), The Toronto Film Festival, Canadian Music Week, Musicians' Institute, McNally Smith College of Music, NARIP and various other symposia.

In addition, he is a guitarist, singer and songwriter who is both a composer and publisher member of ASCAP.

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PITCHING AND PLACEMENT AGREEMENTS
By Steven Winogradsky, Esq.
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Introduction

With the decline of the recording industry and diminishing revenues from the sale of recorded music, many publishers, record companies and independent artists are looking for placements in television programs, motion pictures and commercials as a way of replacing some of the lost income.

“Television is the new radio” is the cry you hear, as placement in a television show not only generates income, it can stimulate record sales if licensed properly. Getting music into these programs is harder than it looks and there are companies set up to provide services to music licensors specifically for this purpose.

“Pitching” or “placement” companies (the “Company” or “Companies”) acquire certain limited rights from the owners of musical content in order to solicit the decision makers in film and TV. Often, those making the decisions are the music supervisors, who consult with the producers and directors to select the music for a particular project.

In exchange for these services, the Companies may be compensated with a combination of a commission on license fees and/or “back end” income or an ownership percentage in the copyrights of the songs placed. This article will discuss how these companies work, what the fee structures look like and discuss a sample agreement from the perspectives of both the Company and the artist.

Background

Rights of the copyright owners

It is essential to understand the legal aspects of the music industry to be able to analyze the potential income streams that might be generated by the songs in question. The Copyright Act of 1976 (USC §1700, et. sec) (hereafter “the Act”) states as follows:

§106. Exclusive rights in copyrighted works

Subject to Sections 107 through 120, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;*
- (2) to prepare derivative works based upon the copyrighted work;*
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;*
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;*
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and*

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audiotransmission.

Please note the difference between the copyright in a musical composition, usually controlled by a music publisher, and that of the sound recording embodying the underlying music composition, usually controlled by a record company. Sound recordings are defined in §101 of the Act as “works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.”

Synchronization licensing

Licensing the use of a copyright in copies of audio-visual works is part of the right of reproduction granted exclusively to copyright owners in §106 of the Act. Although the word “synchronization” is not mentioned specifically, §106 gives the copyright owner the exclusive right to reproduce and authorize others to reproduce the copyrighted work in copies, such as television programs, motion pictures and home videos. “Synchronization” is the right to reproduce an audio representation of a copyrighted work with a visual image on film, tape or other visual media. The visual image is “married” or “synchronized” to the music, so that every time the same scene is shown the same music is heard. The words “sync license” usually refers to the composition, while the term “master license” refers to the recording, but the process for both as described below is the same.

Negotiating for a sync license involves two main elements: permission and a determination of the license fee. As an exclusive right of the copyright owner, **permission** *must* be secured for the reproduction of the work in the program. There is no such thing as a compulsory license in sync licensing as there is in mechanical licensing. A publisher has absolute discretion to grant (or deny) permission, for any reason whatsoever, or for no reason at all.

Setting a **license fee** is also within the discretion of the publisher, as there is also no statutory rate as in mechanical licensing. Each production has its own licensing needs and each song has its own unique value to the publisher, so these negotiations are a one-to-one process between the publisher and the production company. All things being equal, a more popular song or a song by a major artist, will command a higher fee than a less popular song or artist. In the instant case, it is unlikely that Plaintiffs would command as high a fee as Defendants due to their lesser stature in the industry.

For the use of a composition in a single production, the primary components of the license terms consist of (1) media, (2) territory, and (3) length of the term of the license.

Media describes the method by which the production will be made available to the public. For example, there are various forms of television:

“Free” or “broadcast” television, such as CBS, NBC, ABC and local stations that are available over-the-air without charge to the viewer;

“Basic Cable television”, such as CNN and MTV, which is available to cable

customers as part of the “basic” package they receive upon signing up with the cable service;

“Pay” or “Subscription” television, such as HBO or Showtime, where an additional fee is paid by the viewer for access to the pay networks’ programming on an “all you can eat” basis;

Satellite television, which incorporates many of the features of Basic Cable and Pay TV but is delivered via satellite rather than by cable;

Pay-Per-View events (“PPV”), such as 1-time major sporting events or concerts, where the viewer pays a fee for that individual program;

Video-On-Demand (“VOD”), where the viewer is able to watch a program at their convenience instead of waiting for the program to be run according to the networks’ schedules; and

Pay Video-On-Demand (“PVOD”), where the viewer pays a fee for the right to view at their convenience.

There are also theatrical exhibition (publicly performing for profit or non-profit in motion picture theaters, film festivals, and other places of public entertainment where motion pictures are customarily exhibited), non-theatrical exhibition (on common carriers such as commercial airlines, trains, ships and buses, as well as in educational, religious and penal institutions, health care facilities, libraries, museums, hospitals, military bases, oil rigs, marine and industrial installations, clubs, bars, restaurants, and similar “non-theatrical” venues where there is typically no direct charge imposed for viewing), “home video” (audio-visual products for personal use), Internet streaming and downloading (electronically delivered copies regardless of the means of data retention) as well as receiving programming via wireless mobile devices.

Territory is the geographic area in which the production will be distributed. It could be as small as a local television market or as broad as throughout the Universe. Common intervals between those extremes would be for the United States, U.S. and Canada, World excluding U.S. and Canada, or specifically named territories.

Term would be the length of time the producers want to exploit the production. It could be as short as a few weeks or in perpetuity, depending in the distribution of the production. Again, common intervals could be one year, five years, ten years or any other time period requested by the producers.

Public performance licensing

Performing rights organizations (PROs) are a major source of income for creators and copyright owners of musical compositions, whether for music created for television and motion pictures or popular songs performed in a variety of ways. The United States has three PROs serving writers and publishers, unlike most other countries in the world which only have one PRO. The function of the PROs is to collect royalties for the public performance of music and distribute these royalties to the creators and owners. Unofficial estimates are that the PROs in the United States alone collect about \$2 billion, most of which is paid to their members.

The PROs make separate, but equal, distributions to the writers and publishers. These are the so-called “writer shares” and “publisher shares” and are the only source of music publishing income paid separately to writers, as all other income is collected by the publisher, who then divides it with the writer pursuant to their agreement.

For sound recordings, there are no public performance royalties for audiovisual works, so the license fee for the master license is the only source of revenue for owners of the masters.

What does a placement company do?

Once an agreement is signed with an artist, the Company attempts to get the music used by the various production companies it does business with. Those attempts may take the following forms:

1. Review the music and categorize it based upon genre, tempo, male or female vocal and assign key words to the song to be included in the metadata attached to the song. The “metadata” is information that is either included on a list or embedded digitally on the song file itself that includes all of the above information as well as the title, composer and publishers of the song. This allows the song to be included in a searchable database and supplies needed information for licensing and payment;

2. Develop a website where the music can reside to be searched by the Company’s clients. Usually, this is an FTP site where music can be streamed for review purposes or where low quality files can be downloaded, subject to broadcast quality files being sent when a song is actually going to be used in the program;

3. Send the music directly to the music supervisor for a specific use in a specific project. This is where the Company’s relationships really come into play, as the staff of the Company reviews programs to see what kind of music they might use that fits the genre of the program. Sometimes, the supervisors will call the company asking for a particular type of song

to see if the company can offer something that matches the criteria;

4. Enter into agreements with studios and supervisors to supply hard drives of music for consideration. Sometimes, the companies work out the deal terms prior to sending of the music, so it is “pre-cleared”, or the music is subject to negotiation on a case-by-case basis;

The Placement Agreement

For writers and/or artists signed to record companies or publishing deals, both of those companies usually have to be consulted for approvals and negotiation of fees. If there are multiple writers and, therefore multiple publishers, the number of parties expands accordingly.

However, as we shall see, with many independent artists, both of these copyrights may be controlled by the same party. This is what is known as a “1 stop”, which greatly simplifies the licensing process and is favored by the placement companies and music supervisors as it greatly speeds up any approval process called for in the agreement.

The key terms of the Placement Agreement (the “Agreement”) are as follows:

1. **Exclusive vs. non-exclusive grant:** many placement companies attempt to get the exclusive rights to pitch the music covered under the agreement. Having multiple parties pitch the same music is confusing to the music supervisors and can lead to disputes over which company actually secured the placement. In addition, the Company will want to continue to be thought of as the representative for that artist if the supervisor wants to license another of their songs;

2. **Term of the Agreement:** as it takes some time for the Company to distribute the music effectively and for the supervisors to listen and become aware of it, most companies request a term of 2-3 years, plus some post term language for deals that have commenced but not reached completion. In many agreements, the term automatically renews for additional 1-year periods unless the artist gives notice no less than 60-90 days prior to the end of the current terms, including renewal terms;

3. **Music covered under the Agreement:** in this instance, both the musical compositions and master recording by the artist are included in the grant of rights. It is not necessary for the artist to grant rights for their entire catalog, so there is usually a schedule of titles that are covered under the agreement, with more titles added as the artists continue to create more music;

4. **Grant of rights:** the artist grants to the Company the rights to pitch their music and to license the music on behalf of the artist with the potential audio-visual production companies who wish to use it. The Company gets a **limited power of attorney** in order to execute the agreements and **letter of direction** allowing them to collect the license fees and distribute according to the terms of the Agreement. Generally, the Agreement does not allow the Company to license the music for audio-only product, with the exception of a soundtrack album derived from a production in to which the music is being licensed.

The artist retains all copyrights in their compositions and master recordings and has the full right to release, sell and distribute audio-only product, either

physically or digitally, without the Company participating in the income stream. This may change, however, depending on the nature of compensation to the Company.

5. **Compensation:** in virtually all agreements of this type, the Company will collect the license fees and retain a portion (or all) of the fees as compensation for their efforts. It is not uncommon for the Company to retain up to 50% of the license fees as the reward for their efforts. In addition, some companies require that a percentage of the copyright in the musical composition be assigned to the Company to allow them to participate in the public performance royalty stream derived from the broadcasts of the production.

Keep in mind that this co-ownership **only** applies to the songs for which a placement has been secured, not a co-publishing deal for the artist's entire catalog or all song listed on the schedule to the Agreement.

As the Company is now a co-copyright owner, the Company (or their publishing designee) is registered with the PRO as a co-publisher and is able to collect their percentage of the publisher's share of performance income directly from the PRO. This is important to the Company as it is not uncommon, for a program that is very popular and gets wide distribution, for the performance income to exceed the license fee and, since the placement was a direct effect of Company's efforts, Company should be allowed to participate in the downstream income. The percentage assigned to the Company ranges from 25% to 75%, with a 50% share not being uncommon. Note that no ownership of the master recording is taken under this arrangement.

Often, the Company will also request the right to administer the publishing (for an additional percentage, as is standard for publishing administrators) in order to better control the flow of income and to make sure that the writers and co-publishers get paid properly. As many indie artists are unfamiliar with how to register their songs with the PROs or how to collect their income streams, this additional service can benefit both parties.

This business model may seem weighed heavily in favor of the Company, but it should be remembered that their efforts and any associated costs are at the Company's sole expense, without cost to the artist and with no guarantees that those efforts and costs will be repaid. The company is working "on spec", if you will, and absorbing all the risk associated with these costs. In exchange for that risk, their reward is the compensation listed above.

6. Approvals and restrictions: in some agreements, the Company is given free reign to license the music in any way they see fit. However, in many agreements, there are restrictions about certain types of licenses requiring artist approvals. Usually, these contractual approvals are for X-rated or NC-17 rated films, political announcements or commercials. Sometimes, with artists who have more leverage, all licenses must be approved by the artist, but there is usually language allowing a certain period for the artist to approve or deny the proposed use and if that response is not received, the request is deemed approved. Especially in television, the time allowed for clearance and approvals is very short, so the approval period to the artist could be as short as 48 hours from receipt of notice from the Company.

7. Warranties and Indemnifications: the artist warrants that they have the right to convey to the Company the rights contained in the Agreement, including that there are no other third parties who might have an interest in the songs, that there are no samples contained in the songs and that they will indemnify the Company from any third party claims.

Benefits to the Artist

The most obvious benefit to the artist is income from the license fees and resulting public performance income. For independent artists, even a few thousand dollars is the difference between them surviving or folding. Consider that many indie artists make their living on the road and that \$2,500 as their share of the license fee or performance income could keep them on the road for an additional couple of weeks, resulting in additional touring, merchandise and CD sales income.

In addition, the exposure of having a song on a television program drives all of the revenue sources listed immediately above. It is not uncommon for the Company to be able to negotiate for non-monetary benefits for the artist, such as the band name or website on a chyron or in a crawl at the bottom of the screen. In some cases, programs have their own websites that list the music contained in episodes of the program and it is possible to get a link on the program sites to the artist's website or iTunes page, thereby driving up sales.

Being able to say "as seen on Program X" also aids in the artist marketing themselves to club and concert promoters and bringing more fans to their appearances, also driving sales of CDs and merchandise on site.

Potential Pitfalls for the Company

The whole idea behind the 1-stop clearance is for the Company to have all the rights necessary to give a quotation and issue a license on behalf of the entire song. It is essential that the artist is able to convey 100% of the rights needed, which would include all co-writers, co-publishers and band members.

Too often, the artist “forgets” that someone they knew contributed to the song, or that one of the band members on the track is no longer a member. This can be a disaster for the Company, as their license agreement with the producers contains language that the Company warrants and represents that they have 100% of the right and will indemnify the producers from any such third party claims. Although the Agreement between Company and artist has

similar language, it is the Company who is more likely to have the resources to pay the indemnification costs, not the artist.

In addition, if the Company finds itself in this situation, it is likely that the production company will not accept more material from the Company and no further placements can be obtained from that producer.

Conclusion

As with any successful negotiation, relationships like this can benefit both parties. The artist gets their music exposed to decision makers at the highest levels at no financial cost to the artist and both parties can earn income from the initial placement and a continuing revenue stream that could last for years.

EXCLUSIVE REPRESENTATION AGREEMENT

This Agreement is made and entered into as of _____, by and between _____ (ASCAP) and/or _____ (BMI) and/or _____ (SESAC) ("Publisher"), located at _____, on the one part, and _____, demo/master owner, and _____ (BMI) (collectively, "Licensor"), _____, on the other part. Publisher and Licensor agree as follows:

1. Licensor seeks Publisher's services to exclusively administer and procure placements of some of Licensor's musical works, compositions and Master recordings, as are detailed on Schedule "A", and such other compositions and Master recordings as Licensor may designate in writing during the Term hereof ("referred to hereinafter individually as the "Composition", and collectively as the "Compositions", "Works", or "Recordings").

2. If and when a placement of one of Licensor's Compositions is procured directly by Publisher, subject to Licensor's approval, not to be unreasonably withheld, for either: (a) synchronization in a theatrical motion picture; (b) synchronization in a television program for broadcast to the public; (c) synchronization in a home video program for sale to the public; or (d) any audio-visual production (including, but not limited to, productions released on video cassette, video disc or DVD, audio soundtracks derived from said placements, commercials, promotional film or television trailers, Internet sites, computer programs and/or games, karaoke or any similar media), Licensor hereby irrevocably transfers, grants and assigns exclusively to Publisher, its successors and assignees the right to collect or receive revenues derived from all commercial activities above and resulting from such placement of the Composition(s) throughout the world (Territory"), including but not limited to, the following:

(A) Publisher shall receive and collect one hundred percent (100%) of all license and option fees obtained in procuring placements of Licensor's Recordings, and Publisher shall remit to Licensor fifty percent (50%) of all said licensing fees and option fees pursuant to this paragraph within thirty (30) days of receipt by Publisher. Publisher shall be compensated with an amount equal to fifty (50%) of all said front-end Gross placement fees and option fees generated per placed Composition, as its commission ("Commission"), and

(B) fifty percent (50%) of Licensor's entire right, title and interest throughout the world and universe, including without limitation, the copyright (so-called Publisher's share), the right to secure copyright registration, and any and all copyright renewal rights, in and to the specific Composition ("Co-Published Composition").

(C) Licensor agrees that if and when Publisher procures an approved use of Licensor's music for a specific television, film production, or with a specific advertising agency, that Publisher shall then become Licensor's exclusive representative for music placements in that specific television, film production, or with such advertising agency, according to the terms of this Agreement, during the Term hereof, and for the duration of that specific production or show.

(D) Upon expiration of the term, Publisher shall have the right to collect all license fees earned for the placement of the Compositions during the term for a period six (6) months after expiration of the term (the "Collection Period"). License fees received during the Collection Period shall be deemed to have been received by Publisher during the term and shall be subject to all terms and conditions of this agreement.

(E) In addition, Publisher shall have the right to collect all license fees for any negotiations commenced during the Term, even if completed after expiration of the Term and all provisions of this paragraph 2 shall come into effect regarding division of fees and assignment of copyright.

3. This Agreement shall come into effect as of _____ and remain in effect for a period of __ years until _____ ("Term"). Upon expiration of the initial Term, this agreement shall automatically renew for successive one-year periods, unless terminated by either party upon sixty (60) days written notice prior to the expiration of any term. If and when a placement of one of Licensor's Compositions and Masters is procured directly by Publisher (per paragraph 2, above), Publisher's right to administer said Composition (an "Admin Composition") shall remain in effect for a term of two years ("Admin Term"), commencing as of the date of the License for the placement.

4. Licensor hereby assigns to Publisher the right to administer any Placed Composition (per paragraph 2, above), ("Admin Composition"), and exploit the Admin Compositions in any manner or media now known or unknown, to enter into and execute any and all licenses and agreements regarding the reproduction and other exploitations of the Admin Compositions, as well as the right to receive and collect and all gross sums (except for Writer's share of the "songwriter's share" of small performing rights payments hereunder, which if received by Publisher shall be promptly forwarded to Licensor without deductions or offset), together with accounting statements as received by Publisher derived from the use and exploitation of the Admin Compositions. Licensor, _____ (SS# : _____) agrees to be the fiduciary recipient of one hundred percent (100%) of all net distributable royalties, fees, and income pursuant to this Agreement, for and on behalf of itself and its co-Licensors, co-writers, and co-publishers herein, and that Licensor shall be responsible to distribute and account for said fees and income according to its agreements with its co-Licensors.

(A) Licensor shall compensate Publisher with an administration fee of ten (10%) percent of all of Licensor's "back-end" royalties received in the U.S., which were generated by and attributed to any placement (as described in paragraph 2 above) procured by Publisher pursuant to this Agreement. Publisher shall pay to Licensor 100% of any income received in the United States after deduction by Publisher of the ten percent (10%) Administration Fee, as set forth herein, such payments to be made quarterly, within forty-five (45) days following March 31, June 30, September 30, and December 31 of each year.

5. In consideration of the above undertakings on the part of Publisher, the Licensor hereby agrees:

(A) Publisher shall have the right to deduct from any amounts payable to Licensor hereunder such portion thereof as may be required to be deducted under the applicable provision of any applicable statute, regulation, treaty or other law under any applicable union or guild agreement.

(B) Licensor, or its designee, shall collect Licensor's share of the "songwriter's share" of public performance royalties directly from the performing rights organization to which Licensor belongs.

(C) Publisher may substitute a new title or titles for the Composition, make changes, arrangements, adaptations, translations, dramatizations, and transpositions of the Composition, in whole or in part, subject to Licensor's approval..

(D) Publisher shall not, without Licensor's consent, exploit grand performing rights, exploit or grant licenses for x-rated or NC-17 rated films.

6. During the Term, the Licensor hereby authorizes Publisher in the Licensed Territory the worldwide license and right to:

(A) use, perform, and reproduce (and grant to others the right to use, perform, and reproduce) the master recordings and musical compositions indicated on Schedule "A" in connection with live and recorded audio visual programs and productions, for purposes of exploitation pursuant to the terms of this Agreement. Licensor acknowledges that Publisher and its licensees are not signatories to any music labor unions or guilds (collectively "Guilds") and that Licensor's works were not recorded pursuant to any such Guilds.

(B) record (and grant the right to others to record) on film, videotape, computer disk and/or any other medium, whether known or hereafter devised, Licensor's works in synchronization or timed-relation to audio visual productions, and to issue synchronization licenses for the reproduction and/or synchronization or timed-relation of the Recordings on any visual, audio or audio-visual sound carrier now known or hereafter devised including but not limited to videocassette, DVD, CD-ROM, Internet and all other new media now known or hereinafter developed.

(C) broadcast, telecast, syndicate, license, distribute, and otherwise exploit (and grant to others the right to broadcast, telecast, syndicate, license, distribute, and otherwise exploit) the Recordings contained in Schedule "A", and to manufacture, if necessary, on compact disc, copies of the Recordings in sufficient numbers as may be required by Publisher solely for the promotion of continuing exploitation of the Recordings in the Licensed Territory as authorized hereunder. The costs of design, editing, mixing, production, manufacture and packaging of those discs and related artwork shall be borne solely by Publisher.

(D) issue performance licenses in the Licensed Territory as deemed necessary in the normal course of business;

(E) the right to use the name, photograph, likeness, and or biographical material as submitted or approved by the Licensor of any and all composers of the original recordings, for the purpose of the trade or otherwise in connection with the Recordings;

(F) all rights to license, assign, and enter into agreements to or with any person or entity with respect to all or any rights or part of the rights granted hereunder;

(G) all rights not expressly set forth herein as a licensed right are reserved by Licensor.

7. Licensor hereby warrants and represents that _____ has the right to enter into this agreement and to grant to Publisher all of the rights granted herein, and that the exercise by Publisher of any and all of the rights granted to Publisher in this agreement will not violate or infringe upon any common law or statutory rights of any person, firm or corporation, including, without limitation, contractual rights, copyrights and rights of privacy. All elements within the Composition and Master are either original with the Licensor, or are fully cleared by the Licensor. No Composition shall, in whole or in part, be an imitation or copy of, or infringe upon, any other material, or violate or infringe upon any common law or statutory rights of any person, firm or corporation, including, without limitation, musical samples, contractual rights, copyrights and rights of privacy. Licensor further represents and warrants that the rights granted herein are free and clear of any claims, demands, liens or encumbrances from any other party or musician or Guild, and that Licensor owns and controls all Master and Composition rights, together with co-writers, to the works and performances contained in Schedule "A", and that such use authorized herein will not give rise to any claims of infringement, invasion of privacy or publicity or claims for payment of re-use fees or residuals (any and all third party payments shall be Licensor's responsibility).

8. Licensor hereby indemnifies, saves and holds Publisher, its assigns, licensees and its directors, officers, shareholders, agents and employees harmless from any and all liability, claims, demands, loss and damage (including reasonable counsel fees and court costs) arising out of or connected with or resulting from any breach of any of the warranties, representations or agreements made by Licensor in this agreement and resulting in a final, non-appealable adverse judgment to Licensor, or a settlement entered into with Licensor's prior written consent which consent shall not be unreasonably withheld.

9. Licensor empowers and appoints Publisher, or any of Publisher's officers, Licensor's true and lawful attorney (with full power of substitution and delegation) in Licensor's name, and in Licensor's place and stead, or in Publisher's name, to take such action, and to make, sign, execute, acknowledge, deliver and record any and all instruments or documents which Publisher, from time to time, deems necessary to vest in Publisher and Licensor, their successors, assigns and licensees, any of the rights granted by Licensor hereunder, and which pertain to the Compositions included in Schedule "A", including, without limitation, the securing of copyright in the Composition by Publisher in the names of those parties entitled to such copyright interest as set forth herein.

10. This agreement sets forth the entire understanding between the parties and cannot be changed, modified or canceled except by an instrument signed by both parties. This agreement shall be governed by and construed under the laws of the state of California applicable to agreements wholly performed therein.

11. In the event of legal proceedings between the parties, the parties agree to resolve such disputes through binding Arbitration in the County of Los Angeles. The prevailing party in any action brought to enforce or interpret the terms of this agreement shall be entitled to recover from the other its reasonable attorney's fees and court costs, in addition to any damages or other remedies awarded by the court.

12. If any provision of this contract shall be held void, voidable, invalid, inoperative or otherwise unenforceable, no other provision of this contract shall be affected as a result thereof, and accordingly, the remaining provision of this contract shall remain in full force and effect as though such void, voidable, invalid, inoperative or unenforceable provision had not been contained herein, provided, however, that such provision was not clearly a material element of the consideration for this Agreement.

13. All notices, statements, payments or other written communications desired or required to either party under this Agreement shall be sent to Licensor at the addresses set forth below, or to such other addresses as the parties may designate to each other in the future. All notices shall be in writing and shall be sent by U.S. post or by personal delivery by means of a nationally recognized delivery service (e.g. FedEx or UPS).

14. Licensor acknowledges and agrees that Licensor has been represented by independent legal counsel or has had the opportunity to be represented by independent legal counsel of Licensor's own choice for purposes of advising Licensor in connection with the negotiation, preparation and execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have this day signed below to confirm the agreement reached.

Dated as of: _____

Publisher

Licensor
social security #:
and on behalf of _____

Publishing Designee, (Licensor)