

## Recording and Distribution Contracts with Independent Labels

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An alternative to seeking a major label-recording contract or raising funds to produce your own recording is to approach independent record companies. Many independent record labels have become very successful in reaching and developing niche markets. By researching these labels, you may find one that successfully markets music that fits your style and is interested in producing, manufacturing and distributing your record. Some of these independent labels have been very successful and have become subsidiaries to major recording labels, such as GRP (Universal), Narada and Higher Octave (Virgin/EMI), Tommy Boy (Warner Bros.) and Windham Hill/Private Music (BMG), or have developed affiliations with major label branch distribution, such as Rounder Records.

### Small Label Advantages

The chief advantages of releasing your album with independent record labels are similar to the reasons for signing with major labels. They generally have a distribution mechanism in place. They are organized to handle the time and costs of financing and administering the production, manufacture, marketing and distribution of records. They can better absorb the financial risks and have more leverage in collecting money from the wholesalers and retailers of records. In addition, the company may have developed a reputation in the music community for a certain style of music and can move a great volume of records in a wide geographical territory.

Bear in mind, however, that if a small label invests time and money in your career and is successful in generating a reasonable level of income for you, you should carefully weigh the benefits of signing with a major label if asked (where you probably will be one of many)—against staying with the smaller one (where you may be the star!). Far too often, the benefits of a smaller label are discovered only after an unhappy relationship with a major recording label occurs. Much depends on the style of music involved, for example, pop and rock may get more attention from a major label than music aimed at more narrow and focused audiences, such as jazz, new age, children’s music, or Yiddish folk songs. Both small and large labels have demonstrated effectiveness at marketing heavy metal, dance, hip-hop and rap music.

## Contracts

Although contracts with independent labels can be very similar to those negotiated with major labels, smaller independent companies sometimes work out arrangements that do not mirror these standards. These companies may be willing to step away from obtuse and confusing language to create a contract in plain English that is balanced between the interests of the record company and those of the artist to more equitably share the economic benefits realized from the skills and talents of the artist and the business expertise and mechanisms of the recording company. Sadly, however, smaller labels are increasingly reflecting the contractual style and approach of the major labels, perhaps because of the investment costs and financial risks incurred in developing an artist and the desire to be secure that the contract with the artist is sufficiently strong so that a larger label will not be in a position to tempt the artist to switch labels without the smaller label participating in the benefits of that switch. Many smaller labels

also insist on participating in some or all of the music publishing of the artist. That is an issue that needs to be carefully examined, and if it occurs should be the subject of a separate deal.

Here are some options not usually available to musicians signing with major labels:

### Distribution Deals

In this type of deal, you deliver an agreed amount of packaged cassettes or compact discs to a record company. Some labels only distribute product, while you do the marketing and promotion; others do everything.

In a distribution only deal, the record label will either contract directly with stores or deal with networks of independent distributors or both, selling to them at wholesale prices.

If the company only distributes your record, you will receive a sum equivalent to the wholesale price, minus a fee of 20% to 30% and other direct expenses that you authorize the company to spend, but you pay for all the manufacturing costs and all associated marketing and promotion costs. A standard contractual agreement is that you will receive money only on records actually sold and paid for.

These types of deals often result after bands release recordings for a regional audience, find themselves with growing popularity, and use the added leverage to make a deal that will broaden their audiences.

Unlike major recording labels, independent labels sometimes encourage the sale of records, cassettes or compact discs at performances or to fan mailing lists. In this case, a clause can be added to the standard recording contract that will state that the musician can buy product at a low wholesale price. This inventory may be provided as an “advance” against the royalties or other fees that will be owing. This practice is actively discouraged by most major recording labels.

### Pressing and Distribution Deals (P&D Deals)

In P&D deals, you deliver a fully mixed recording master and artwork to the record label, which then assumes the responsibility of manufacturing and distributing your records, cassettes or compact discs. If the label advances the manufacturing costs, it will reimburse itself out of the sales proceeds of your recordings, plus, perhaps, some value for the use of its money, in addition to the distribution fee.

If the record label also picks up promotion, publicity and marketing, then the deal is usually structured as a royalty deal that will leave the record label with a sufficient margin to cover all of its costs and make a reasonable profit. The royalty is sometimes higher than in standard recording contracts because you have already invested the costs of recording and producing. That is not always the case, however. When negotiating this type of deal, ask that any royalty percentages be specified as net cents per unit for each configuration.

As an alternative, if marketing and promotional duties are involved, these expenses could be deducted as direct costs also, along with the distribution fee

and manufacturing costs, with the balance paid to you, but more likely the deal will be structured on a royalty basis, with a royalty of anywhere from 10% to 18% of retail, plus mechanical royalties on the music.

## Production Deals

In this type of deal, you sign as an artist with a production company. The company is responsible for recording your music and for obtaining distribution through independent distributors or a record company. In many cases, contracts for these deals are structured similarly to record contracts because the production company will typically make a pressing and distribution deal with a record label that also includes marketing and promotion and then contract with you for a percentage of the royalty paid to it by the record company.

For example, a production company may have a deal with a record company that pays 14% to 18% of the retail selling price on records sold, depending in part on whether the recording costs are paid by the production company or advanced by the record company. The production company might then have contracted with the artist to pay a royalty from between 6% and 10% of the retail selling price or 50% to 60% of the royalty paid to the production company by the record company.