

**A LEGAL “CRASH COURSE” FOR
MUSICIANS, SONGWRITERS & PERFORMERS**

[Yes, it’s a “crash” course, but hopefully you won’t crash.]

Contemporary Folk Week

The Swannanoa Gathering

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I. The Substantive Legal Areas:

A. Introduction

First, there’s no such thing as “music law” or entertainment law”. It’s not like “criminal law”, “personal injury law” or “patent law”. Rather, someone who calls him or herself an “entertainment lawyer”, or “music lawyer” must be familiar with a variety of legal areas, including contract law, copyright law & trademark law (these are the most common subjects of interest to you, the client), but must also have some expertise in business law, employment law, tax law, estate planning and possibly immigration law [visas, work permits, income tax issues], bankruptcy law and criminal law. Later, I’ll discuss how to find and “train” your lawyer.

Second, the music industry has a unique history, one which uses specific words, phrases and language, plus some unusual trade customs and practices. Your advisors (whether lawyers, agents, managers or accountants) must be comfortable with these industry “quirks”.

Third, for “music lawyers”, this area of practice involves what might be most politely described as “unconventional” clients. Unusual ebbs and flows of income, late hours, coarse language, casual or bizarre dress, strange business settings and the personalities associated with highly creative people require a lawyer who is personally adaptable to these aspects of the music client.

So, on to the “big two” – Contracts and Copyrights.

B. Contracts

1. Introduction

Three Contract-related “nightmares” for Lawyers and Artists: (1) The Artist who says: “I took the record contract to the lawyer at my father’s bank to review.” (2) An Artist who is so enthralled with a soliciting party (record producer, manager, agent, etc.) that thorough paperwork seems unnecessary. (3) What’s worse than signing a recording contract? Signing a recording contract that you have to “sue” to get out of!

A. “Lawyer-speak”, or “the fine print”:

- (a) Assignment of Rights – who has the right to do what
- (b) Delegation of Duties – who has the obligation to do what
- (c) Injunctive Relief – quick judicial relief to prevent an irreparable harm
- (d) Jurisdiction, Venue and “choice of law” provisions – which court and which law controls
- (e) Service of Process – how everyone is “officially” notified
- (f) Statute of Limitations – when rights, duties and remedies expire
- (g) Arbitration/Mediation – two ways to solve disputes
- (h) Attorneys’ Fees- who pays, and under what circumstances
- (i) Binding Effect – how you make changes “binding”
- (j) Construction – Bias against the contract writer
- (k) Entire Agreement – verbal statements
- (l) Force Majeure – literally, “superior or irresistible force” (fr.)
- (m) Governing Law – similar to (d)
- (n) Independent Counsel – did everyone have a lawyer of their choosing?
- (o) Notice of Breach/Right to Cure – How to claim a breach; how to fix one
- (p) Notices – The proper method of communicating “officially” (similar to (e))
- (q) Remedies – what you are entitled to receive for breaches
- (r) Representations and Warranties – General promises and factual statements
- (s) Section Headings – names of the headings as being “substantive” or not
- (t) Severability – carving out a ‘problem piece’ of the contract
- (u) Gender – neutral pronouns
- (v) Waiver – Failing to promptly claim a breach doesn’t “lose” it
- (w) Signing in duplicate – All parties should get a fully-signed “original”

B. Some famous contract negotiating statements “translated”:

(1) “This is our standard contract” (Often followed by a statement like “nothing can be changed”):
POSSIBLE TRANSLATIONS: (1) “We’re completely in charge, so just sign it and shut up.” (2) “We already paid our lawyer to make this as one-sided as possible, and we’re not going to let you waste that money.” (3) “We think we can bully you into signing “our” agreement without having to really negotiate. (4) [Make up your own translation here:

_____]

(2) “You have to sign this contract today”: POSSIBLE TRANSLATIONS: “We’re tired, it’s late, so just shut up and sign it”. (2) You’d have to be crazy to sign this, and if we let you wait until tomorrow (when you are sober/straight/awake), you’ll never do it”. (3) [Your turn: _____]

(3) “Why do you want to talk to a lawyer?” (Often followed by something like “Don’t you trust me?”): POSSIBLE TRANSLATIONS – (1) “Shut up and sign it, you stupid s**t!” (2) “If you get a lawyer who actually is looking out for your interests, this contract is toast.” (3) [Your turn again: _____]

2. Recording Contract

Described as “the most sought-after prize by artist/clients”. Also described as “the most complex agreement in the music industry”. Because of the usually limited bargaining power of the artist, Recording Contracts usually seem so oppressive as to be arguably unenforceable. What does this mean to the artist and his/her lawyer? The attorney must know the difference between what is “standard” language (even though oppressive and probably not negotiable), and what is, in fact, truly “negotiable” to any degree. Note that in today’s world of “self-produced” CDs, and internet marketing, recording contracts with major labels, or even independent labels, may or may not be as valuable as in the past.

Most of the “Standard” Provisions (or concepts) in a Recording Contract are listed below:

- (a) Note, in general, this kind of contract is designed to provide protections to the label, not the artist.
- (b) The artist usually is required to provide exclusive recording services to the label.
- (c) Methods of production and distribution (Will there be a Distribution Agreement?)
- (d) Repeated “Terms” should be clear, and unambiguous (for example, “compositions” are different from “recordings” which may be placed on a “master”, but “recordings” may be called “sides”. Are “songs” “compositions”, or not?).
- (e) The contract’s duration, including renewal provisions.
- (f) Release Commitments by the label (Are they required to actually “release” an artist’s record, once recorded and/or manufactured?)
- (g) Copyright ownership. (A composer might want to protect against uses of a song which he/she finds offensive)
- (h) Budgets (for recording costs, etc.) and advances (money to the Artist which is “owed” back to the label).
- (i) The recording process (when, where, for how long, with whom?).

- (j) Delivery and Acceptance of the product – The Artist “delivers” and the label “accepts”.
- (k) Creative control (This is nearly always important to an Artist, but it’s hard for a new Artist to get it.)
- (l) Videos (for promotional purposes)
- (m) Group provisions (if it’s a non-solo act)
- (n) Merchandising (Will there be a Merchandising Agreement?)
- (o) Re-recording restrictions (the label generally will want to restrict this)
- (p) Warranties and Indemnities (Express warranties are “promises” that certain things exist (like that the Artist actually is the copyright owner of “his/her” songs). Indemnity provisions provide protection from claims of others.
- (q) Assignment & Delegation (Can someone else do a specific task or take on a responsibility?)
- (r) Royalty payments (what the Artist gets paid) and reductions (what the label can deduct before paying you). There’s lots of quirky history here – packaging deduction, breakage (85-90%) right of return, and sales “lines”.
- (s) Recoupment (recovering advances and expenses).
- (t) Cross-collateralization – a very tricky concept.
- (t) Accounting and auditing (keeping track of sales and royalties, and objecting to reports)
- (u) Exhibits and Attachments (Schedules which list various items – for example, royalties on US sales, vs. “foreign” sales.)[As the Artist, you must make sure that every “add-on” to the contract is really there and completed!]

3. Music publishing Agreements – “Full” publishing (or “songwriter”) agreement – publisher owns the full copyright; “co”-publishing (or “participation”) agreement – publisher owns 50% of the copyright; and Administrative agreement, where publisher owns no part of the copyright.

A quick list of some of the “Standard” Provisions (or concepts) in a Publishing Agreement:

- (a) Duties of the Publisher – account for royalties; pay royalties; “exploit” the song.
- (b) Advances, if any.
- (c) Royalties – usually figured on “net income”, the exact definition of which is important.
- (d) Expenses – who pays for these?
- (e) “Reversion rights” – if no exploitation, Artist can terminate agreement.
- (f) Artist wants no “cross-collateralization” with recording contract expenses/advances
- (g) Songwriter should always get proper writing credit.
- (h) IF songwriter is also a recording artist, all song licensing by the publisher must conform to terms already in the recording contract.

C. “Intellectual property”

1. Copyrights:

Copyright is a property right which was granted in the U.S. Constitution – [Article I, Section 8 for those of you who really care about this kind of detail.] The Copyright Act of 1976 (effective 1/1/78) was a major overhaul of existing copyright law, and this Act defined works subject to “copyright” as “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which [the work] can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device”.

How can you understand copyright law? The U.S. Government has “helpful” brochures and online information, BUT courts and the U.S. Copyright Office do not always agree on what the law “is”. [**Digression:** Five Steps to a complete understanding of copyright law: (1) attend and complete undergraduate school, (2) attend and complete law school, (3) read the dozens of multi-volume treatises that have been written about copyright law, (4) continue studying all the new treatises, articles and court decisions, (5) repeat step #4 until you are dead.]

There is an unusual aspect of copyright “ownership”. When you own any other kind of personal property (for example, a watch, book, furniture, or a guitar), you own it basically forever – you can sell it when alive, keep it until death, and then pass its “right of ownership” to someone else, whose rights extent into the future in the same way. BUT, copyright ownership has a fixed life span. [What is that life span? The answer is complicated! We’ll get there.]

What kinds of works can you “copyright”? Literary works; musical works (including accompanying words); dramatic works (including accompanying music); pantomimes and choreographic works; pictorial, graphic & sculptural works; motion pictures and other audiovisual works; sound recordings; architectural works.

The copyright owner has “exclusive” rights. What are these rights? (1) reproduce the work in copies or phonorecords; (2) prepare derivative works based on the work; (3) distribute copies or phonorecords of the work to the public [in other words, sell (and/or rent) the work]; perform the work publicly (directly, or through machines); display the work publicly.

Note that the copyright owner’s rights are EXCLUSIVE (solely available to THAT owner), except, of course, for the “exceptions”. Here are the most common “exceptions”: (1) fair use; (2) compulsory mechanical license; (3) public policy; (4) record stores.

What do these “Exceptions” mean?

(1) **Fair use** – use in criticism, comment and news reporting; also teaching, scholarship and research. [What’s the “rule of thumb” for how much music you can borrow within this exception? Trick answer: There is none!] One of the new developments in the “fair use” arena involves “sampling”. There are now sampling “clearinghouses” which result in agreements in which the sampled artist is granted co-ownership rights in the new work as a “derivative” work.

(2) **Compulsory mechanical license** – AFTER the first release of a song [either by a recording (like a compact disk) or by publication (sheet music)], anyone else can record the song by paying a licensing fee to the author. Today, a leading “clearinghouse” which handles these licenses is the Harry Fox agency in NYC. Established in 1927, Harry Fox represents over 30,000 publishers. These licenses (for 2,500 CDs or fewer) can now be easily obtained online. You sign on, create an account, “search” for the song, and pay with a credit card. [www.harryfox.com/index.jsp] For 2006, and the remainder of 2007, the statutory rate is 9.1¢ OR 1.75¢ per minute of playing time (or fraction thereof), whichever is greater. Note that there are alternatives to Harry Fox on the “web”, and some medium-sized publishing companies handle mechanical licenses on their own website.

(3) **Public policy** – use by libraries for limited purposes, plus educational, worship, charitable and other non-profit purposes.

(4) **Record stores** – stores who play music to sell their inventory.

If you “use” someone else’s copyrighted material, and you are not within an “exception”, you’ve violated their copyright “rights”. So, how do you protect yourself from violations? At least three alternatives: (a) Go online to the U.S. Copyright Office and read their materials [www.copyright.gov]; (b) Get permission from the author; (c) Ask a music lawyer for help.

There are three kinds of copyright ownership:

(1) by creation

(2) by “work-made-for-hire” doctrine [Three “common” situations where this may apply: songwriter is an employee of an entity; OR songwriter is part of a “band” which has created a separate entity to “own” the copyrights of its band members; OR songwriter establishes an “Artist Corporation”

(3) by assignment.

Some miscellaneous copyright-related laws:

1995 – Digital Performance Right in Sound Recordings Act; 1998 – Digital Millennium Copyright Act (DMCA) – relate to broadcasting a sound recording online.

1998 – Sonny Bono Copyright Term Extension Act (Section 505 of 1976 act) – added 20 years to copyright duration.

Copyright Duration – “generally”, if created after 1/1/1978, the lifetime of the author plus 70 years. [So, a copyright can be valuable for years after the creator’s death. This is why “estate planning” issues can be important to the Artist.] If the work was created before 1/1/1978, 95 years from the date published or registered. [**Digression:** What does “published” mean? In a copyright sense, “published” means that copies are given to the public, OR there is a public performance, OR copies are offered to the public. Submitting a demo tape to a radio station for airplay is “publishing”. Also, posting on the internet is “publishing” a song.]. Be aware that major corporations who “own” the publishing rights on copyrighted works continue to lobby for extensions on the length of copyright protection, so it is likely that copyright duration will get longer and longer.

Copyright notice and copyright registration – Under the 1976 Copyright Act, neither is required. Copyright is automatic upon a “creation” and a “fixing” to a tangible medium. **BUT**, if you don’t use the notice, someone can claim that they were an “innocent infringer” (meaning that they violated your copyright but didn’t know they were doing so since the author didn’t alert others that the work was “owned”.) **AND**, you can’t file a claim for infringement (which would entitle the owner to damages) without having registered the copyright. So, use the notice [a small letter “c” inside a circle, followed by the year of publication and the name of the author; OR the word “copyright” or the abbreviation “copr.” instead of the “circled c” symbol.] [For a sound recording, it’s the same except “p” is used instead of “c” (also in a circle) – the “p” stands for phonograph.]

[Digression: Where is the copyright symbol on your computer? Go to the “Insert” drop down menu on your word processing toolbar, select “symbol” option, find the © symbol among the symbols, and then “insert” it into your text. OR hold down “Alt” key, then on the numeric pad type “0169”, then release “Alt” key.]

Damages for infringement can be as little as \$200 (per infringement) to \$150,000 (per infringement), plus infringing products can be impounded and ordered destroyed. Copyright infringement can also result in criminal penalties.

2. Trademarks

A Trademark is a name or symbol used in conjunction with a product designating the source of those goods in the marketplace. [A “service mark” is the same thing for a service.] A trademark is generally a “proper adjective” (a proper noun used as an adjective), followed by a generic noun. For example, Time Magazine or Xerox copy. Sometimes the same mark is used for both products and services – “Mtv” – used both for the Mtv television station (the service), and Mtv products. Trademarks are governed by both federal and state laws. A federal trademark (federal service mark) can only be acquired when goods (or services) are put into interstate commerce with a name or logo showing their source. To “protect” a mark (that is, to retain its exclusive use), it must be “distinctive”. In descending order of “distinctiveness” marks are fanciful (coined), arbitrary, suggestive, descriptive, and generic. [Fanciful: Kodak. Originally fanciful but lost: Aspirin, Elevator, Band-Aid. Other well-known examples: “Kleenex tissues” not “Kleenex”; “Xerox copy machines”, not “Xerox machines”; Jello brand gelatin; duct tape; not “scotch” tape but rather “Scotch brand adhesive tape”.] You can reserve a mark for 6 months that you intend to put into interstate commerce. Research into potentially competing or duplicative federal and state trademarks is highly advisable.

3. Trade names

McDonald’s; Target; Home Depot; Sony; Ford; AT&T – you get the idea. Add logos, particular type styles and particular colors and shadings and you have trademarks.

II. Important Musical/Business topics:

A. “Kinds” of Advisors

1. Lawyers

(a) Generally, there are three types of “music lawyers” and some lawyers work in more than one area: **(1) Deal-makers** – generate business opportunities for their musical clients; **(2) Transactional lawyers** – handle client’s business matters & draft and negotiate contracts for the client; **(3) Litigators** – sue on behalf of the client or defend suits against the client.

(b) Ethical issues for lawyers (yes, I know that the phrase “legal ethics” can be an oxymoron) – Two big areas: **(1) Conflict of interest** – When does this become important? When the lawyer acts as an “intermediary” between, say, the artist and a record company (who pays – or should pay - the lawyer?); When the lawyer acts on behalf of a group of artists who form an “act” or band; **(2) Jurisdictional license problems** – federal copyright and trademark law is different than the copyright and trademark laws of various states. AND, some states have extensive laws governing musically-related topics (New York and California are obvious examples), and lawyers are often not admitted in ALL states or JURISDICTIONS which might relate to music contracts.

(c) Finding & “training” your lawyer: **(1) Finding your lawyer** – Use the same rules as you would to find a “good” spouse/partner, a “good” doctor”, or a “good” mechanic – someone who listens to you, seems to be interested in you, makes time for you, is practical but can dream, has a sense of humor, is not too “full of himself/herself”. You’re allowed to “Interview” lawyers in the same way that you’d evaluate candidates for a spouse/partner, doctor, mechanic. Are they interested in you and your work? Are they “too pushy”? Are they “too slick”? Are they “too dull”? Trust your gut and don’t be too suspicious or too gullible. Remember, good lawyers want good clients – that means clients who are involved in interesting work, who are not “nut jobs”, and who are organized enough to pay their bills. **(2) Training your lawyer** – ask what you will be charged for, and how much, and how often. Make sure you get satisfactory answers. [For example, some lawyers do and don’t charge for postage, copying, phone calls, internet research, paralegal time, FedEx charges, courier services] Lawyers who are uncomfortable talking about their own fees are lawyers who either don’t value their own services, or who probably have lots of fee disputes with clients. Make sure you are getting good value for the fees you are paying – ask questions if you don’t understand what is being done, or why. You are the client – you are “the boss” – your lawyer works FOR YOU – don’t give up control, and don’t “get stupid”. Make sure you understand what is being done on your behalf and that you approve of the actions being taken. Good lawyers WANT to explain things to their clients because clients who are “aware” of (and who clearly understand) actions being taken ultimately are satisfied (ie. “paying”) clients. [You might want to put the last four sentences on a 3x5 note card and carry it with you whenever you visit a lawyer.]

2. Agents

The Agent’s usual role is to obtain live performances for an artist. Agents are generally paid a commission (often 10-15%) of the money earned from the live gig. NOTE: If you sign an Agreement with an agent, that Agreement may require you to pay the commission for ANY live gig, whether the Agent was involved in obtaining it or not! [This can be an important negotiating point for the artist, especially if the artist has already developed a network of regular gigs and venues to perform. Remember, “get your money’s worth” – your Agent should be getting you NEW and BETTER (i.e. higher paying, better exposure, better billing) gigs than you could get yourself. That’s what their commission is supposed to “buy” for you.] Agents are sometimes subject to state laws governing “talent agents”. Florida and California are among the states which have such laws. Most complaints under these laws do not involve the music industry, but rather the “modeling/acting” industry.

3. Personal Managers (or just “Managers”)

Managers tend to be more directly involved in an Artist’s life than either Agents or Promoters. An Artist should take time to get to know a prospective Manager, and thoroughly check out that Manager’s reputation before entering into a Management Agreement. Managers are often initially hired to obtain a “record deal” for the Artist.

Important points in a Management Agreement:

(a) The Manager’s “commission” (usually 15% - 25% of the Artist’s “gross income”), should be as clearly and specifically worded as the Artist has the bargaining power to accomplish. If possible, the commission should be from “net income” (not “gross income”), and that “net income” figure should exclude “advances” to the Artist (sums which are required to be “paid back” – usually to the record company), and exclude “earned” (but not actually received) sums.

(b) If the Manager is given the power to collect money (on behalf of the Artist), and distribute it TO the Artist, the Management Agreement should provide the Artist with the right to audit and review the income records.

(c) Historically (even recently), Management Agreements have given the Manager a “power of attorney” to act on behalf of the Artist. [A “power of attorney” means that a person can legally do anything that a person could do – sign contracts, open bank accounts, sign checks, etc.] Unfortunately, this power has been abused by some Managers, and due to the possibilities for miscommunication in connection with this important power, “more modern” agreements have limited it, or eliminated it completely. Again here, the extent of the Artist’s bargaining power will have a big impact on what this particular “clause” will look like in any Management Agreement. Be especially careful of a phrase or provision which gives a Manager “a right coupled with an interest”. Such language may give the Manager the right to continue to exercise a power of attorney even after the Manager has breached (violated) the Agreement!

(d) The Artist should have the right to approve all promotional and marketing materials.

(e) The Artist may want a “key person” clause in a Management Agreement, thereby insuring that a particular person at a Management Company would be working with the Artist.

4. Accountants

After you have a good lawyer, ask him/her to recommend a good accountant. Accountants can do for your money what lawyers can do for your paperwork. You can interview for an accountant and choose and train an accountant in the same way that you found and trained your attorney. See Paragraph 1. above.

5. Record Producers

They help produce records. A Producer Agreement is a good idea.

6. Music Publishers and Publishing Companies

Often involved in the context of recording contracts, but for songwriters, they can be an important, and life-long, revenue stream. See the previous discussion at Paragraph I, B, 3 on Music Publishing Agreements. You should certainly use as much care in finding and signing with a publishing company as you would finding and picking any other important advisor.

7. Distributors

These companies help make sure you get lots of record sales. A record company without a distribution "arm" or sister Distribution Company may be handicapped in the marketplace. You will want a Distribution Agreement. Note: those from a major label can run from 60-100 pages) Second Note: if you are selling your own CDs at retail, they will need a Universal Product Code (UPC). Also, apparently there is a new kind of equivalent "code" to track music sales online – the "Grid" (Global Release Identifier) to track the sale of music online.

8. Promoters

A Promoter owns the right to stage an act, and accepts the risk for profit or loss. Agents sometimes act as Promoters. A Promoter will sometimes organize a tour, and require the Artist to sign a tour Agreement. These Agreements can contain many details which will vary widely depending on the location, length and complexity of the tour. [For example – with an overseas tour, who is responsible for handling visas?]

9. (Business Managers)

Not really advisable for Artists grossing less than \$500,000.00 per year.

B Business entities

1. Sole proprietorship – artist “works for himself”.
2. Partnership – State partnership laws differ, and many issues must be addressed in a partnership agreement. One of the most common examples of this kind of arrangement is when the members of an “act” decide to work as a partnership.
3. Artist Corporation (or Personal Service Corporation) – tax ramifications & liability issues (pyrotechnics, injuries, touring issues – artist cancellations, rainouts, etc.) Many issues must be addressed in the “shareholder” agreement which establishes an Artist Corporation.
4. Fictitious Name Registration – Protects the use of a name (such as a band’s name). In Florida (and other states), this registration process can now be done online.

C. Taxes

We could spend two weeks just on this topic. So, after you have a good accountant, he/she is the person to whom to take all your questions. Note that with “group” acts, if one person is getting paid for the whole group, they will eventually come under IRS scrutiny if they only report their “cut” of the band’s money. There are not very many good (and completely legal) ways to solve this dilemma. The recommended way is to have the lawyer create a legal entity (which is the band), get a federal tax identification number for it, and report all the income through that entity. Remember, the IRS never forgets; even death will not wipe out an IRS debt.

D. Performance rights and issues

Any entity which is legally going to publicly perform the compositions of others must have a public performance license. This would include radio stations, television broadcasters, virtually all retailers (restaurants, clubs, bars), concert venues (but not movie theatres) and stadiums. Three performing rights societies issue licenses on behalf of copyright owners and collect and distribute royalties. The amounts of the fees charged, and the royalties given out are the result of the most complex calculations imaginable. For example, with a restaurant, factors such as the square footage of eating space, the number of nights music is played, the hours, the presence or absence of a liquor license are all factored into the fee. [There is a separate jukebox license office which covers all three societies.]

There are three performing rights societies in the United States: ASCAP (American Society of Composers, Authors and Publishers); BMI (Broadcast Music, Inc.); and SESAC (Society of European Stage Authors and Composers). Songwriters can belong to only one of these societies, but music publishers belong to all three. [In the latest issue of “Acoustic Guitar” magazine, (9/07) on pages 94 & 95, there is an article about performing rights societies.]

There is also a “right of publicity” which is the right of an individual to control and profit from the commercial “value” of his/her own identity. There are many “famous” cases involving violations of this right – Use of a Tom Waits-like voice in a commercial; “He-e-e-re’s Johnny Portable Toilets”; Use of old photos of the Three Stooges without their consent.

E. “Kinds” of Music

1. Public Domain music – more and more become available every year as old copyright periods expire. Be careful, not all “common” music is in the public domain. See www.pdinfo.com for information about identifying music in the public domain.
2. Commissions – a very good thing for a songwriter. Talk to your lawyer about putting together a short simple Agreement you can use when someone wants to commission you to write a composition.
3. Parodies – A very tricky area of the law. Parodies are “generally” considered “copyrightable” in their own right, but there are notable examples where the owner of the original piece was able to block a parody. This topic falls within the “fair use” exception of copyright law. Caution is advisable.

F. The Digital World

This is a new and fast-changing universe where music, law, and competing business interests are often in conflict. Almost anything that is “true” today will be subject to change tomorrow. We could probably spend a complete seminar hour on this broad topic, including issues like: (a) Royalty rates for internet radio stations; (b) webcaster rights and duties; (c) various legal conflicts [Such as the 3/07 article – Viacom sues Google for \$1Billion for copyright infringement. 160,000 clips on YouTube, viewed 1.5 billion times – clips of copyrighted television shows (such at *The Daily Show*) and movies.] Note that there is a “Radio and Internet Newsletter” – which is “Googleable”.

III. An Unconventional Glossary:

Accidentals: wrong notes.

Allegro: leg fertilizer.

Books: “Outside of a dog, a book is man’s best friend. Inside of a dog, it’s too dark to read.”
[Groucho Marx]

Cadence: When everybody hopes you’re going to stop – but you don’t.

Civilized Person: Someone who can play the accordion but won’t.

Decisions (good and bad): Good decisions are the result of experience; Experience is the result of bad decisions.

Drool: What the drummer got on his IQ test.

Experience: what helps you recognize a mistake when you make it again.

Experimental Psychologists: they now use lawyers instead of rats. Why? (1) There’s more of them. (2) They don’t get so attached to their subjects. (3) There are some things rats won’t do.

Fool-proof: Nothing is fool-proof to a sufficiently talented fool.

Homeless: A guitarist with no girlfriend.

Indecision: the key to flexibility.

Indecision: It may or may not be your problem.

Lies: creative phrasing of the truth, or, as we call it now...marketing.

Metronome: A dwarf who lives in the city.

Nobody: Nobody said it was going to be easy; and nobody was right.

Orchestral Suites: naughty women who follow touring orchestras.

Perfect Pitch: When you throw a banjo into a dumpster and it hits an accordion.

Recording Industry Association of America (RIAA) – the trade association for record labels; known in some cynical quarters as “satin’s spawn”.

Synchronization License – a license for the inclusion in a film, television show or commercial. Essentially, permission is obtained to “synchronize” the song with the visual images.

Time: nature’s way of preventing everything from happening at once.

Theory and Practice: “In theory, there is no difference between theory and practice. But, in practice, there is.” – Jan L. A. van de Snepscheut/Yogi Berra

Usefully – “I would rather have it said ‘He lived usefully’ than ‘He died rich’” – Benjamin Franklin

Verbal Agreements: “A verbal agreement isn’t worth the paper it’s printed on.” [Samuel Goldwyn]

Waits, Tom - “The big print giveth; the fine print taketh away”.

IV. Resources:

Some of the sources used in this presentation:

The Practice of Music Law In Florida, Julee L. Milham, 2003, The Florida Bar.

Entertainment Law & Business, Shanker, Guinn & Orenstein, 2005, Juris Publishing, Inc.

This Business of Music & More About this Business of Music, Shemel & Krasilovsky, 1977, Billboard Publications, Inc.

“Counseling Clients in the Entertainment Industry” – Music Publishing, Sound Recordings, Film, Theatre, Florida Bar Association, Continuing Legal Education Seminars

“The Arts and the Law”, Florida Bar Association, Continuing Legal Education Seminar.

Books of interest:

Guitar – An American Life, Tim Brookes, 2005, Grove Press, NYC [a fun read about the history of the guitar and one author’s quest for a handmade instrument]

The Little Book of Plagiarism, Richard A. Posner, 2007, Pantheon Books, NYC [only a lawyer could love this kind of book, but very small and short]

Guitar Man, Will Hodgkinson, 2007, De Capo Press, Cambridge, MA [from no knowledge to a gig in record time]

Hotel California, The true-life adventures of CSN&Y, Mitchell, Taylor, Browne, Ronstadt, Geffen, the Eagles, and their many friends, Barney Hoskyns 2006, John Wiley & Sons, Inc. NJ [Great “behind the scenes” history of lots of familiar names and tunes]

Clapton’s Guitar, Watching Wayne Henderson Build the Perfect Instrument, Allen St. John, 2005
Free Press, 1230 Avenue of the Americas, NY, NY 10020 [the quirky craftsmanship of guitar artisans]

Music Organization Resources:

American Federation of Musicians – (AFof M) - www.Afm.org

American Federation of TV and Radio Artists – (AFTRA) - www.aftra.com

American Society of Composers and Performers (ASCAP) – www.ascap.com

Broadcast Music International (BMI) – www.bmi.com

Harry Fox Agency – www.harryfox.org

International Alliance for Women in Music (IAWM) – www.iawm.org

Music Publishers’ Association (MPA) – www.mpa.org

National Association of Recording Merchandisers (NARM) - www.narm.com

Recording Industry Association of America (RIAA) – www.riaa.org

Society of European Stage Authors and Composers (SESAC) – www.sesac.com

Soundscan – <http://home.soundscan.com>

Uniform Code Council, Inc. – www.uc-council.org

Intermountain Acoustic Music Association (IAMU) – www.xmission.com/niama

International Bluegrass Music Association (IBMA) – www.ibma.org

Folk Alley – www.folkalley.com

www.songfile.com

www.discmakers.com – font library for all compact disk symbols and text

Legal Resources:

United States Copyright Office – www.copyright.gov

United States Patent and Trademark Office – www.uspto.gov

World Intellectual Property Organization – www.wipo.org

V. About the Presenter:

Bob Hicks is a Cleveland, Ohio native who has lived in Florida since 1983. His early musical training was classically oriented (piano and theory and orchestral music), and he discovered the guitar (and folk music) in college. He taught public school, sang and played professionally in sacred and secular settings, and taught guitar (well) and composed (miserably) prior to attempting to gain a measure of respectability by becoming a lawyer (foolish boy!). His early general practice included music clients and hearing-impaired clients (he learned sign language). He was in-house counsel and Chief Administrative Officer for a privately-held Florida finance company until 2000, when he retired. Now he sings, plays guitar, travels, plays tennis, collects art, and enjoys his wife, children and grandchildren (all not necessarily in that order).

VI. Sample Agreements:

1. Recording Contract - Form 13 – The “Paterno Form” a popular simple alternative to “standard” record label recording contracts.
2. Performance Contract – Form 2 & 3
3. Management Agreement – Form 5
4. Co-Publishing Agreement – Form 10