

# SHOPPING RECORD DEALS

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## 1. Basic Shopping Guide

**A. Shopping Defined.** “Shopping” is a misnomer. The process is really buying and selling. Shopping generally means presenting artists to record companies with the goal of securing a music recording or music publishing agreement (the proverbial “deal”). The idea is that a strategic relationship with an entity capable of funding and administering the recording, manufacturing, distribution and promotion of recorded products will enhance an individual artist or musical group’s artistic and business stature, assets, and income. The artist as an independent business contracts with a recording company. If the businesses can work successfully together, the relationship, under the terms of the recording contract, can last many years. If it does not prove to be financially productive, usually the record company will terminate the agreement. Once a recording contract is entered into and unless the artist is a star, the record company has the overwhelming money, power, and leverage to secure more favorable terms and to control the artist’s recording career. In the event the artist becomes a financial success, it is common for certain terms to be renegotiated to favor (reward) the artist. If the artist is not ready, willing and able to lead the effort with commitment and dedication to advancing the artist’s career, the process is greatly impaired. Consequently, the efforts of those who help the artist on a speculative and contingent payment basis (including lawyers) are also jeopardized. Therefore, the artist’s commitment, as well as talent, must be evaluated by advisors.

**B. The Buyers.** The buyers are individuals or entities (usually record companies, also known as “labels”) to which the artist’s music and a business relationship are shopped. Usually the financiers (buyers) of the recording end up owning the sound recording copyrights and master recordings. In today’s entrepreneurial environment, buyers can be defined more expansively.

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- i. *Private investors and lenders.* The artist may prefer to secure the financial assistance of an institutional or private lender or investor or to self-fund and “self-release” recordings. In this way, the artist acts as the record company and can release and promote albums. To include, among other sales and distribution outlets, sales at live performances (“from the stage”) which earn a greater gross return on each album sold. In exchange, the lender or investor may seek the return of principal, interest and “up-side” which generally means a percentage of the artist’s income from recorded products, and perhaps participation in other revenue sources from the recording career in the future. Ultimate ownership of the copyrights in the recordings may be less important to the investor so long as the loan or investment is at least secured with the right to receive payments - whether principal, interest, royalties or profits.
- ii. *Independent record companies.* In the past, “indies” were responsible for the minority of all recorded product income from sales around the world. Recently, collective independent record company releases and related income has been growing and now rival the major record companies. Indies are important in the development of the artist. “Developing” an artist is a process which takes the artist from obscurity to recognition both artistically and as an economic entity. There are thousands of indies throughout the world. Many of them have strategic and formal relationships with major labels or major distribution companies which allow expanded distribution and promotion of artists who “break-out” by attracting an expanded audience (“upstream”).
- iii. *Major Labels.* The prize when shopping is believed to be the major label deal. Presently the major labels include Universal, Sony/BMG, Warner Bros., and EMI. Although the modern music industry has always been dominated by the major labels, global consolidation continues. Of the thousands of titles released by major labels each year, only ten to twenty percent (depending on the year) sell more than 10,000 units! It’s a result - the major labels have become dependent on multi-platinum successes. Everything else makes little or loses money and the artist’s record contract is destined for termination. While large recording budgets, generous advances and potential up-side of a successful major label release is attractive, this result is a possibility not a probability.

**C. A&R Representatives.** A&R stands for artist and repertoire. These individuals, whether employed by record companies or as independent talent scouts, not only identify artists, but also participate in the creative process. A&R reps continue to be the critical nexus between the immense talent pool and the record company. A&R careers rise and fall on the signings and successful (or unsuccessful) careers) of artists. A&R people tend to be young and mobile. They traverse the country and often bounce among record companies. They use current technology, such as internet research, to identify artists that are creating a “buzz”

and evaluate their ripeness for a record deal. Ultimately, they are expected to have “ears”; that is, the ability to identify artistically and commercially successful music. Lawyers, managers, agents and producers can also bring artists to a label’s attention and are usually referred to an appropriate A&R representative for the genre.

2. **Solicited V. Unsolicited.** Most labels will not accept unsolicited material, which is material that the label did not request. Unsolicited packages often get returned unopened for two reasons. First, the volume of submissions is just too great. Second, the label may be concerned that acceptance of unsolicited material could give rise to a claim of access and copyright infringement by the submitting party who later may claim that his or her song was recorded and released by the record company as performed by another artist.

Invitations to submit (solicited) material should be sought by making the appropriate inquiry or contact with a label A&R representative, a label executive or other label representative who has the appropriate authority to invite a submission. Common sense dictates that the material to be submitted fits the genre of the label’s recordings.

### 3. **Shopping Representatives.**

- A. **Self-Shopping.** Artists can be discovered on their own merits by creating their own buzz.
- B. **Managers.** A known manager whom represents known artists will have label access because the manager may have the next big act. Diligent and credible managers at any level of expertise are a good resource for A&R representatives.
- C. **Agents.** Music agents book live performances and have a perspective on unsigned talent. As a result, they are candidates to introduce an artist to a record company.
- D. **Producers.** Producers can serve not only to produce recordings, including demonstration recordings (“demos”) used for shopping, but also to identify artists. Producers may seek to “attach” themselves to an artist’s recording career by entering shopping and/or producer agreements.
  - i. *Shopping only.* A producer who shops an artist, may or may not produce the demo, and may or may not produce the album, if a record deal is secured .
  - ii. *Shopping coupled with the right to produce an album.* Usually the producer helps the artist record the demo either on a speculative basis (“on spec”) or for a fee. If the producer shops, his deal with the artist usually includes the right to produce all or part of some of the albums recorded with the label.

- E. Artists.** Signed artists, especially those with successful careers, are probably the strongest referral of unsigned acts to record companies.
- F. Lawyers.** Lawyers, especially those who are known in the music industry, are good shopping representatives as the material submitted by them is usually reviewed for the following reasons:
- i. *Filter for music and personalities.* Lawyers are a buffer against copyright claims. Labels look to lawyers to filter out bad acts.
  - ii. *Established relationships from previous deals.* If the lawyer has done a deal with a label - ears are usually open.
  - iii. *Credibility and ability to conduct business professionally.*
  - iv. *Facts, not ears.* Lawyers are not usually expected to be musical tastemakers as much as communicators of facts. However, the music better be good or no one will listen to the lawyer's submission again.
  - v. *Lawyers as Agents and Managers.* There is no legal prohibition against a lawyer functioning as an agent or manager while maintaining a license to practice law. In the music industry, lawyers have become instrumental in procuring recording contracts and assisting with management (if not acting outright or de facto as the manager) of an artist's career by participating in career strategy and deal making. Because the lawyer usually does not usually book personal appearances, the proactive role is more akin to a manager than to an agent. Personal management requires daily and detailed attention to the personal affairs and logistics of an artist. Because an experienced music lawyer may know the business better than an inexperienced manager, the attorney who has a proactive relationship with the artist and manager may find himself or herself making recommendations, facilitating relationships, creating opportunities, and advising the manager as well as the artist. By doing so, the lawyer becomes, in effect, part of the management team. In some cases, the attorney may be invited by both artist and management to take on duties which are generally the prerogative of artist management. Management services by a lawyer usually require representation on a contingent fee basis and greater involvement with the artist's daily business and legal affairs. The attorney may become more like a company general counsel or "in-house" lawyer to the artist's business. It is axiomatic that an attorney's authority to represent clients creates an agency and fiduciary relationship. Attorneys who regularly function as an entertainment "agent" as defined in state regulatory law may be required to be separately licensed as an agent under the applicable statute of the state in which the attorney's principal place of business is located. This should obviate the need for the attorney/agent to register as an agent elsewhere. However, should an attorney/agent establish an office or agency in a state in which

he or she is not licensed to practice law, licensing under that state's rules as an agent (and certainly as an attorney, if the intention is to practice law) will be required.

#### 4. When To Shop?

Talent will be objectively evaluated in terms of a business risk for the record company. In making its assessment, companies will look at many objective and subjective factors including:

- i. *A proven audience.* May fans regularly attend an artist's performances.
- ii. *Substantiated and substantial record sales.* Regional, traditional and Internet physical product sales of over 2,000 albums is impressive - the more the better. To validate sales, artists can register stage sales with SoundScan.
- iii. *Persuasive critical reviews from local, regional or national traditional or on-line press.*
- iv. *Any recurring rotation on radio.*
- v. *Strong college performance including album sales, radio spins and live show audiences.*
- vi. *An offer from a record company.*
- vii. *Internet/Web Sites.* The Internet has become a very significant tool for shopping. Music, photos, lyrics, videos, press and web traffic summaries are all right there. Specialized sites such as [www.myspace.com](http://www.myspace.com) have become places to build an audience and be discovered.
- viii. *A pure musical connection with the talent evaluator.*
- ix. *Undeniable talent.*

#### 5. Preparing To Shop - Lawyer's Role

**A. Lists and Relationships.** Build a list of A&R Reps, record executives, producers and other tastemakers who are open to receiving material. Meeting these people at industry conferences and gatherings is even better.

**B. Lawyer Representation Options.**

- i. *Shopping only.* Proceed with caution as an artist's expectations can be high while successful results are statistically improbable. The process is not legal work, is speculative, and payment is usually paid with a contingent fee upon reaching a successful result. The client usually pays the direct costs of shopping incurred by the lawyer.

- ii. *Lawyer participation in developing the act.* To assist a client, a lawyer may assemble key team members, including an executive producer, financiers, songwriters, producers, studios, agents and managers from the lawyer's relationships. These strategic relationships can take an otherwise unassisted but clearly talented artist to the next level. This is a very entrepreneurial undertaking that may not be tolerated by non-entertainment (or any) law firms. Again, fees are generally contingent. This arrangement generally produces some degree of conflicts of interest, whether permissible or impermissible, under applicable professional rules of conduct. Such an approach may justify a larger contingent fee and will usually require legal and business counseling.
- iii. *General representation including shopping.* In an effort to grow with a promising music client, an attorney may wish to provide general entertainment and business law services to include shopping services (Form I).

**C. Commitment to Follow Through.** Whatever the attorney promises to do, professionalism requires follow-through or the lawyer will experience client disappointment and reputation erosion. Legal time for thorough shopping is substantial and is a substitute for what might otherwise be tens to hundreds of hours in billable time. This work must be undertaken judiciously.

## 6. Shopping is Selling

- A.** Shopping is not really practicing law, nor is it legal advocacy. It is well organized and committed selling. The commitment to the artist demonstrated by vigilant follow-through can be persuasive. Ultimately, the lawyers do not secure record deals - artists do. A&R, or other label people, make the qualitative decisions. A lawyer's access to labels is valuable to an unconnected artist. Ultimately, however, a label will be persuaded not by the attachment of an influential music lawyer, but by the art, personality and work ethic of the artist. If all goes well, the lawyer earns a good client.
- B. Packaging.** The visual, aural and image presentation of the artist, whether included in a physical package or on-line, is essential. Consider the following elements:
  - i. *Creative and convenient encasement.* A transparent letter-sized plastic envelop allows the content to be easily identified and handled. Confetti and premiums are not recommended.
  - ii. *Demo recording.* Provide a CD of about four songs with the best song first. An entire album is appropriate if that is what has been released for sale and perhaps reviewed by press.
  - ii. *Visual material.* A professional photograph and a good music video (if

there is one) are helpful.

- iv. *Shopping list.* Devise a way to track submissions and follow-up until the answer is yes, no or maybe. “Maybe” is usually an invitation to receive additional recordings and information as the artist continues to develop. Do not just send a package without follow-up.
- v. *Contact person.* Include the attorney’s (or whomever is the primary contact for the artist) telephone number and email address on the actual CD, liner notes, jewel case and website.
- vi. *Useful statistics.* Record sales, major public appearances, excerpts from good reviews, radio spins, e-mail/fan club membership numbers and the like are relevant.
- vii. *Reviews.* A very limited number of critical reviews or articles selected from the most prestigious media is helpful.
- viii. *Hype.* The label representatives will make qualitative conclusions from truthful facts. It is a not-so-fine line between enthusiastic presentation of facts and over-stating the artist’s abilities or accomplishments.
- ix. *Cover letter.* Short, factual and personal.

C. **Live Performance.** Most artists are signed after the label has the opportunity to see a performance. It is very common for a shopping package to include an invitation to a special “showcase” performance often conveniently located in L.A., New York City or Nashville. At a minimum, a schedule of live dates for the label to consider attending should be provided.

## 7. Why Shop?

Shopping is a way to earn a client or serve an existing client. The fees earned from the time spent undertaking a successful shopping effort coupled with the negotiation time for the recording and other related agreements generally paid from initial money advances to the artist upon signing will not equal billed hourly tune. However, it would be rare (if not unreasonable) to bill hourly for such speculative, non-traditional law services even if the client could afford it. Contingent income beyond initial advances is subject to the artist’s success and the ability of the lawyer to continue representing the artist. Most shopping clients are young, inexperienced and broke. The incentive to shop is to earn a long-term client and to keep connected with the creative staff at the record companies- even if they do not sign your artist.

**8. Reference Material Recommendations:**

- A. Billboard. A premier industry weekly publication which also publishes other industry reference books as well as on-line services 212-536-1402.
- B. Pollstar Record Company Roster. 209-271-7900.
- C. A&R Registry: 800-377-7411
- D. Hits. Industry signings, charts, and gossip. 818-501-7900.

**FORM I**

**GENERAL LEGAL REPRESENTATION SERVICES  
INCLUDING MUSIC SHOPPING SERVICES**

\_\_\_\_\_, 20\_\_

Jane Doe  
John Doe

\_\_\_\_\_  
address  
\_\_\_\_\_  
\_\_\_\_\_

Re: **ENGAGEMENT LETTER OF AGREEMENT**

Dear Jane and John:

We are delighted to work with you and thank you for selecting our firm as your attorneys in connection with ongoing general counsel services related to your recording and entertainment career. “You” or “your” herein refers to “Jane Doe and John Doe, professionally known as “The JJ Band” or any entity subsequently formed by either of you or any renaming of any entity which continues to feature you as a music artist in the Entertainment Business (as defined in paragraph 4.d). Our engagement will be covered by the terms of this Agreement, unless we mutually agree otherwise in writing.

1. **TERM.** The Term of this Agreement is effective as of \_\_\_\_\_, 200\_\_ and will continue until terminated in writing by either you or us subject to continuing payments under paragraph 4 and further subject to our exclusive representation of you for “Shopping” (as defined in paragraph 2.c).

2. **SCOPE OF SERVICES PROVIDED.**

a) We will serve as legal counsel to you on legal matters which shall generally include transactional work (negotiating and drafting contracts) and advising on the following matters: intellectual property (including trademark and copyright filings); shopping to secure a music recording, music publishing, personal management and business management contract, which decision to enter shall be in your sole judgment; public appearances; literary; books; film and telefilm matters; the formation or maintenance of business entities; labor; coordination and general supervision or engagement of other lawyers or experts; and other reasonably related services involving the Entertainment Business (“Services”). \_\_\_\_\_ will be your primary

lawyer. We shall work in the interest of forwarding your career in the Entertainment Business. We shall be directly accountable to you.

b) The Contingent Fees (as provided in paragraph 4. herein), do not include compensation for our rendering legal advice on matters such as securities, investments, money management, tax, litigation, arbitration, and other matters that are not set forth in paragraph 2.a) hereof. The Contingent Fees do not include rendering Services in states, countries or jurisdictions in which the matter requires that we must be admitted to practice law. For those matters not covered by Contingent Fees, we will advise you of the current hourly billing rates and you can decide whether or not you would like us to provide needed legal services.

c) Shopping. We shall work with you to present your music and artistry to recording companies and publishing companies with the goal to secure Recording and Publishing Agreements (as defined in paragraph 4.b)(ii)) with companies and upon terms to be approved at your sole discretion (“Shopping”). We shall be your exclusive Shopping representative for one (1) year (“Shopping Period”) and will diligently present your music and assist you with identifying and corresponding with recording and publishing companies.

3. **TERMINATION**. Subject to the conditions set forth in paragraph 1., you can terminate this Agreement at any time for any reason. We can terminate this Agreement, at any time, if we feel we can no longer properly represent you for any reason. Upon termination, you will pay us: (1) any undisputed hourly fees and charges due through the date of termination; (2) Contingent Fees as they come due and (3) any costs incurred, including copying charges for any files in connection with any transfer thereof. If you and we agree, we shall provide Services through whatever project benchmark or assignment you want us to complete. Disputed fees and charges will be resolved by arbitration (see paragraph 7 below). Unless you and we otherwise agree in writing, we shall have no obligation to retain your files beyond one year after our Services conclude.

#### 4. **CONTINGENT FEES AND COSTS.**

a) Contingent Fees. For Services to be rendered for the matters set forth in paragraph 2.a) hereof you shall pay us as “Contingent Fees” on “Gross Compensation” (as defined in paragraph 4.d) herein) from all sources in the Entertainment Business as follows:

(i) Five percent (5%) of Gross Compensation. Upon the termination of this Agreement, this amount shall be paid on Gross Compensation earned during one (1) year following termination. This amount shall exclude Contingent Fees for Shopping.

(ii) With respect to any recording agreement or music publishing agreement entered into or negotiated during the Term or Shopping Period, as a result of our Shopping efforts (“Recording and Publishing Agreements”), we shall be paid ten percent (10%) herein, on any money advances payable to you under

the Recording and Publishing Agreements. The advances payable to you shall include any artist personal advance and any balance remaining to which you are entitled from a recording budget and/or recording fund (“Advances”). The Contingent Fees shall apply to Advances payable to you applicable to the first album under any Recording and Publishing Agreements [or for a set number of years]

After the Term, we shall be paid Contingent Fees of five percent (5%) in perpetuity of all royalties payable to you or earned by you after repayment by you of any recoupable amounts payable for recording costs, as defined in the applicable recording agreement, against royalties applicable to the First Album and further limited to recordings and compositions written by you which are released and exploited under the Recording and Publishing Agreements. [Post term commission limited to one album].

b) Costs. In addition to Contingent Fees, you will also be responsible for advancing or reimbursing us for costs and expenses we incur on your behalf. Such costs and expenses will be billed to you and will include photocopy charges (\_\_\_\_¢ per page), travel expenses, filing fees, registration fees for copyrights and trademarks, messenger fees, long-distance telephone charges, outgoing and incoming fax (\_\_\_\_¢ per page), overnight delivery charges, and miscellaneous related expenses. To the extent we advance those costs on your behalf, you agree to reimburse us for them; and from time to time we may request that you make an advance payment for an unusual cost item. We will get your prior permission before incurring large client cost disbursements. No single expense of \$100 or more will be expended without your consent.

c) “Entertainment Business” shall mean and include any and all branches of the entertainment, literary, broadcasting, merchandising and/or commercial exploitation fields now existing or hereafter developed, direct or ancillary, including without limitation, all forms of motion pictures, personal appearances, personal endorsements, touring, radio, recorded music, music publishing, digital music distributions, books and printed material, television, telefilm, videodiscs and videocassettes.

d) “Gross Compensation” shall mean and include, without limitation, salaries, advances, earnings, fees, royalties, residuals, repeat and/or rerun fees, gifts (but only if such gifts are in lieu of partial or full compensation to you), and any form of payment in kind or bartered or exchanged services, bonuses, shares of profit, shares of stock, partnership interests, percentages and the total amount paid to you for any record package, television or radio program (live or recorded), motion picture or other entertainment packages, and/or which are earned and received directly or indirectly by you or your heirs, executors, administrators or assigns, or by any other person, firm or corporation as your compensation for activities in the Entertainment Business. With respect to stock, or the right to buy stock, in any corporation, our percentage shall apply to said stock, or the right to buy stock, and we shall be entitled to our percentage share thereof. If any corporation, partnership, trust, joint venture, association, proprietorship or other business entity in which you have a direct or indirect interest shall receive any revenues or compensation for permitting or contracting for the use of your services,

name, likeness or endorsement, then your proportionate share of such revenues or compensation shall be deemed to be Gross Compensation received by you for the purposes of this Agreement.

e) Notwithstanding the foregoing, with respect to your personal appearances, for purposes of computing commissions hereunder, there shall be deducted from "Gross Compensation" earned by you in respect thereof, when applicable, the amount which shall be payable by you or on your behalf for (i) "Sound and Lights" (generally the direct cost to you for third-party-provided sound and lighting reinforcement for live performances) for such engagements; (ii) regarding personal appearances: agency fees, directly related transportation fees, equipment rental fees and lodging expenses; (iii) payments paid by you, or paid on your behalf, to third parties in the nature of deficit tour support; and (iv) bona fide loans. [These are limited deductions sometimes the deductions may mirror those agreed to in a third party personal management agreement].

5. **REVIEW BY INDEPENDENT COUNSEL.** We hereby advise you to seek outside counsel in connection with this Agreement and your execution hereof. We cannot represent you in connection with any agreement with us and we give you no advice.

6. **BILLING LOGISTICS.**

a) Our Contingent Fees are payable upon payment to you of Gross Compensation to which such Fees pertain. In that regard, we may include in any agreement which we negotiate on your behalf, as to which Contingent Fees apply, a provision irrevocably requiring the remitter to directly pay to us the Contingent Fees on your behalf simultaneously with payment to you of Gross Compensation. You shall render an accounting to us within fifteen (15) days of the end of each month, and with each payment you make to us showing the basis of such payment.

b) We, our accountants, attorneys or agents shall have the right to review your determination or calculation of Gross Compensation and the financial figures supporting the computation of your payments from Gross Compensation and any and all other relevant or supporting documents on which any Contingent Fee due us was or could be made. If we shall so request, which shall be no more than once a year, we shall be given the opportunity, upon reasonable advance written notice, and in a manner calculated to provide the least disruption to your business operations, review and audit the underlying figures giving rise to the Contingent Fee computations. Any such audit shall be conducted at our sole expense, except that, if the audit discloses that Contingent Fees paid to us were understated by an amount in excess of 10% for any Term Year, then you shall reimburse us for the reasonable expense of such audit.

7. **AVOIDING DISAPPOINTED EXPECTATIONS AND RESOLVING DISPUTES.** We want to serve you well. We believe that the best way to avoid disappointments and misunderstandings is for there to be frequent and open communication between us. You understand that we make no promises or guarantees about the outcome of any matter. If a dispute between us should arise, we want to settle it quickly and fairly. We will try to do so through discussion. If we are not successful in doing so, then both parties agree to settle any

dispute arising between us by prompt, confidential and binding arbitration under the auspices and pursuant to the rules of the American Arbitration Association in \_\_\_\_\_.

8. **CONFLICTS OF INTEREST.** You understand that we represent other parties in the Entertainment Business, and that from time to time conflicts of interest may arise between you and other clients of the firm. If a conflict arises of which we are aware we shall promptly advise you and we will try to assist in resolving such conflicts. If such conflict cannot be overcome, we will have the right to represent you, to represent others, or to withdraw completely. In any such case, it may be necessary for you to engage separate counsel.

9. **MISCELLANEOUS PROVISION.** This Agreement represents the entire agreement between the parties concerned and the subject matter hereof and supersedes all prior agreements with respect thereto between the parties hereto and any of them. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives. This Agreement shall be subject to and governed by the laws of the State of \_\_\_\_\_ and all questions concerning the meaning and intention of the terms of this Agreement and concerning the validity hereof and questions relating to the performance hereunder shall be adjudged and resolved in accordance with the laws of said state. Whenever possible, each provision of this Agreement and each related document shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or any related document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or such related documents. This Agreement may not be and shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part except by written instrument signed by the parties hereto.

10. **SIGNING.** If you agree, sign and return. Please indicate your approval and agreement to the scope and terms of our engagement by executing the enclosed copy of this letter and returning it to me.

We look forward to working with you.

Yours very truly,

By: \_\_\_\_\_  
Attorney

Approved and agreed.

Dated: \_\_\_\_\_, 200\_

\_\_\_\_\_  
[Artist]