STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF CARVER | FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent.

Court File No. 10-PR-16-46
Judge Kevin W. Eide

SUPPLEMENTAL DECLARATION OF JOSEPH J. CASSIOPPI IN SUPPORT OF MOTION TO APPROVE RESCISSION OF EXCLUSIVE DISTRIBUTION AND LICENSE AGREEMENT

I, Joseph J. Cassioppi, declare and state as follows:

1. I am a shareholder at Fredrikson & Byron P.A., counsel for Comerica Bank & Trust, N.A. ("Comerica"), the Personal Representative of the Estate of Prince Rogers Nelson.

2. I submit this Supplemental Declaration in support of Comerica's Motion to Approve Rescission of Exclusive Distribution and License Agreement.

3. After its appointment, the Personal Representative immediately retained experienced counsel specialized in entertainment law, Jason Boyarski of Boyarski & Fritz, LLP, and has consulted with Mr. Boyarski regarding WBR's and UMG's claims.

4. Attached hereto as **EXHIBIT A** is a true and correct copy of the September 28, 2016 Memorandum of Law in Support of Non-Excluded Heirs' Opposition to Special Administrator's Motion to Approve Recommended Deals.

5. Attached hereto as **EXHIBIT B** is a true and correct copy of the September 27, 2016 Affidavit of Craig Ordal submitted in this matter.

6. Attached hereto as **EXHIBIT C** is a true and correct copy of an excerpt from *All You Need to Know about the Music Business*, authored by Donald S. Passman (9th ed. 2015).

Filed in First Judicial District Court
6/9/2017 6:08:58 PM
Carver County, MN

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: June 9, 2017

/s/ Joseph J. Cassioppi
Joseph J. Cassioppi

61552494

Filed in First Judicial District Court
6/9/2017 6:08:58 PM
Carver County, MN

EXHIBIT A

ENTIRE EXHIBIT FILED UNDER SEAL

Filed in First Judicial District Court
6/9/2017 6:08:58 PM
Carver County, MN

EXHIBIT B

ENTIRE EXHIBIT FILED UNDER SEAL

Filed in First Judicial District Court
6/9/2017 6:08:58 PM
Carver County, MN

EXHIBIT C

d S. Passman

ıg Harvey
onary
ıge

All You Need to Know About the Music Business

NINTH EDITION

Donald S. Passman

Illustrations by Randy Glass

Simon & Schuster
New York London Toronto Sydney New Delhi

Royalty Versus Joint Venture

So how about the key question: Are you better off with a joint venture or with a royalty arrangement? To answer this requires a crystal ball. If you're extremely successful, you're better off with a joint venture. With modest success, you're better off under a royalty arrangement. (If you're a turkey, it doesn't really matter.) Here's why:

As we discussed, you're charged for more costs in a joint venture than you are under a royalty deal, and thus with only modest success, you're behind. However, many of these costs are not "per unit," meaning they're only paid at the beginning, as opposed to "per-unit" costs that are incurred for each record ("unit") made. (Examples of per-unit charges are costs of manufacture and freight for physical goods, mechanical royalties [the monies paid to songwriters for the songs in the record], union per-record charges, etc., which are only paid when a physical unit is manufactured and shipped, or when a digital unit is sold. Costs that are not per-unit are such things as artwork, videos, promotion, marketing, and advertising, which are unrelated to specific units.) Thus, with a great deal of success, the non-per-unit costs are eaten up by the first dollars that come in, and thereafter the profit per unit is far greater than any royalty arrangement.

PRESSING AND DISTRIBUTION (P&D) DEALS

If you are truly a record company in your own right, then this is the deal for you. It gives you the most autonomy and control of your life, as well as the highest profit margin. This is the deal that true independent labels make.

A **pressing and distribution agreement** (or **P&D** deal) is exactly that—the company agrees to manufacture records for you (although in some situations this isn't even so; the product is manufactured elsewhere), and then to distribute them solely as a wholesaler. This means you sell the records to the distributing entity for a wholesale price less a negotiated distribution fee (which covers the distributing company's overhead, operations, and profit). The distribution fee for physical product ranges in the 20% to 25% range (less if you're a big label), with the bulk of the deals around 24% to 25%. For example, if a CD wholesales for $10, under a deal with a 25% distribution fee, the independent company gets $7.50 per unit ($10 less 25%). Out of this, the independent pays manufacturing, mechanicals, artist royalties, promotion, overhead, salaries, and everything else.

re you better off with a joint venture
o answer this requires a crystal ball.
u're better off with a joint venture.
r off under a royalty arrangement. (If
atter.) Here's why:
ed for more costs in a joint venture
al, and thus with only modest suc-
ny of these costs are not "per unit,"
beginning, as opposed to "per-unit"
ord ("unit") made. (Examples of per-
cture and freight for physical goods,
paid to songwriters for the songs in
rges, etc., which are only paid when
nd shipped, or when a digital unit is
are such things as artwork, videos,
tising, which are unrelated to specific
of success, the non-per-unit costs are
come in, and thereafter the profit per
y arrangement.

RIBUTION (P&D) DEALS

ny in your own right, then this is the
t autonomy and control of your life, as
This is the deal that true independent

agreement (or **P&D** deal) is exactly
anufacture records for you (although
so; the product is manufactured else-
hem solely as a wholesaler. This means
buting entity for a wholesale price less
hich covers the distributing company's
fit). The distribution fee for physical
% range (less if you're a big label), with
% to 25%. For example, if a CD whole-
a 25% distribution fee, the independent
$10 less 25%). Out of this, the inde-
echanicals, artist royalties, promotion,
ng else.

Unless you're a really large label, or have massive bargaining power, the distribution company will only handle your physical records if they also get the exclusive right to distribute your digital records. Even though their distribution costs are less for digital, they will insist on the same distribution fee for both physical and digital product, and unless you have a lot of clout, this is hard to change. Their argument is that the physical business is dwindling, that they can't make money if they don't have digital, and there are significant costs in managing the hundreds of users, and millions of plays, in the digital world.

If you're putting out physical records, a distribution deal is not for the weak-hearted:

1. In these deals, the entire risk of manufacturing falls entirely on the independent company. Remember how physical records are sold on a returnable basis (see page 78)? This means that, if you guess wrong, the returns come back home to roost. So not only are you losing your potential profit on the sale, you're also coming out of pocket and losing the cost of manufacturing and shipping records you can't sell (although they make passable doorstops). Many deals also require you to pay a distribution fee even if the record is returned, adding injury to insult.
2. The distributing company typically offers no services whatsoever in terms of marketing, promotion, accounting, etc. You really are on your own. (You can sometimes make a deal to get these services from the distributing company for an increased distribution fee. For example, they might help with marketing, sales, or promotion, and charge an extra 3% to 5% on top of the distribution fee.)
3. You may well be treated as a second-class citizen. This is because the distributing company will favor its own product over yours; they make a bigger profit on their own stuff, and they have a bigger investment in it.

These types of deals can be made at the highest level (for example, Hollywood Records [Disney's label] is distributed by Universal under such an arrangement), down to small indie labels who make these deals with independent distributors.

A relatively new animal is the **label services deal,** which is essentially a distribution deal aimed at artists (rather than independent labels, though I'm sure they would handle the right label as well). For a known artist, the distributing label (at the time of this writing, Kobalt and BMG Rights are major players in this game) will front the money for you to not just manufacture product, but for marketing and promotion as well. They will then do a kind of profit split, but instead of taking costs off the top like a joint venture (see page 214), they instead take the costs from your share of money. That means you end up in the same place you would have been under a normal distribution deal if you'd written the check yourself (except for the fact that you didn't have to write any checks, which is no small "except"). The specifics are very negotiable, so I can't give you hard and fast rules, but for the right kind of artist, these can be favorable deals.

UPSTREAM DEALS

An **upstream deal** is a cross between an independent distribution deal and a production deal. It works like this:

An independent label goes to an independent distributor that's owned by a major label. It makes a standard distribution deal but also gives the major label a right to *upstream* the artist, meaning the deal miraculously transforms from a distribution deal into a production deal with the major label. (Technically, the upstream deal is made with the major label in the first place. The major label then "supplies" the independent distribution to the indie label. In other words, the pure distribution part of the deal is in a contract with the major label, not a separate contract with the independent distributor.)

When an artist is upstreamed, the distributing label moves the records from the indie distributor to its major distributor. It stops paying over the gross sales monies less a distribution fee, and instead pays the indie a royalty, or, if the independent has enough clout, a percentage of profits. Whether it's a royalty or profit share, the independent gets less money than it would under a distribution deal. That's because the distributing label is now taking a much bigger risk. As part of the upstream, it takes over the cost of marketing, promotion, videos, etc. (all of which were the responsibility of the indie label under the distribution deal). Also, the distributor takes the risk of records being returned, which was the indie's problem under the distribution deal.

The idea behind upstreaming is that, when an artist's sales get to a certain point, it takes the clout (and money) of a major to move those sales to the mega level. The major labels aren't willing to put out big marketing bucks if they're only getting a distribution fee, so the deal transforms.

The upstream is usually at the discretion of the major label. Some