

# INVESTMENT AGREEMENTS & MUSICIANS

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*The views and opinions expressed in this article are not meant to substitute for legal advice which should be sought in each particular instance. In particular this article raises potentially complex tax issues which should be reviewed with a qualified trained professional before entering into an investment agreement as described below.*

## **Introduction**

An artist seeking funding to finance videos, recordings, tours, etc. will often approach family members or other sources to provide money to support their careers on a speculative basis. This article addresses some of the key concerns when attempting to structure an agreement to repay such an investor.

## **How Much Money?**

The agreement should obviously discuss how much money is being invested by the investor and when the money is to be paid. Some agreements can provide for instalment payments while others involve lump sum payments.

## **Speculation Clarified**

The proposed agreement may be structured as a loan where repayment is not guaranteed. The agreement should be very clear that the recording business is a highly speculative business and that repayment may not be guaranteed. The investor should understand the risk and the artist should ensure that their personal assets will not be at risk if a disgruntled, misinformed investor seeks direct reimbursement for their investment.

## **Which Sources Repay Investment?**

A typical artist earns income from a variety of sources including record sales, live touring, merchandise, publishing and endorsements. Will the investor recoup their investment from all these sources or just selected income streams? For example, if your rich uncle pays money toward the recording and manufacture of your CD, would he only be repaid from sales of the CD or would he also collect money from live performances and merchandise sales? It is often argued from an investor's perspective that the repayment should be from all income sources because investment in one sector assists income generation in another. Clearly it is to an artist's benefit to limit the recoupment on the investment to the income streams related to the investment only.

## **Rate Of Return**

You should clarify how quickly the investor will be entitled to recoup on their investment. An artist should attempt to keep the rate as minimal as possible because they will likely be relying on future income streams to continue investing back into their career. Normally a rate of return would range between 10-50% of net income from all sources until a satisfactory recoupment level is reached. Repayments can be made on a monthly basis or some other agreed timeline.

## **Cap On Return**

When I am in the position of representing the artist I will try to put a cap on the amount of return the investor will be entitled to (100-250%). For example, if your rich uncle invests \$10,000 I would argue that he should discontinue collecting a return on his investment when he has been paid back a reasonable

return on his investment (\$10,000-\$25,000). A perpetual return can be a real burden on an artist and should be avoided; particularly if the return is with respect to all income streams of the artist.

### **Legal Advice**

Often in these scenarios you are dealing with an investor who has a minimal amount of knowledge about the music industry and its speculative nature. An artist should be careful to avoid advising the investor about the ramifications of the investment agreement and, rather, should advise the investor to seek out independent, experienced counsel to interpret and, if necessary, negotiate the agreement on their behalf.

At the same time an artist would be best served to retain learned counsel themselves to avoid potential tax pitfalls and other legal minefields which exist in this area.

### **Conclusions**

Outside funding as discussed above can be a welcome push to an artist's career provided the agreement between an investor and artist is well drafted and is a fair compromise between the parties. As a side note, artist should also consider such funding agencies as Factor, the Ontario Arts Council, the Canada Council and Videofact which provide funding for musicians in their endeavours.