A university dissertation looking over many musical court cases, including a large section on The Stone Roses (2001)

Introduction

The EU has recently ruled standard football contracts to be anti-competitive putting the footballing bodies of each country in to a state of pandemonium, It is noteworthy that article 85, was the key, and this was what George Michael wished to take his case to the European Union on [Greenfield and Osborn 1998]. Nigel Parker of Lee and Thompson comments that he believes George Michael stood a good chance of winning [Music Week].

So can George Michael, or all those under contract with record companies feel aggrieved by the freedom of footballers? It does appear that in other industries, contracts have become increasingly flexible and fair from a player's perspective[Greenfield and Osborn 1998]. This is the key issue of this dissertation. Why is it that the music industry still has what appear to be unenforceable contracts? Why has this not changed as rapidly and spectacularly as it has with the last decade and football? Or, to be more blunt, why has it not changed at all?

Is it simply that acts are prepared to accept almost any deal, that they are ready to 'sell out'? Whereas acts could accept only the best deals and then enter into these only on your terms, effectively 'buying in'. Acts have only one career, and hence the 'what if?' with acts will always be a big what and a big if. Refusing a deal, and hoping for a better one, may mean the end of the career. However accepting a bad deal may mean the end as well.

This dissertation looks at the decisions taken by acts and small labels, and how they are affected by the decisions taken by the established major labels. Some bands and labels may not even be allowed to make decisions; the choices and options will be so few. These types of decisions ('selling out') are typical of when a band is almost assimilated into the status quo, because it has no leverage to change the terms of the deal. 'Buying in' is when a label or act has the ability or power to change the system, or at least get something from the status quo in exchange for some other benefit. Hence to decry all actions as either 'selling out' or 'buying in' is very polarised, but so is the distinction between failure and success in the music industry itself.

Chapter 1 - A history of music industry court cases and its response to them

There are not famous court cases involving disputes between book writers and publishers, and although there have been disputes between actors and filmmakers, these often relate to other issues. So what characteristic makes record companies so prone to court cases compared to sports, the entertainment world and cultural industries as a whole? Another question would be, why do the contracts of the music industry continue to be unaffected by the changes in other industries [Greenfield and Osborn 1994]?

In answer to the question to the seeming proneness of the music industry to article 85 and litigation as a whole, we could ask whether the recording industry achieved a set of working practices that reduced the chances of disputes? By creating a system to stifle legislation, court cases and writs could be such that music contracts become almost 'above the law', with 'selling out' almost inevitable (with court cases then, like football, being disastrous to the industry). This question forms the basis for this chapter.

Why when it would seem any artist could walk free from a record label, do contracts not seem to have changed to counter this? Is it simply that so few disputes occur anyway to drive reform? Or is it that the industry has achieved a system in which a dominant set of practices and perspectives stifles disputes before they can occur? Or does this system ensure that bands are coerced into accepting almost exactly what he companies offer?

Certain industries will always be more litigious than others, and with the music industry it appears to be especially prone to contract dispute, if court cases are an accurate guide to the extent and degree of litigation. Even so, many disputes seem to be settled out of court (the music press consistently reports such incidents). Perhaps music industry companies favour out of court settlements because they are fearful of setting and creating precedents, which would lead to change.

The writs served would tell a much more complete and interesting story than the court cases alone. Writs would tell us which contractual issues and practices prove conflictual. There are five main areas that contribute to contract dispute: -

- Restraint of Trade

- Undue Influence / Fiduciary Duty

- Technically / Commercially Satisfactory

- Exercise of Options

- Right to Audit [Mill]

Court cases present a simple view of record contracts, most seeming to fall into undue influence and/or restraint of trade. The terms on which contracts are challenged (n cases that actually go to court) will give us clues to the nature of disputes. They do not give us anywhere near the full picture of relations between pop acts and companies (whether record companies, publishers or management). However court cases do allow us to see what the industry responses have been, and to see if this litigation prevention system does exist.

1. The success of bands and its relation to contract disputes

However as far as the vast majority of acts (and their contracts) are concerned many will never experience a contract dispute because they are under contract for such a limited period. Eight out of ten acts fail to make a profit and are released from their contracts very early in their careers [Burnett] [Vogel] [Wallis] [Lull]. Hence, in these cases there is little or no chance for a contract to become frustrated, if only 20% (at best) of artists signed to labels enjoy a length of contract beyond one album. So these contracts that reach court represent a tiny majority of all the contracts that are created.

2. Managers and fiduciary duty

Decades before recording contracts were taken to court, bands and managers often became involved in litigation over breaches in fiduciary duty. During the early days of the music industry labels existed which acted as a one-stop shop for bands. An act's manager would sign them to their own record label, and also in certain cases, their own publishers.

This situation occurred with Dick James and Elton John (Elton John V Dick James Music (1986)). Elton John gave Dick James rights for publishing, management and recording. Elton John believed Dick James had encouraged him to enter recording and publishing deals under undue influence. The deals were not explained or negotiated and John never had the option to take legal advice. The judgement ruled in favour of Elton John. The case Gilbert O'Sullivan V. Management Agency and Music LTD (1982), is in many respects identical to that of Elton John.

What these cases have in common is that the manager has not acted in the best interests of the client, as a manager has to; this is called their fiduciary duty. To act in interests other than those of his client leads to a situation when they may well be in breach of this fiduciary duty. This is why a manager signing a band to his own label may breach their fiduciary duty. Hence the trend for one-stop shop of manager cum labels cum publishers seems to have been discontinued.

There are still manager labels that deal with bands, with Nude being a prime example. The relationship between Nude (label), Saul Galpern (owner of Nude and manager) and Suede (band), has so far been fruitful. However, this is with their particular practice. It may well be that Suede if they are unhappy with the conflict in Galpern's role can leave his management. On a small scale, such as Nude, there is a certain synergy in managing and releasing records by them.

Manager labels clearly still exist, but what has happened to reduce the court cases? A current 'manager label' which been through litigation with fiduciary duty cases are First Avenue [Mill]. They have the following current roster on their record label: -

Artist	Relationship with First Avenue
Michelle Gayle	Licensing deal with EMI
Eternal	Solely with First Avenue
Dina Carroll	Licensing deal with Mercury
Kele Le Roc	Licensing deal with Polydor
Ashley Robles	Solely with First Avenue

[Music Week Directory]

It is clear from this that First Avenue has a particular way of working with their acts, and that they aim to receive income greater than that of a manager's commission. By signing a band directly using a licensing deal, First Avenue give EMI the rights to distribute and press First Avenue records, however First Avenue will receive royalties from records sold, as well as managers commission.

Manager labels may have used similar deals (perhaps distribution deals) with the major labels in the past. However it now seems that to avoid loosing acts, record companies may seek to avoid this, as it may mean, due to breaches of fiduciary duty, artists can leave their managers and effectively the major label. The shift into licensing (not just First Avenue, but also Nude and Big Life for example), allows a band to be contracted to the major label via licensing. They are still dealing with the manager label from whom they are licensed; however in this case, if the act severs its relationship with the manager, the band remains with the major label.

There are two legal points worth considering here: -

1. When a contract is severed due to undue influence, the contract is completely void, and the artist gets their copyrights back. Hence if a manager has exerted undue influence and breached his fiduciary duty, it is as if the deal never existed [Bagehot]. So the major label in the past would have to give up its ownership of the rights.
2. If the case involved a restraint of trade argument, courts have been known to sever and remove the terms involved (as mentioned in the Stone Roses case [EMLR]. Hence if the deal is a licensing deal between the label and the managers label, the court may well see the manager's terms as a restraint of trade and sever them, but still leave the deal with the major in tact. This modern arrangement is a more secure practice from the point of the major label. This is useful for a record label for many reasons. The chance of losing income because a band leaves its 'manager label' is greatly reduced.

Rather than having to prove that fiduciary duty was breached when signing to the ‘manager label’ (clearly a possible conflict), you would have to prove that by signing to another label, via a licensing deal, was a breach of fiduciary duty.

Is this fair to an artist? First Avenue is theoretically a ‘surrogate record label’. As they work closely with the larger labels, they will gain from that. Coupled with Dannen’s [Dannen] famous quote regarding lawyers, could easily be applied to managers as well. Their action - like that of lawyers - effectively places them within record labels, as opposed to working for their acts. The problem with this is that if, manager labels or managers work regularly with similar labels, they may well breach fiduciary duty by their chosen working practices from the very beginning of their relationship with acts. This is because although there is no direct conflict of interest between the manager as manager and manger as record company, they may still not be offering impartial advice on which label to sign to. This is clearly potentially unfair to the act, but much harder to prove than when compared to manager labels.

A manager is in charge of many aspects of an acts career. They will have certain practices they have adopted, and may often like record labels have other people they represent. Certain labels will refuse to work with an act that doesn’t have a manager, which clearly given they take a slice of earnings is an unfair working practice on an act. The commission a manager takes also seems to be shifting upwards, another working practice not in favour of the act.

Taken together, major record companies want well managed acts, but they do not want acts whose contracts can be challenged in courts. Developing a business practice (such as licensing deals) would allow you to remain more within your fiduciary duty, but also with income streams maximised (for you and the licensing label). But this practice offers nothing to an act. The synergy of management and record company does not cut costs for the band. However, a double interest may make the label keener on the act, with the chance of greater income being the reason why,

If conflict of interest cases (breaches in fiduciary duty) demonstrate how an act may be vulnerable in contractual relations with managers, they are also vulnerable signing record contracts. Returning to the earlier list of five, now the claim is not that fiduciary duty has been breached, but that the contract is a restraint of trade. The cases involving Olivia Newton-John and Dean Martin both focused on this in America [Passman], and occurred much earlier than the famous English cases. These two cases represent the American ‘restraint of trade’ rulings.

3. Restraint of trade cases and their after effect

The disputes that created contract law precedents under the law of England and Wales with regard to the music industry are as follows; A Schroeder Music Publishing Co. Ltd V Macaulay (Instone) (1974), Zang Tumb Tuum Records Ltd and Perfect Songs Ltd V. Johnson (1988), Silvertone Records Ltd V. Mountfield and others (1993) and Panayiotou and others V Sony Music Entertainment (UK) Ltd (1994).

In law, certain cases set a legal precedent. Macaulay relied on the verdict of Esso Petroleum Co. Ltd V. Harper’s Garage (Stourport) Ltd. (1968). Before this case, the doctrine of restraint of trade did not cover record agreements. The Esso case focused on how Esso could have sterilised the output of the garage, which is why the doctrine could then be extended to record contracts.

The doctrine had to be extended to deal with contracts of supply. Prior to this the key ruling in restraint of trade cases had been ‘the Nordenfelt test’. However, now it became set of questions. First, was the contract one to which the doctrine could be applied. Next, did the terms restrict more than was necessary to offer adequate protection to the party needing the restraint? Then the result of this would be used to see if the restraint was in the public interest.

Although the Holly Johnson and Stone Roses cases ruled in favour of the act, the George Michael case failed on what could be called a technicality, in relation to this public interest question. George Michael had originally (via a licensing deal with Inner Vision) been contracted to CBS in 1983. In 1983 Michael argued that the deal was void, going as far to issue a writ. Due to the fact Michael had

claimed his 1983 contract was a restraint of trade, he could no longer claim his 1984 renegotiation was also a restraint of trade. If a deal was decided (or in this case believed) to be a restraint of trade, then any deal that came from it, such as a renegotiated improvement, would not be a restraint of trade. It is against public policy for a deal that was considered a restraint of trade, to then become a restraint of trade itself.

Parker J then also went through Michael's current deal (even though he didn't have to), and declared, that it was not a restraint of trade anyway. This however presents the next way the record company has moved to prevent court cases. Like with the cases regarding fiduciary duty and manager labels, the restraint of trade cases stop suddenly after George Michael. Have record companies stopped restraint of trade cases with another shift in working practices?

4. Negotiation and the standard form

Boon highlights [Boon], the fact that a band's lawyer accepts a bad deal 'working on the principle' that if the band is successful, and the deal will be renegotiated. Whilst this could be presented as the artist accept a bad deal to cover the certain start-up costs of a band. It is more likely it represents a system by which labels can offer what they know to be poor deals. Boon highlights that renegotiation (after success) is much more fair than in negotiation.

If you view it in terms of the George Michael case, it now seems much darker. If a band once successful renegotiates their contract, the contract would then see them affected by the ruling of Parker J in the George Michael case. If 'renegotiation once successful' becomes standard practice (and it seems to be) a band has one choice to go to court and break the deal if it wants a fair deal (or not sign it at all). It is possible the record companies are offering deals that would be a restraint of trade, safe in the knowledge that if a band is successful, it is more likely to renegotiate than go to court. If the band accepts the renegotiation option, then the court would seem predisposed to take it as an enforceable deal, and that the band would also in light of Parker J's ruling, have to take that view as well. Commenting on the George Michael case, Peter Scott of Howell Jones [Music Week] reinforces this view.

'The case [George Michael] has established once and for all that the UK law is very clear - if you sign and renegotiate a contract with sufficient legal advice then you are accepting it as a valid deal'

A band could try another label and possibly get a better deal, but increasingly this is impossible. The nature of record contracts is that they are 'standard forms'. Standard forms save time, and more importantly control risk, because they determine in advance who will do what [Treitel p196]. Boon refers to labels being able to 'keep in step' [Boon], hence making standard terms even more standard. Even then, what difference do the terms differ across one label to another [Boon]. As Parker J said in the George Michael judgement [Greenfield and Osborn 1998]

'This similarity of agreements was a product of market forces rather than any lack of competition between the majors. Furthermore the negotiations of deals were handled by a small group who acted on both sides and were thus able to set industry standard.'

Boon estimates [Boon] that there are ten major firms, which claimed specific expertise in the London area.

Standard forms are not an unfair practice. Every day, with acts as simple as purchasing groceries, you will in fact enter into a standard form contract. However, without negotiation, the standard form is the only form. One thing standard forms do exploit is superior bargaining power [Trietel]. Greenfield and Osborn continue [Greenfield and Osborn 1998 p181]

'A crucial factor in these types of bargaining situations is that most 'new' artists do not have any leverage to negotiate much variation with regards to the individual terms. This both encourages the use of standard form contracts and ensures that the terms agreed are very similar to the norm'

The only time a band has 'leverage' is with a bidding way. A bidding war can be scene as anti-standard form, as when you have two contracts, then you can see if one label's terms truly are standard. However, these next two quotes show that record labels have achieved a level of synchronisation that means that the standard form is almost an industry standard. In the Macaulay ruling, Diplock LJ considered there where two types of standard form [Greenfield and Osborn 1998 p181]

First, there were contract of ancient origin that were firmly established over a long period of time and subsequently would be deemed to have stood the test of time, these would usually be considered fair and reasonable. The second type of standard form contract is '... is of comparatively modern origin. It is the result of concentration of particular kinds of business in relatively few hands.... (The terms of this kind of standard form contract have not been the subject of negotiation between parties to it, or approved by any organisation representing the interests of the weaker party. They have been dictated by that party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services: ' if you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it.)"

In the George Michael case a whole 15 years later, Mr Lee his expert witness commented on 'changes' as so

'I think what tends to happen, and how changes evolve is perhaps in two ways. One: a new difficulty appears and people have to address it. It appears in practice and it may have been inherent in the contract all the time, but it will appear in practice. The other is that the artists who have more influence are able to extract concessions, and then the record companies become familiar with those concessions and it becomes easier for people with less influence perhaps to persuade them to accept them in their case as well'. [Greenfield and Osborn 1999]

So fiduciary duty and restraint of trade cases have been reduced. The practice of standard forms has made this worse, but what has allowed this to happen?

Boon argues [Boon][Greenfield and Osborn 1999] expert legal advice may only prevent you from the worst contracts; it in no way makes the contract fair. Scott's comment reinforces the 'take it or leave it' attitude of the record companies themselves. When speaking with Ms Barbara Dohmann QC who represented the Stone Roses I asked how they would gauge sufficient bargaining had taken place. More often than not, it was the positions and experience that was key. As she explained [Dohmann]

'Yes it was not a level playing field whatsoever. On the one hand an experienced record company with in house lawyers and all the advisors they would have wanted. And the other hand you had these boys who had no particular education or sophistication whatsoever, advised by somebody who didn't know if he was coming or going, with no idea.'

Negotiation appears to offer poor deals, and their lawyer may not be able to, or inclined to prevent this. Bands are obliged to seek legal advice, but the argument Ms Dohmann raised is clearly important; a bad lawyer does suggest a bad deal. So if the Stone Roses had had a good lawyer, would that therefore make it a good deal? Courts decide what is sufficient negotiation but as Jones [Jones 1999 p81] highlights with his solicitor's (David Irving) advice after reading the deal.

'I would advise the band not to sign,' was David Irving's advice ' but we all know that you will. Won't You?'

Michael Smith of Zomba comments [Smith] '90% of the lawyers role is to explain the contract, even if the terms are crap, you at least know what you're getting into.'

5. The 'Americanisation' of negotiation

Given what has already been said about 'small pools of negotiators', the American industry is definitely one where this occurs. As Siegel comments [Siegel] about the large music law firms

'They therefore have a power base, and power begets 'courtesy' and preference'

Remember here however that the power is with the record company and the law firm. As with managers, law firms can be seen, especially in these American cases as, again, part of the record company. Dannen [Dannen] also highlights that at one stage Grubman had 30% of CBS artists, as he was perceived as less of a troublemaker. Soocher highlights this power basing to be almost industrial practice in the USA [Soocher p48].

'CBS also signed its superstar deals in the United States. "Walter [Yetnikoff, head of CBS] inferred that he'd be more comfortable dealing with [top U.S Music industry attorneys] John Branca and Allen Grubman, Lippman continued. Branca, in Los Angeles, had played a key role in CBS artist Michael Jackson's Thriller success. Grubman, in New York, had become an industry heavyweight after Yetnikoff sent several important CBS acts to Grubman's firm. "We asked both" but Branca declined, Lippman said'.

This practice does seem to be moving across the Atlantic. Boon comments [Boon]

'Since extreme competitiveness could affect negotiator relationships, bargaining over recording contracts tends not to be overtly conflictual, and may lead to the prioritising of the relationship of the negotiator over the relationship with the artist'

Although it seems the UK lawyers, in comparison, are not quite as record company friendly, especially when compared to the USA. Andrew Sharland who represented the Stone Roses comments [Sharland]

'If you're good at what you do, you are more likely to be perceived as a threat by potential opponents, whether companies, managers or artists. As a result, those in the know will try to secure our services, so you don't end up on the other side in a particular dispute. There is no really 'us and them' or you're on their side, so you are not on mine' mentality between companies and artists, so far as I am aware.'

This again, with standard forms is a business practice that offers little to bands. If this practice gives insufficient negotiation, then a band is surely compromised. It seems impossible that a court guarantee that negotiation has been adequate? Given the cost of negotiation and the fact, as has been shown, the advice may be inconsequential in guaranteeing a good deal.

Whether disputes occur between labels or manager-owned labels, the relative disempowerment of acts are reflected in court cases, but also reflect a simple statistical fact – that of supply and demand. There are obviously thousands of bands wanting some form of deal. Hence deals are for the chosen few, and most bands that reach that stage are more than willing to accept anything. Record companies know this, and with the 'renegotiation once successful' system, are safe with that practice. Only bands willing to go to court threaten that. The only time when 'renegotiation once successful' would be affected is with bidding wars. Here an act that is wanted by more than one label will get a better deal, as the label is willing to make more concessions to the act to sign it. This is when the dynamics of supply and demand are changed.

6. New labels and the control of them

It is not just bands looking for deals. New labels are also looking for money. Here with labels such as Instant Karma (a recent example), the new label is founded and funded using venture capital (mirroring the royalty advance structure from record deals with acts) from another label (typically a major). It is likely that when a label is 'spun-off' like this, the contracts for the new label are very close to the ones of the original firm.

In a mature industry, one which using the characteristics of Porter [Porter] is almost an exact definition of the music industry, spin-offs, or the creation of new labels from the staff of major labels are to be expected. It is the case with a label like Instant Karma this new label would use the contracts of the old label. Examples of UK labels would be: -

Infectious set up by an ex-director RCA with financing from BMG

Instant Karma set up by a Former Warner Chairman with help from Sony [all FT]

Geoff Travis established Blanco Y Negro, whose contracts were not those of Rough Trade (Travis's own former label), but those of Warners [Travis].

As aforementioned the majority of these new labels are in practice working, contractually at least, as one of the major labels, they are working as a surrogate 'record label'. What benefit is this to the major label? Simply that its rivals work on the same system, and are hence no more attractive to bands. The standard form becomes even more dominant.

However the music industry seems to have developed an industry that avoids spin-offs. Ken Berry is handsomely paid as the chief executive of EMI, perhaps this pay is part of what is called a 'golden handcuff'. So if music industry practice (and the inevitable cost of setting up a new label) hinders spin-offs, only your rivals can break the status quo by altering record contracts to make them more attractive. Hence buying up rivals is the best way to maintain your status quo. With fewer labels, there are fewer types of contracts, and subsequently the standard form becomes even more standard. These mergers took place between majors at the beginning of the decade (between 1988 and 1992 [FT]); gradually creating fewer and fewer majors.

Label	Bought by	Cost
Motown	Polygram	325 Million
Virgin	EMI	1026 Million
Chrysalis	EMI	270 Million
A and M	Polygram	460 Million
Geffen	MCA	545 Million
Island	Polygram	272 Million

It is standard practice when these labels are purchased to place a term in the deal to prevent these label's founders using the money to start a new label. The contract for purchase stipulates they cannot create a rival company for a period of time. For example, after Chris Wright sold Chrysalis to EMI, he was contractually obliged not to start a new label for 15 years [FT]. Richard Branson was also tied up for 5 years after selling Virgin to EMI [Cavannagh]. This is certainly a good way to maintain your status quo. Negus suggests [Negus] that this is one of the record industry two tactics. The first is overproduction ('the mud sticks' theory) and the second is to wait for an entrepreneur (and then buy them out).

Between 1983 and 1994, the birth rates for record labels was as follows [Music Week Directory]

Year	Births	Deaths
1983	258	168
1985	372	150
1986	236	73
1987	205	156
1988	95	99
1990	558	282
1992	254	242
1993	221	131
1994	332	98

With this rapid decline in independent labels, major / large independents and smaller local labels, bands had a greatly reduced set of options when it came for releasing material. Fewer labels also means reduced contractual diversity (increasingly standardised contracts) and a less chance of a bidding war to get a fair deal. The more labels there are, the greater the chances there are for bands. Hence with fewer chances, the supply and demand factors are changed, allowing the practices of the majors to become more and more resilient and unyielding to change.

7. Conclusion

The pattern of the consolidation of the practices of the major record companies as dominant in the record industry is reflected in the contracts themselves. Some record deals still feature a ten percent charge on royalties that dates from the days of Shellac when 78 speed discs often used to break in transit. Often contracts still pay a reduced royalty rate for CD's to cover the costs of developing the format. These terms still haven't left contracts. It seems that once a standard has become enshrined, even when now completely spurious and without justification it may well remain.

As a whole, the record industry seems to be adept at finding strategies to resist disturbance to its core, business practices. Even to the extent of surviving challenges to contracts in which its entire business rests. Each one of these situations be it 'manager' labels, or the negotiation system force acts to 'sell out', because even their representatives are not working enough for them. Even the new labels who would given them a chance of 'buying in', are effectively forced to sell out to the major labels status quo and use similar practices and contracts.

In the next chapter I will consider how an act suffers at the hands of this status quo, and how the system damages careers almost from their very beginning.

Chapter 2 - A band's experience of contracts

This chapter looks at how the systems highlighted previously force acts into decisions and situations that put them at a disadvantage, and that they are forced to 'sell out' if they want to have a career. By using Wham! / George Michael and The Stone Roses as examples of acts, I intend to show how court cases have changed little in terms of practices, and acts are put under pressure to accept the systems and methods highlighted in the last chapter.

The Stone Roses are the last act to have had their record deal judged to be in restraint of trade under English and Welsh law. In NME articles written at the band's peak in 1989, journalists often speculated about the band's destination and whether they would be the next band to 'sell out'. In the two biographies [Middles][Robb], the band's manager is depicted as being inundated with approaches from the heads of A and R at major labels, this although still very much contracted to Silvertone.

Simon Frith in his ‘rock model’ analysed this process [Frith], but failed to consider the downside of such a migration, as typified by the journalistic phrase ‘selling out’.

It seems clear that the Stone Roses did intend to leave. However, in order to free themselves from Silvertone the band needed to contest their contract in court. As shown in the judgement [EMLR] with both the Stone Roses and Holly Johnson’s contracts were extremely restrictive. Perhaps this was done to prevent selling out. Silvertone (and its parent company Zomba) and ZTT are competitive independents (with clear aspirations of growth), to these labels, selling out was not an option they would offer a band. Michael Smith of Zomba [Smith] comments ‘You are looking at a relatively young record label, you know the concept of independents being friendly with bands is certainly true, there is also the other part of it that the independents don’t have as much cash as the majors and have to draw in as many sources on income as possible’.

In the period (1989-1992) the Stone Roses went from an independent deal, to a major deal worth millions of pounds [Middles]. By 1992, George Michael was also in litigation with Sony. By compiling this case and that of the Stone Roses, I intend to demonstrate how the system achieved by record companies (as shown in the last chapter) is at the expense of the bands. There are several contracts that put pressure on a band, which are in many ways are so restrictive, they start to create breaches between and within the band and between the band and its representatives.

1. Band Agreements

If anything demonstrates the forces placed on acts by record company practice, then it is band agreements. Although not part of recording contracts, but recommended in almost every legal guide [Passman][Siegel], band agreements are something that should help prevent conflict between band members. Ominously, band guides recommend doing them early on, as it is better to do it ‘when you are still talking’. Quite what happens to cause people to stop talking is really the key part of this chapter!

The major trauma of band agreements regards with song ownership. This is when the band has its first contact with the practices of the record industry, and it is effectively the act’s first contract with the record industry, even though the band remains physically and contractually outside it. As Avron-White comments [Avron-White], the practice of live a band playing outside record company practice places little or no value on song ownership, but record companies clearly do. These band agreements are effectively proto-publishing deals.

A band agreement also may also make band members eligible for profits and losses that a band makes (It represents the foundation of a limited company). This is the conversation between Ed Jones of the Tansads, and the band’s manager.

Jones	Manager
What is it?	Its an agreement to say we are in business
Why do we need it?	It's the law. We have to present accounts
Why do I have to sign it?	Because you're in the band
What if I do not sign it?	You can't not sign it, you're name's on the record contract
I don't want to be in a partnership	But you're in the band
I'm not in the partnership	The band is the partnership
Why?	It's just a device. It means nobody's personably liable. We share profits, and we are equally liable for losses
So if the band goes bust, I will have to pay?	In theory. Yes but -
So you want me to be liable for decisions taken by me?	What do you mean, decisions taken by me?
By you, John whoever. You decide where the money goes, not me	Do you want to become involved? Is that what you are saying?
No	No What?
No, I don't want to become involved	Well what do you want?

[Jones 1999 p105]

Quoting Avron-White [Avron-White p40-41]

'Although they were semi-professional, and had no management contract or even recording company interest they were nevertheless perpetually arguing about royalties and who should be credited with which parts of which number in the forthcoming, yet never to arrive, recording contract. After some degree of argument it was suggested the band should follow the contractual pattern of the well known Climax Blues Band whereby band members all held equal shares of royalties. A player, HD claimed that this was Climax's policy and that it made for better inter-personal relations in the group as well as encouraging greater involvement by all in the song writing project. However, since the initial writing of this chapter, it is interesting to note, the alternative management, which the band is, now under has encouraged the band to negotiate separate contracts rather than a group contract, awarding only those individual musicians who had made an original contribution. Evidently this led to considerable rivalry on the song writing side of the band's work - with each musician vying for his compositions to be performed on forthcoming recordings so that he would have a greater share in the royalties from the album. The outcome of this battle was that the management, then Warner Bros., took executive

decisions on all compositions written by the band. This resulted in the band splitting up and reforming.'

What affect do these band agreements have? Acts appear to be forced by the band agreement, and the possibility of a publishing deal into identifying a 'song writer', thus altering the song writing process. Even if a band uses an agreement it is happy with, this may well clash with record company and management practices, forcing the band into an alternative practice. The act is effectively encouraged to 'split up' at this early stage according to song writing ability. Avron-White predicts a 'pairing off' of songwriters, where the lyricist and main melody writer break away [Avron-White p251].

As surmised by Avron-White [Avron-White p254]

'Legal matters regarding ownership of original material and publishing rights plays a considerable role in determining not only working relationships between individual musicians but also the conventions and artistic dimensions of the musical project.

This was the case with the Stone Roses, as John Squire and Ian Brown (songwriter and lyricist) broke away. The dispute over song ownership happened before they had a publishing contract, and was the direct result of their band agreement. The dispute occurred in early 1986 [Middles][Robb]. Squire and Brown announced that they intended to take all the song writing income, leaving the other band members (three at this time) with solely income from record sales and mechanical royalties. Two members of the band left permanently as a result. Wham! benefited by the fact that George Michael wrote all the songs and hence they did not suffer from this problem of rivalries. According to both the biographies [Michael][Wapshott and Wapshott], Ridgely was happy with this arrangement. After the Tansads argument shown earlier, two of the band left due to the dispute caused by this partnership agreement.

The Tansads and Stone Roses examples show how the possibility of a publishing deal and economic pressure affect the act long before it was arguably needed.

Why does this happen? Like with labels, unless a band has a different ideology, it has no reason to do anything other than what is the status quo. The status quo of publishing deals (as shown in the Spandau Ballet case) is that the main songwriter's contribution is seen as key to the song writing. The only other musical people recognised are song producers, who are paid for their talent. Non-song writing members of the act are clearly undervalued by this process, and the band agreement makes that very apparent. A non-song writing band member may ask for some form of payment, but this may lead to him being replaced. No true alternatives to publishing practices exist, that most bands have to accept this system, only a handful (radiohead, manic street preachers, blur [Jones 1999 p51]) don't.

The next contract a band may enter into is with a manager. These are important, as for the first time an act no longer gets all the income it earns, and has to pay some one else a commission. As management contracts are often the first contact with the industry as a whole, they are doubly problematic because the band has no experience whatsoever. With the Stone Roses, they entered into a management agreement with Howard Jones, who also ran Thin Line. Wham! signed a management deal with Nomis management, which was ran by Jazz Summers and Simon Napier-Bell.

2. Thin Line Management and Nomis Management

The first record deal the Stone Roses entered into was with Thin Line, which was founded by Howard Jones and Martin Hannett. Howard Jones was the Stone Roses manager at the time and he decided to release the band on his Thin Line label. As Ian Brown comments [Record Collector]

'He formed the label so we could release the single, rather than go for a deal'

It would be unlikely that the band would have been able to get a deal at this time anyway (late 1985), and so this deal would likely to have been the only one they could have got. The 'rock' model [Frith] suggests that an acts career goes through several stages, one of those being local labels. This is the key issue for a band in this situation. Although it may be the only deal available. However, Howard

Jones was aware of the fiduciary duty he owed to the band [Jones 2000]. The deal suited the Stone Roses and having a manager with contacts at this level is perhaps more important than royalties and fiduciary duty.

George Michael had expressed a desire to manage Wham! himself [P53 Wapshott and Wapshott] and so Wham! had no management, when they entered into the deal with Inner Vision. They where advised occasionally by their publisher as to what decisions to make. Like with fiduciary duty having one member of an act manages the act is a very tricky situation. What the extent and nature of the duty is in case like this is very confusing. It is a further level of confusion if the manager was part of the act himself. Wham! had been approached by Nomis management and eventually after Michael became inundated with requests, he accepted the offer from Nomis [Wapshott and Wapshott].

Although having no obvious effect on a band, managers are a stage in a bands career where a proportion of income and control are lost. This is the first clear instance where power is signed away from the band and to the industry and its companies. Managers do offer bands benefits. The Stone Roses saw Howard Jones as a label and some one with important contacts. Nomis would take the workload away from George Michael. Management deals are aren't as restrictive as record deals, and courts have ruled then when a relationship has soured between act and manager, the deal is effectively unenforceable. They are fairer to the act, and the act has much more control. They are 'buying in', much more than 'selling out' as far as management deals are concerned.

The Stone Roses, they left Thin Line in 1986. They then sought the management of local venue owner, Gareth Evans who got them a deal with F-M revolver records in 1986. Wham! or to be more precisely George Michael, left Nomis in 1987 after it was sold to a South African firm. This was something Michael was displeased with, and the deal was ended almost immediately.

3. FM-Revolver and Inner Vision

Unlike management deals, irrespective of the relationship between label and act, record deals remain enforceable. So record company deals are secure, where management deals aren't. Hence record deals are likely to lead to a dispute, as an unhappy act cannot effectively 'up and leave' like it can with managers.

Like George Michael and his two cases with Inner Vision and Sony, the Stone Roses had a dispute with FM-Revolver, long before their court case against Silvertone. The band literally walked away from the deal with FM-Revolver. Ian Brown in Record Collector [Record Collector] claims that they simply called up and said they didn't recognise the contract. Whether they ever had a 'dispute' over the deal with FM-Revolver is open to question. Clearly the contract went through a period of frustration, but the case never went to court, and was never settled out of court. The parting ended the contract, and the relationship between the band and the label as far as recording went. Eventually Mr Birch heard that the band had signed to Zomba, effectively leaving him with the possibility of suing for breach, as the band was still effectively signed to him.

Here, F-M Revolver could have sued the band, and probably gained some form of compensation. However, the cost for the Mr Birch would have been substantial. This form of 'selling out'; when a band can leave because it is unlikely to be sued is a major problem with the industry as a whole. The cost of court cases is a 'hidden' but very real factor in determining whether to challenge contract breaches. In this instance it can be seen to render contracts almost immaterial.

Perhaps this is one reason why small labels affiliate through licensing and ownership deals with larger labels. You gain their contracts, which are more likely to be legally watertight than your own. More than this, the larger label has an interest in your act as well, and this may well discourage other labels encouraging your acts to sell out. However, the larger label in the licensing deal may encourage the act to sell out. This was the case with Rothschild, who where licensed to RCA in the United States. RCA tried to persuade the act to sign with them directly, leading to the court case.

Inner Vision was a licensed label (to CBS), and Wham! was its first signing. The relationship soured over money, and did end up with a writ unlike with the Stone Roses. Mark Dean of Inner Vision chose

to dispute the both his contract with CBS, and his contract with Wham! The trouble took almost a year and ended when Inner Vision (when facing insolvency due to legal costs of over £80,000) capitulated to a compensation deal with CBS.

Small labels don't always have the money to pay for proper legal advice [Smith]. Evans and Michael both believe that the FM-Revolver and Inner Vision deals would have not held in court [Middles][Robb][Wapshott and Wapshott]. With this size of label, acts and labels stand at a watershed. Deals are not yet superstar labels and acts themselves are not superstars. The labels also lack the ability to support superstars. In terms of 'the rock' [Frith] the acts are between two layers. The act could wait for the label, but why should it?

However unlike the Stone Roses, Wham! approached their new deal with CBS with full legal advice for their new multi-album deal. Rough Trade contracts did not work that way. The labels owner, Geoff Travis preferred to work for one album, and then see if the band wanted to continue. As already mentioned, the label had shown an interest in the Stone Roses, which climaxed in the middle of 1988 with an attempt to sign them.

Wham! had now signed to CBS, which we will pick up again after this next section.

4. Rough Trade

The negotiation that was conducted by the band's representatives did focus on the financial aspects of the contract (advances and royalty rates) rather than other terms of importance [Birch][EMLR]. The eighties' independents including Mute, Factory and Rough Trade used 50/50 profit share deals. These deals are classed as more 'artist friendly' than those offered by a major labels.

The way the contracts themselves are fairer has never really been gauged. The obvious way 50/50 deals are fairer are that the artist's income is greatly increased. The equivalent when compared to a 50/50 deal is a 20% royalty deal [Barlow]. Hence given the usual rate of 12-14% royalty (before reductions), an artist makes more. However with 50/50 deals an artist only receives income when costs are paid for.

However this is not truly 'artist friendly'. Although it assumes an equal partnership, this is a division that would not sit well with King Solomon. It does seem to suggest equality between the band and the label. In the terms of supply and demand, it assumes you both have the same need for each other.

This notion of 'artist friendly' contracts focuses solely on income and even then possible income. The fact is a 50/50 without income is fundamentally as friendly as any royalty deal. Secondly, it makes no guarantee that you will be treated any better, or 'pushed' any more. Wax Trax [Lee 1995] and Rough Trade [Hesmondhalgh 1996a] both used a promotional spend according to the success needed or expected. Hence, it was artist friendly if you got the push and the income from it, else it is the same as any other deal. A 50/50 deal could make you rich, but that does not make it friendly. Rough Trade's marketing exploits are a point in fact here. The staff didn't send promotional copies to journalists, or radio one. It wasn't until late 1983 when they employed a publicist. This was coupled with the fact that RTD did not use sales representatives as other sales forces did [Cavannagh p42].

As this shows, the notion of an 'artist friendly' contract is not talking in absolute terms. The contract may be apparently artist friendly, but that is empty if the labels practices are not. There are artist friendly terms in the contract, but here we have to question why have contracts in the first place? Is not one reason to deal with situations when conflict occurs? Hence is the presence of a contract in one way, a step towards being less artist friendly? A contract by its very nature assumes that at some stage the artist-label relationship will not be friendly.

The Stone Roses deal with Silvertone was certainly not artist friendly, and was described in court as one of the most oppressive deals ever seen [EMLR].

5. Silvertone and CBS

Normally a bidding war, or a situation where many labels are all trying to sign the band leads to a position where the band can achieve far greater 'leverage' in negotiation, often achieving a deal that more established acts would get. [Boon]. The band signed to Silvertone / Zomba in mid 1988. The deal was rushed through because of the interest of Rough Trade; although something akin to a 'bidding war' never really took place. However, the negotiation offered the band a chance to strike a fair and reasonable deal [EMLR], and there was no reason to believe this was not achievable. The negotiation focused on economic terms, and simply the basic royalty rate and the advance. However a more experienced music solicitor would have removed terms such as breakages and packaging deductions (which affect the basic royalty rate). The Stone Roses legal advisor did no such thing [EMLR].

The commercial viability of a band is something reflected in a record contract, after all, any advance you are paid should realistically be expected to be recouped, or else the advance you are given would be too high. Some prediction software has been introduced at some labels to estimate sales, hence allowing for advances to be more accurately calculated. The deal was referred back to Zomba's senior management several times [Robb][Middles]. In this case the negotiation of the band's advisors was focused on the size of the advance. Zomba's negotiators had to check the advance with their management before agreeing to sign the band. However it was felt that as the deal was favourable in terms of the label, the advance was acceptable to the company.

Whether the Stone Roses contract was any better or worse than other contracts in circulation at the time is open to speculation. The contract was signed two months after the Holly Johnson case ruled his contract was in restraint of trade, and this case would have been well known within the music industry. Although the judgement speculated on whether the bands' representative knew this, the case was reported in several law reports, and it gained coverage in the NME (and one supposes in the rest of the music press as well).

Even though Holly Johnson had signed deals before his contract with ZTT, his injunction still suggested that he had not taken the advice of a music solicitor before entering into the deal. After the court case, Johnson went on to sign for MCA. The legal fees for negotiation with MCA came to 60,000 pounds [Johnson]. Remember this was two months before the Stone Roses signed to Zomba. If the Stone Roses had taken 'expert' legal advice, assuming this 60,000 fee to be relatively standard, the band would not have been able to pay it. The bands' advance was only 27,500 pounds; hence for a band to pay for this quality of negotiation would have taken them to invest 32,500 pounds in it themselves.

Given that the two rulings for both Holly Johnson and the Stone Roses highlight the lack of knowledge (and wealth) before signing the deal, it is interesting that judges never links this to the cost of negotiation. It is suggested that a portion of the advance should go to the band on behalf of lawyer's negotiation fees [Harrison], but then what happens if the act, after negotiation does not sign? Who pays then? Many bands may see solicitor's fees as something that can be cut and used elsewhere. As I have said many times, if you want a deal, does the negotiation of it matter?

Hence we have a 'catch 22' situation. Bands cannot afford legal advice, but failure to take it may lead to a contract not being enforceable under the terms of the law. Given the thoroughness highlighted in the first chapter, this appears to be the only legal weakness the music industry has left in contracts. Does this reinforce the renegotiate-once-successful system, as acts that do fail to take legal advice are again more likely to renegotiate than go to court.

However void his Inner Vision deal was (due to the lack of negotiation), George Michael still signed to CBS, rather than go elsewhere. He, like the Stone Roses, continued to have success, but unlike the promises of renegotiation that never came true in the case of the Stone Roses, Michael's contract was renegotiated several times. Quoting from his biography [Wapshott and Wapshott p135]

'In 1986 he [Michael] broke off only briefly, to renegotiate the terms of his five-album contract with Epic records Epic was happy to sign on almost any terms, as Michael had become their biggest single asset, the most lucrative name on their roster. With Dick Leahy [His publisher] guiding him, Michael was an astute negotiator. He would listen politely during meetings and then explain his career plans

with enormous confidence. In for years he had changed beyond all recognition as a businessman. Now he never allowed himself to be put on the spot to make a take-it-or-leave-it decision'

In 1991 he started renegotiating again, with what was to be a $60 Million deal. As covered extensively in the first chapter, the renegotiation once successful is essentially is the legal watershed between the case of the Stone Roses and George Michael. Because the Stone Roses did not renegotiate, their contract remained a restraint of trade. Michael on the other hand, had had expert guidance and renegotiated several times before his court case.

Renegotiation is not aggressive so to as make sure personal relationships are maintained [Boon]. This however fails to take into account the most important relationship, that of the band and the label. If the negotiation between the two parties were done in a way (such as from scratch), then the relationship between the two would be stronger. It would also be fairer and certainly more artist friendly than the alternatives. I imagine it would be considerably stronger in a judicial review as well. The key reason for the use of lawyers is that negotiating with a lawyer ensures relationships between the band and the label don't sour over the contract negotiation itself. If this negotiation isn't aggressive as Boon argues, then why does the lawyer need to act as a buffer? The band could easily be present.

The record industry, now safe with its negotiation system has no reason to change as long as people don't challenge it. The only chance a band has is with a 'bidding war' or, to get a fair deal once established as a major act. This is the position, the Stone Roses where in when they arrived at Geffen.

6. Geffen and DreamWorks

Little information on the Geffen deal is in the public domain, even after repeated requests. It was certainly the act's first major deal, although Geffen is now part of Interscope, which is part of Universal. Signed in the UK with expert legal advice, it would clearly have been substantial enough in terms and warranties to more than reflect the size of the advance. The band clearly had arrived at 'superstar' status, like George Michael, in terms of record contracts at least.

Some of the contractual terms can now be seen in the fate of the band now. John Squire after leaving the Stone Roses formed a band called the Seahorses. The Seahorses signed to Geffen, and this is probably due to the presence of a leaving member clause. The Seahorses have since split, but Squire is down as a Geffen artist at the present time [Music Week Directory]. Alan Wren, the first member to leave the Stone Roses has new solo material and no record deal, and from this you would suspect Geffen have not exercised his leaving member clause. Gary Mountfield left the band after its demise, and joined Primal Scream when they where still contracted to Creation, but likely with Sony influenced contracts. Whether Geffen could have stopped him joining Primal Scream is open to question. Also there is Aziz Ibrahim, who replaced John Squire in the band, who has since formed his own label. It would be safe to assume he has not been bound by the contract after entering into it himself.

The only other member of the Stone Roses to have released material since the band's demise is the lead singer Ian Brown, who is signed to Polydor. However since the band split, Geffen and Polydor both became part of the Universal label, and it may well be that Polydor exercised Geffen's leaving member clause. Whether he is doubly recouping both Polydor and Geffen with his new royalties is also open to question.

Brown and Squire may also face cross-collateralisation of their current work and that of the Stone Roses (who never recouped at Geffen). Geffen have also tried to recoup some of the advance ($100,000) from Brown by actually asking for it as a cash payment [Middles], and one suspects Gary Mounfield and Alan Wren also. Whether this is possible under the terms of the contract would be an interesting end to this story. These situations are clearly parts of terms that are present in superstar deals that are not common in smaller contracts. I've never seen a clause that can take back an advance, but I am sure Geffen would never expect it to happen. That doesn't mean they wouldn't write it into a contract however.

DreamWorks is the new home of David Geffen, who (along with Virgin for the UK) bought Michael's contract for 40 Million dollars, in what was music's first transfer fee. The album gave a royalty over ride of 4% to Sony. The settlement was 400 pages long, and gave Michael a $10 Million advance, with a 20% royalty [Wapshott and Wapshott]. However since signing this deal, Michael has expressed his displeasure at the failure to release some material in America [Greenfield and Osborn 1998] and also given us the following opinion [Wapshott and Wapshott p263]

'I would have preferred a one-album deal as I believe that's the way business should be done'

7. Conclusions

Clearly to this day the artists are still under the effect of their contracts, signed decades ago. The Stone Roses are only now allowed to re-record material the songs they gave to Zomba (although they no longer exist as a band). George Michael is also paying his override to Sony. Michael seems to still suffer problematic relationships with record companies. Neither act has complete control over his back catalogue. Michael's last quote is perhaps the most reflective, after loosing a court case, he still had to essentially accept the terms he was offered, rather than the ones he would prefer. He surely has enough money to do it himself, and has set up his own record label, Aegean. However, one day last year he dropped all the acts on the label and its current state is uncertain.

Even though the Stone Roses route to success was clearly different to that of Wham! both entered into problems with a lack of negotiation, but perhaps, they also suffered from terrible relationships with record companies. Although I argued Michael was the first 'transferred' singer, it is clear that both the Stone Roses and Holly Johnson had their 'transfer' fees paid in the form of court costs.

Negotiation may not have spared them either. It is controlled by a select few, ensuring that it can be controlled. The only negotiation that could possibly be described as heated is the negotiation between band members, as the argument highlighted by Jones shows. Unlike the negotiations over contracts, these are often problematic and do lead to relationships becoming strained.

Whereas the negotiation is carried out by lawyers is pleasant to prevent relationships becoming strained. However, once the deal is in place, bar the use of a manager, no such system is in place to keep relationships normal. The only thing that may keep the relationship together is the contract as a legal control. All the court cases reflect the failure of a relationship, and unlike management deals, bands cannot simply walk away. Middles [Middles] biography shows that the relationship (between the Stone Roses and Zomba) fell apart long before the court case, and the relationship was kept going by increasing payments to the band. Like when a contract is renegotiated, the relationship is essentially only improved by giving more money to the act.

Neither act has ever really achieved a contented relationship with their record companies. It could be argued, especially in Michael's case, he felt he was compromised by his dealings with record companies. Even though both Wham! and the Stone Roses have effectively 'cried wolf' with two disputes with record companies, they never really seemed to alter their actions to prevent trouble reoccurring. Worse than this, these disputes never really changed a great deal in terms of industrial practice for either acts or record companies.

As mentioned in the first chapter, perhaps this is because so little case law exists with which contracts can be compared. However, the courts have been erroneous in the assessment of the Stone Roses, and some believe also with George Michael [Greenfield and Osborn 1998]. The contract with FM-Revolver is not mentioned in the judgement of the case, and the Stone Roses barrister, Barbara Dohmann QC, was not aware of it. Rough Trade, who negotiated to sign the Stone Roses later in their career, had no recollection of the FM-Revolver deal.

Given the documented economic nature of the negotiations of the Stone Roses advisors [Birch][EMLR], it seems that the band did not take the Rough Trade option, which was mentioned in court. Had Rough Trade kept the Stone Roses, there is little doubt the band would have been rewarded with sizeable income. Almost certainly that income would have exceeded that which

Zomba's terms would have offered. Even the advance offered by Rough Trade was greater than the advance offered by Zomba (£30,000 to £27,500 [Travis][EMLR]).

Although unrelated to this legal discussion, it is interesting to the later court case why a band whose negotiations were so economically focused would not be interested in the wealth of a 50/50 deal, or a label with the power of a major behind them. Interestingly in Record Collector [Record Collector], Ian Brown comments that they signed to Zomba rather than Rough Trade as Zomba were offering us an eight-album deal, and Rough Trade one.

Chapter 3 - The Contracts in a Genre - The differences, the Similarities

The two previous chapters have argued for two main points; (a) that the record industry has achieved a set of practices that avoid litigation, (b) but in so doing acts and labels to accept a status quo, which favours the record companies. In the last chapter it was demonstrated how this has a negative effect on acts. The only time this was possibly not true was with 'artist friendly' contracts. Do small labels specialising in one genre, often described as 'part of a scene' offer a different practice? This chapter looks into labels of a particular genre, to see if like the post-punk scene labels, they offer different types of contracts.

With this third chapter I look at small record labels that specialise in one particular genre. The question of this chapter is whether these labels have different contracts, and why that is, or, if they are forced into essentially having contracts similar to the major record companies? During this investigation I will also ascertain whether contractual terms that are not in major label deals, occur in these genres. This will discover whether alternative and more equitable practices exist in these genres, as much as post-punk labels pioneered the 50/50 deal. Quite why the 'post-punk' labels of the eighties went for fifty/fifty profit-sharing deals is unclear. Equally why or whether labels before this never opted for it is also unclear.

Ideally, for this exercise we need a group of large labels that specialise in one particular style of music. Naxos is a large classical label, and perhaps the largest single genre label. Arguably labels such as Death Row and Aftermath (American hip hop labels) are larger, but these are licensed through Interscope, and will probably have Interscope contracts. The only substantially large labels in the UK are dance labels, but as they may be of greater size than the other single genre labels, they may have already evolved contracts with terms different to those they started with. Hence a comparison with a (relatively) smaller label from another genre is inaccurate.

While it was impossible to gain intimate knowledge of their capitalisation it is fair to assume that they are of roughly equal size. All of these companies need to use record contracts.

> Classical Music - Sue Revill, manager of Chandos Records

> Folk Music - Ian Green, manager of Greentrax Records

> Dance Music - John Barlow, manager of 3 Beat Records

> Hip-Hop - Will Ashon of Big Dada, part of Ninja Tune

> 'Indie' Music - Wyndham Wallace, manager of Easy!Tiger

1. The major and the independent

It has been well documented [Lee 1995][Hesmondhalgh 1996b] that as a record label grows in size, its practices and its contracts become more and more like those of established industry practice. This assumes that even with a difference at the beginning, eventually labels become part of a contractual homogeneity and with that, similar working practices. There is no reason for a new label to adopt any particularly different contractual practice to that of any other label. Arguably, the easiest way for a label would be to adopt the existing system. Fundamentally, and no record company ever seems to

have worked differently to that of a business. Would the nature of major contracts (a major with say classical, rap and dance divisions) allow for these differences, or would the differences in single genre-based label contracts carry on in some shape or form regardless of the label's size and success? Some of the idiosyncrasies may well be ironed out by professionalism; some of the practices may well be stream-rollered out by greater forces.

2. Economic pressures and there relation to the contract

Initially it seems that the major dominating factor of record contracts at this scale is the economic constraints placed on the label because of the genre's sales potential. Although not mentioned by the dance of hip hop labels, all the other three labels mention the difficulty in breaking even, and how this affects the relationship. Sue Revill of Chandos comments [Revill]

'Classical [music] is very difficult to sell. It is a niche thing and appeals to collectors. We have very few releases that break even. It is tough trying to explain to artists that their discs are not going to sell tonnes of copies nor will they make money from royalties'

This reflects itself in the control an artist has. Whether this is actually in the contract is not specified, but she does draw the distinction that artists unless 'major-named such as Pavarotti' have much more control over photographs and editing than artists whose commercial success is likely to be limited. Obviously the larger the commercial success expected, the better the deal would be. Similar issues are highlighted by Ian Green [Green].

'Our contracts are more flexible [than majors] because sales of traditional music albums are moderate and the artiste is unlikely to earn much from royalties'.

Greentrax do sell records to artists at lower than wholesale to allow them to sell at gigs and keep the profit themselves (as do Easy!Tiger). Interestingly only the folk and classical labels use royalty deals, the other three labels use 50/50 deals.

Hence both labels suggest flexibility towards the artist is proportional to sales potential. This is something that is true in almost all contracts, even with major labels. However, with these terms on small labels, a successful act is not a tightly bound to the label as a superstar would be. These economic factors raise an interesting point. The 50/50 deal is usually described, as 'artist friendly' because of the difference in money the artist would receive. However, as both Greentrax and Chandos stressed the limited market for their releases (not to suggest the other labels would not do this as well).

The fifty/fifty deal offers less income for the record company when compared to a royalty / advance deal. Does this fact the reflect the need for a label to make more so it can exist in the first place? There is no point giving away deals, or types of deals that you cannot possibly afford. A deal that makes releases economically unviable is not artist friendly, as it will mean their work is never heard.

Most of the labels allow the artist to work for other labels (the contracts are non-exclusive), or to work as session musicians for other people. The dance and hip-hop labels only contract the artist under one name, allowing him to work under other identities and pursue other projects [Ashon][Barlow]. Greentrax limits its contract to one album and will agree to more if the label and the artist wish to proceed [Green].

At the other end of the scale majors treat genres differently as well. The divisions of major labels (black/ urban/ classical) reflect the need for specialists in these areas. Whether at major labels this is reflected in contracts is questionable, but it seems that the major labels do behave differently towards genres outside the rock/ pop heartland. Negus [Negus] draws conclusions that certain genres, in particular rap are different in contracts to others. Rap is considered to lack back catalogue value, and hence publishing deals are less favourable. Dance and rap acts may only get single deals (to test potential) rather than album deals offered in other genres [Siegel p116].

Rap labels are likely to be licensed and urban/ black divisions are often, as cited by Negus as more likely to be dropped during cost cutting [Negus]. Classically, the commercial attractiveness of artists is reflected in their relationship with labels. Sir Simon Rattle took 15 years to recoup for EMI [Lebrecht], a time span that most pop acts would be lucky to get. Siegel suggests that some classical artists do not pay recording costs [Siegel p117].

3. Conclusions

It is clear that in niche markets (scenes), different musical genres evolved a range of practices and terms that differ in whole or in part from those dominant within the mainstream record industry. More often than not the commercial pressures of the genre are the key reason for this. The band and the label seem to be much more 'part of a scene'. This is perhaps viewing the labels and their contracts with rose-tinted glasses. All have a high level of professionalism, and are not one man and his dog operations. They are clearly aware of commercial pressures, and have gone as far as having a contract deal with relationships.

To look at what is in the contract is to fail to look at what is not in the contract. All of the contracts have not covered such things as rights and video production. Most important of all, none of these labels has ever come close to mentioning the consideration of release. This is surely the fundamental difference. None of the small labels would consider not releasing a package, as most likely it would be too expensive for them not to. This is much fairer to an artist than major contracts, where the consideration in the contract is less, and the likelihood of release is much less.

A small label may well release a one-off single, and then the band contract would end. Once a label wants to grow, it logically looks for similar material, and where better but a band that has already given you success. Hence the one-off single becomes the contract. This may well continue to the need to grow more, and this is the case with Twisted Nerve and Fierce Panda, both of which are discussed in the next chapter.

Chapter 4 - Growing Pains - the history of labels dealings with contracts

In the last chapter, I looked at the conditions that affect contracts in different genres. This could also be interpreted as what forces are involved in contract creation in the first place. In the smallest record labels, contracts are hardly used the nature of one-off releases. In fact most labels start to release material by one band in particular [own]. A study of these labels and their contracts (and their subsequent evolution) would highlight the factors that affect the creation and development of contracts, and perhaps the level of 'selling out' or 'buying in'.

1. Why change your deals?

The most common practice that happens in smaller labels is that, due to the lack of profitability is that bands waive mechanical royalties. Instead, a percentage of the pressing, usually 10%, more acts as payment in lieu to the band. The progression from this is typified to a 50/50 deal, usually considered artist friendly, but they are also simple to implement.

These are the contracts of the smallest labels. When a label grows however, what happens to its contracts then? One of the ways a label grows is through a licensing deal with another label. Why do bands choose licensing? First, it is the standard route, and as of yet no real alternatives occur. Organic growth is very hard for a record company to achieve, and sudden success is expensive for the label. Labels lack capital, and if sudden demand appears, a label may not be able to exploit it fully. Wallis's model [Wallis] suggests that economic control is one of the keys to growth.

Wax Trax suffered this with the popularity of the KLF track 'What Time is Love', when they couldn't afford to press enough to meet demand [Lee 1995]. Creation had a similar experience to this with the Primal Scream track 'Loaded' [Cavannagh p316]. In the mid-eighties, labels such as Blanco Y Negro and Elevation (Creation's major affiliate) were set up to avoid this sort of situation. Hence labels often have a sudden need for cash, (such as with the bankruptcy of Factory and Creation), and go to a

major to get it. This then involves the major wanting something in return, usually licensing deals and back catalogues.

Porter highlights what is called a 'growth wall' [Porter], which is a key point in a firm's development. This is where the organic growth of the small firm, meets a barrier, such as regulation or a surge in demand it is incapable of meeting. The relevant example here is the singles demand that Creation and Wax Trax faced. It is likely that once this 'growth wall' has been crossed, the label becomes a different creature altogether as it has to change to go through it anyway. After rapid growth in 1989, Creation brought in James Kylo who was of the opinion [Cavannagh p269]

'The real thing I was brought in to do was take it from being a hobby to more like a firm'

A management consultant joined in 1991 to further this professionalisation [Cavannagh]. At this time Creation also shifted from 50/50 deals to 66/33 deals. Hence on meeting the 'growth wall', a label needs money, and more often than not, takes some form of licensing deal. Wax Trax tried and failed to get a licensing deal with Sire, as it had such bad financial practices [Lee 1995]. McGee himself says

'Theres only two things that happen with independent labels – you either get bought out or die. And that's it.' [Hesmondhalgh 1998]

Creation dramatically altered its practices once Sony purchased a 49% stake in 1992 [Cavannagh], starting to drop bands for instance, something it had not done before. Hesmondhalgh [Hesmondhalgh 1998] comments on similar happenings at Rough Trade

'The shift towards more standard forms of industrial practice, where risk is spread across a repertoire of acts subsidised by a small proportion of major successes'

Lee's work on Wax Trax also leads to similar conclusions [Lee 1995].

'Wax Trax's move towards the major labels represented in the employees' minds the only possible alternative [to their current practices] open to them. As the economic objectives of the label began increasingly to overshadow the ideological foundations and aspirations of the company, the employees looked to the only formalised economic model they knew for running a record company. That economic model was, not surprisingly, that one used by the majors'

As well as demand for singles, once a label is successful, bands may demand better terms. Cherry Red suffered from this after is early success [Cavannagh], when the big bands wanted to know why the firm was awash with money, when the bands had yet to see any. This led to conflict, and the runaway success created even more need for capital. Hence a 'growth wall' creates two pressures for a label, which the next example with licensing deals shows.

2. Are licensing deals less fair?

Several of the early conflicts with record contracts, such as Wham!'s dispute with Inner Vision or Holly Johnson's case against ZTT both relate to licensed deals. Hence there is clearly an issue to be looked at here. Are for example, licensed deals less fair to the new label, then are the terms less fair on the band? If they are the only way for labels to grow, then do bands suffer in exchange for labels success for survival? We look at the labels here to work out if, and now labels are affected by the change in their contracts.

* This list shows Mark Dean's Inner Vision label terms [Wapshott and Wapshott p47, 48 and 50].

* Annual non-returnable advance of £150,000, rising to £199,650 by the fifth year

Loans of £75,000 (rising to £99,825 by the fifth year) to ease cash flow and expenditure, but explicitly not to be used for advances and master tape production. It would have to be repaid with interest by the end of the fifth year.

The advances: -

Album Number	Advance
1	£2000
2	£5000
3	£7,500
4	£10,000
5	£12,500
6	£15,000
7	£20,000
8	£25,000
9	£30,000
10	£35,000

The royalties: -

Terms from CBS to Inner Vision	Terms from Inner Vision to Wham!
For the first three years • 15% royalty for the UK • 13% for North America, Japan and Germany • 12% for all other territories In year four, once past 100,000 sales an extra 1 + 2% royalty rate.	8% royalty on UK Singles and albums 6% on albums elsewhere 4% on singles elsewhere

Once the conflict occurred, the problem of licensing deals came the fore. Wham! attempted to renegotiate with Inner Vision in 1983, but as CBS would not renegotiate with Inner Vision, there was little Inner Vision could do, especially with royalty rates [Michael p93]. Michael firmly believed that CBS would sue Inner Vision if it let them go [Michael p114]. Quoting Wapshott and Wapshott [p48 Wapshott and Wapshott]

'Dean later acknowledged that the CBS deal was horribly stacked against him 'At 21 to 22 years of age you don't really care about the deal, you care about getting recognised'

Jill Sinclair, who along with Trevor Horn ran ZTT, said the deal they signed with Island was the first deal they had ever seen [NME 1988], and perhaps goes a long way to explain the lack of negotiation that led to Holly Johnson being released from his deal. Label bosses are as capable as artists of being naive and ill advised in negotiation.

The Wham! case highlights the trouble with licensing and success is that should conflict occur the band is likely to leave the licensee and move directly to the major. George Michael comments on Inner Vision's situation in that if Inner Vision had let Wham! go, then CBS would be likely to sue them for breaking their deal [Michael].

Modern linkages between record companies seem to be that of part-ownership or the complete acquisition. It seems typically that when a label wishes to grow, rather than doing so by itself, it seems common that it forms a relationship with a much larger label. This is the key issue of this chapter, what happens to a label's contract when it grows? More than this, do these deals affect the labels previous working practices, and does it become more and more like the conventional labels with standardised working practices?

The two labels that I have looked at for this chapter have both taken the licensing route. Twisted Nerve is a Manchester label, and the home of Mercury Music Prize Winner Badly Drawn Boy. The other label is Fierce Panda, a London label home to artists such as Bellatrix and Seafood. They have a history of releasing EP's with artists who then go on to sign for major labels. Twisted Nerve are licensed to XL, who themselves are part owned by Beggars Banquet. Fierce Panda have a deal with Mushroom, part of Rupert Murdoch's group of companies.

3. Current licensing deals and their effect

Both deals provided finance for the label to grow, and also facilitate distribution or provide certain services for the smaller label (such as marketing and international licensing). This, in itself creates a different practice for labels. The nature of the deals gives the labels freedom in certain ways, as Twisted Nerve and Fierce Panda continue to do one-off releases. The deals are different, with Twisted Nerve becoming part owned by Beggars Banquet, whereas the Fierce Panda deal sees contracts being in both the names of Fierce Panda and Mushroom.

They both still have contracts they use that are not the licensed ones. It seems that both of the labels stress the need for this, and perhaps in a way reinforces their independence, by allowing them to act alone in certain circumstances. As Simon Williams of Fierce Panda comments [Williams]

'I would admit that to saying that the long-term contracts are more in the style of Mushroom whilst the short term contracts are more in the style of Fierce Panda'.

This could also be interpreted as licensing the label's success. The term 'licensing success' indicates perhaps the real reason bands go for licensing. Hermann Gray's study of Theresa records [Gray] highlights the bands need to create a contract once artists received international licensing deals. If bands get successful in one territory they may well be licensed abroad. Once Theresa had agreed to legal deals with other labels, it meant that it had to achieve a similar relationship with its artists, and hence Theresa's contracts changed.

To avoid this sort of problem, labels may well have deals that allow acts to move to the licensing label, in a way acting as a 'surrogate A and R man'. The Twisted Nerve licensing deal allows for this. With the Fierce Panda deal, the nature of the co-signer facilitates a similar relationship. Twisted Nerve feel that they will eventually switch to XL contracts and use them themselves [Duffy]. Fierce Panda seem keen to keep their two sets of contracts separate, but as I expect all albums (the one-off deals I feel relates to singles) are licensed to Mushroom and hence covered by that contract [Williams].

4. Conclusion

When a small company seeks a loan, the loan itself will not necessarily bring with it certain working practices in the same way a licensing deal would. The only pressure would be to pay off the loan, whereas with licensing, the sale of records reimburses the larger label. Licensed labels are very much like bands in that way, if bands had to recoup, they would without doubt behave fundamentally differently. The experience of Alan McGee's Poptones label, one established with money from its flotation, is one I feel will be very important. Here McGee will not have to meet any repayments, though he is theoretically under pressure from shareholders.

However McGee is starting with his money, rather than having to go looking for it. Hence there is no obvious need for him to use a licensing deal at any stage. He is much less likely, due to having capital from the flotation, to meet a growth wall like Creation or Wax Trax did. Venture capitalists, bar the purchase of Motown [FT] have shown little interests in record companies, even with respected industry people searching for capital. On this basis, all small companies find it increasingly difficult to maintain alternative practices with regard to contracts when faced with the demands of success. The model proposed by Wallis suggests the merging of ideologically similar labels is the only way to really keep differing practices alive [Wallis].

As covered in the first chapter, a band has only one career and unless it is willing to stay with the smaller label, then it should 'sell out' and go for a larger label more capable of earning the act more. Similarly with labels, unless they are driven by some ideology (such as Rough Trade) that makes them anti-major, then there can be few reasons for not taking a licensing deal. Bosworth [Bosworth] highlights small firms fear growth because they loose control. However licensing deals if you are working on a similar practice are a small change in the level of control, for a vast difference in economic strength.

Chapter 5 - The evolution of a label's contracts

The logical progression from the last chapter is to further investigate contracts, and to look at the contracts of an established label. Once a label has grown, it then is more in control of its contracts, and is less pressured than it is during growth? Hence, the established label should have a contract that reflects its practices (and ideology), perhaps even attempt completely new contracts, as Wallis suggests [Wallis].

The ideal choice of label would be one such as Virgin, whose contractual evolution featured a merger with EMI and several periods of frustration with artists [Hesomndhalgh 1998 p257]. Negus refers to the 'virginification' [Negus] of EMI after the merger, it would be curious if the Virgin contract was 'EMI-ified' after the merger. Similar labels would also have demarcations, such as Creation pre and post-Sony. Other alternatives would include labels with long histories and those untroubled by merger or dispute, which would show us the process of natural evolution. One label that fits this category is Beggars Banquet, and this is the one I have chosen to examine. In this exercise, I compare and contrast two Beggars Banquet contracts in order to determine where they have evolved.

The Beggars Banquet label mirrors the shape of other organisations, most notably S.I.N.E, as it has joint ownership deals with several other labels, notably XL and 4AD. Some of these labels themselves have deals, such as 4AD's deal with Che and XL's deal with Twisted Nerve. Hence its contracts will have spread through the industry. The two contracts examined are the 1994 and 2000 versions.

1. First Impressions

The contracts look and feel are very similar and the changes only seem typographical. The warning over age and taking legal advice has moved from its own separate page (it's the first page of the contract) and the index page has been removed.

2. Content Changes

Given the gap of six years between the two contracts, the number of changes is almost minimal. The content may have been re-arranged, with some changes format wise, but the contract seems almost identical. The major change is the addition of two extra named clauses, though both of these are only

one clause long and appear towards the end of the contract. The first of the two clauses is the approvals clause. This clause reads as

'In the event that company requires artists' consent or approval hereunder such consent and/ or approval shall not be unreasonably withheld or delayed and shall be deemed given in the event that company has not received a written refusal from Artists specifying valid reasons for such refusal within two (2) working days of Company's request therefore For the avoidance of doubt approval and/ or consent given by Artist's manager (or other representative) shall be deemed approval and/ or consent by artists'

Quite what this covers is unclear, but it is interesting the term approval is not defined in clause 1, which is where the majority of the terms are defined. The clause does not define what can be a reason for denial, though I expect this clause is for the purpose of smoothing out problems in relationships between the label and an act, when it has soured.

The second clause is the domain name clause. This relates to the URL that the band will use as their official site. This clause reads as

Artists agree that if Artists have not registered an internet domain name using Artists' professional name within one (1) month of signature hereof then company shall be entitled to register such domain name at Company's expense and Company shall own such domain name until Artists repay to company all costs incurred by company in connection therewith Whether Company or Artists have registered such domain name Artists shall have full control over the content of any "website" using such domain name SAVE that artists shall procure than any such website shall include a hyperlink to Company's website

Quite what costs incurred connection with means when compared to paying off costs registering a web page, and given that a .co.uk / .com package can be bought for almost nothing (in terms of record company prices anyway). These are two interesting clauses, especially the approvals clause, which is perhaps almost a boilerplate term to deal with a problematic relationship.

However the two new clauses are not the major content change. This is the movement of a lot of the 1994 contract out of the main contract and into the schedule at the end. Various figures such as royalties, advances, and dates for options are all moved to the end of the contract (the schedule). I assume that this is done because it reflects a 'tiering' of bands, and that standard terms can now vary greatly across the acts. Hence if the terms are moved to the back then the terms inside the main contract can be re-used without variation. Hence what would be the standard term contract does indeed become the standard term contract for everyone. However, as most of the major parts of the term are taken to the part that can change, the standard terms can now vary a lot more across the roster. This means the main part of the contract is more flexible and can be used much more elsewhere. It may also be possible to use the contract for more than band/ label deals, and possibly licensing.

3. The cause of these changes

Although there are specific causes for certain changes in the contract, the most interesting is the one above, why so many of the important parts of the contract have been taken out of the standard terms. The most obvious reason is that a label such as Beggars Banquet will clearly have bands that are of different priorities and so reflects that. Also certain bands will be of different commercial viability and then to offer them lesser terms make sense to the label. Hence the contract can now be used to achieve unique deals for each act.

The second change reflects the 'internationalisation' of the label. The 2000 contract mentions the American label, and recommends licensing to them, and deals with the controlled composition clause that affects American record deals. This is effectively a deal for the UK and the USA.

The final change is the lengthening of the merchandise clause. Although it still makes no provision for the record company to own merchandising rights, the clause does lengthen to allow for rights in

artwork and its reproduction. Although allowing the artists certain freedoms (and to keep the merchandising rights themselves), it does allow for the company to make money from its rights in certain cases. The only other change of note was the 2000 contract did not seem to specify how videos would be paid for (the 1994 contract used a 50/50 recoupment deal).

4. Conclusion

The major variation is that the terms have moved to the outside of the major part of the contract. As Beggars Banquet grows established acts that will with time reach the end of their deals and start new ones, it is likely that the label will need flexibility in its contracts. What might appear to be the label creating less artist friendly contracts, could easily be argued to be a process which makes contract production quicker, and makes them individual for each band, something which achieves better solutions, and hopefully ones that will last longer.

The effect of global expansion also plays its part, as does the internet, though the vast majority of the definitions remain the same, bar those of digital download and direct delivery, which came into being between 1994 and 2000.

Conclusion

It is clear that acts and labels do go through processes that could be called ‘selling out’. However, as an academic term, ‘selling out’ holds no particular meaning. The ‘selling out’ of labels could be seen as the adoption of more professional methods, which would keep the label alive. An act ‘selling out’ could be seen as giving up its liberties in exchange for the chance of stardom.

The system of negotiation and renegotiation set up by the majors ensures that the majority of decisions taken by new labels or acts are ‘sell outs’. Standard terms could well be negotiated, but then you are negotiating away from somewhere, rather than coming to an agreement between the two of you. Hence it could also be claimed that every clause removed is effectively an act or label scoring a small victory, and they are in fact ‘buying in’. However record contracts are designed (as shown in the Stone Roses case) with built-in clauses that in-house lawyers expect a band’s lawyers to remove [EMLR][Boon].

As covered in chapter 4, organic growth is extremely hard for an act. Going to a label allows an act access to promotion and funding it could not dream of itself. However, this process is no doubt explains the 1 in 8 failure rate. New product development across all industry has an 88% failure rate, so the music industry fairs better than most [Hill]. Although Coulthard [Coulthard] highlights that some judges believe successful artists carrying their development costs to be fair, in the case of failure it is surely not.

The courts are perhaps the largest problem. Distinctly inaccessible for the majority of people, they are incapable of really driving change and setting precedent. The Stone Roses case is a point here. Several key pieces of evidence including the F-M Revolver deal, and the vast superiority of the Rough Trade deal are amazingly overlooked. Here the real question is whether courts have the skills to deal with music contracts. Boxing and Football [Greenfield and Osborn 1998] show how the central regulation of these sports has stopped exploitative contracts and practices. This self-regulation is not even present in the music industry.

Given the contracts in America are based on original American Federation of Musician contracts [Schlumberg], it is worrying why the unions have lost all their power. We see the film world held up by the threat of strike, and basketball, baseball and American football have all had strikes within the last decade. They also have much better deals. Courtney Love has recently tried to unionise the American music world again, but has had little success [Guardian 2001a]. Love highlights

‘Recording artist don’t have access to quality pension plans like the ones made available to actors and athletes through their unions …. The baseball players’ union has negotiated a pension plan that ensures that NO major league player ever finds himself without an income. Why shouldn’t recording artists get the same benefits?’

Imagine the ‘where are they now’ shows if this was the case. This is the real problem though, as bands are not really selling out or buying in. They are simply unaware of their location and action. This is not a return to ‘the rock’ model, it is merely saying that the horror stories of collapsed record deals and appalling relationships would be a thing of the past if acts returned to the unions.

However, whereas baseball players are paid irrespective of their success, acts are not that fortunate. Record contracts, other than with the possible exception of Rough Trade [Hesmondhalgh 1998], have neither considered putting artists on an actual payroll. They have also no employment rights. Although English and Welsh music deals may mirror the old practices of musician unions contract, I doubt whether the musicians union has the power today to change the terms. The music industry is a bastion of capitalism, and the advance / royalty system is almost venture capitalism in its purest form. Acts have taken this to heart, and taken a system that chooses few to start with, and the takes even less to become stars.

When the record industry should be with football and standing on the brink of a new beginning, it instead stands where football did in the late fifties with George Eastham and Newcastle [Greenfield and Osborn 1998]. Eastham was kept on a retained list of professionals who could not move to other clubs, but would not be paid either. Hence George Eastham is the 7 of the 8 bands who fail to make it. These 7 bands whose music is effectively retained, they are not allowed to play, whereas the stars are the complete opposite.

With unionisation or a challenge on article 85, music contracts would be completely different and the music industry would have to behave completely differently. Instead of this, a new form of independence and ‘buying in’ appears to be emerging. Four of the Mercury Award nominees, including the winner Badly Drawn Boy, released their albums on their own labels. These labels, and others like Ani DiFranco in America have shown that organic growth and success for acts is possible. As these are labels ran by the act, it is also proves band labels do not need licensing to succeed.

It is acts and labels without ideology that allow the ‘selling out’ to happen over and over again, but when the chances are few and the ‘what if’s’ so massive why should a band not accept it. As long as this is the case then contracts will stay as they are. Attempts to revolutionise other cultural activities have proved successful, with United Artists and Citron Press being key examples. However, perhaps with music to succeed on a grand scale, you do need a record company.

An act however cannot be expected to be a label owner and its key artist at the same time. It effectively breaches its fiduciary duty as an act, because it will be wasting time on administration, when it could be writing songs or playing gigs. As long as the division of labour within the music industry creates people with specialist roles (artist / manager / lawyer) then these tasks will remain separate. It is when acts become their own manager, lawyer and record company do we see real change and difference.

It is perhaps the true status quo that the record industry recognises those of extreme talent more than any one else. This encourages the division of labour even more. Entrepreneurs are bought out [Negus], marginalized [Peterson and Berger] and handsomely rewarded (remember the ‘golden handcuffs’). Acts are forced into having managers and lawyers, and working out at even the very beginning who are the talented members (the songwriters) in the band. Only when an act stands against this, will ‘buying in’ become prevalent over ‘selling out’.