

## Be Not Afraid: Why Lawyers' "Fancy Contracts" Help Musicians

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Not surprisingly, musicians have come to loathe the complex, "fancy" contracts lawyers invariably draft, to the point that the mere prospect of a lawyer becoming involved at the deal-making stage is often enough to induce nausea. But it shouldn't be that way. In fact, as explained below, these "fancy" contracts -- which are loathed for the excruciating detail and precise language they employ -- are valuable to all parties involved precisely *because of* these detailed provisions.

Exactly why this is so can be seen more clearly from this example: Suppose Smith and Jones agree to undertake a partnership of sorts, with the goal of producing a musical composition. Jones agrees to operate as the producer of the song, and will be responsible for creating the track, while Smith will operate as the singer and principal lyricist. They agree to eventually apply as joint authors for copyright in the song, and to share in all profits equally.

Smith then decides he wants to have his lawyer draft a contract, a move that is anathema to Jones, who doesn't understand the need for a lawyer when both he and Smith agree in principle to split everything 50-50, and their respective duties are very straightforward and well-defined. Instead, at the absolute most, Jones favors drafting a simple agreement themselves. Smith persists, however, and eventually produces a seven-page contract drafted by his lawyer that he turns over to Jones. Jones promptly sighs in disgust, contemplating the myriad of ways that "sneaky lawyer tricks" might be hidden in the maze of provisions in the contract, threatening to ambush him like a mugger in the shadows. Jones then begrudgingly forwards the contract to his own attorney, regretting that Smith's stubbornness has enriched the college funds of his lawyer's children.

Is Jones right to think this way? Probably not, and here's why: Jones' beef with Smith is that Smith wanted to use a lawyer in the first place, whereas Jones preferred to "keep things simple" and stick to an oral agreement or, at most, draft something themselves. This is almost never a wise idea, and ironically, in the end, may be the *least* "simple" of the alternatives.

The fact of the matter, and this is truly the key point to understanding why using a lawyer makes sense, is that in the real world, after the parties have left the deal-making stage and begin to go out and perform under the agreement, situations and issues will invariably arise that may not have been entirely foreseen by the parties at the time they entered into the contract. When these situations occur, and they will, believe me, a well-drafted contract will govern the situation, as it dictates to the parties what their respective rights and liabilities are, both vis-à-vis one another as well as against third parties.

Taking the example of Smith and Jones again, suppose they opted for Jones' preference for an oral agreement and did not formalize their relationship with any written contract. Suppose further that the very next day, in contemplation of their first recording session later in the week, Jones hires an engineer and agrees to pay him an hourly wage. Later in

the week, when Smith shows up at the studio, Jones greets him with a handshake, a hearty pat on the back, and a bill for half of the cost of the engineer's fee. Smith is shocked by the bill, and claims to have believed all along that Jones would pay for all such costs, since Jones is the producer and operates the studio. Naturally, this is not quite what Jones had envisioned.

This is but one of a multitude of examples where parties to a seemingly simple and straightforward agreement subsequently encounter issues neither contemplated. When these issues arise and there is no written contract executed between the parties that provides for these scenarios (or if there is no written contract at all), arguments will happen -- and that's not good for business.

When lawyers become involved on behalf of their clients, they may be perceived as creating a "mountain out of a molehill" by drafting lengthy and detailed contracts that account for situations and contingencies far beyond the contemplation of either party. And that's exactly right! And, having seen what happened to Smith and Jones, it should now be clear that this is a good thing, not a bad thing. This is precisely the job that needs to be done: to clearly define the rights and duties of both parties, and provide for *as many* contingencies and various scenarios down the road as possible. Then, if a potential dispute arises that is clearly governed by the contract to use our example, if the contract clearly states that Jones, and not Smith, is responsible for all costs connected to studio time, the parties have nothing to fight about.

To use another example, assume the contract between Smith and Jones contains a provision on copyright infringement, i.e., that infringement actions against third-parties may be brought by either party on behalf of the joint venture, but that the other party is responsible for half of all attorneys' fees. Not only does this provision have the effect of forestalling any disputes between Smith and Jones as to who is responsible for such costs and who has the authority to bring such actions, it also serves as a reminder to both Smith and Jones that they enjoy copyright protection. In other words, the contract language reminds the parties that they should be on the lookout for potential infringement, that they have legal remedies available to them should any third-parties infringe their copyright, and it clearly defines who is responsible for paying for any actions brought in their behalf.

Of course, none of this is to suggest that by reference to "thorough" or "fancy," the contract should be written entirely in unintelligible legal jargon. Lawyers are not doing their job if their drafting vocabulary consists only of Old English phrasing which appears to be utter gibberish to any reasonable person. But a clearly drafted contract with clear, unambiguous and precise language in its provisions can (and should) still be "complex" insofar as it addresses as many contingencies and issues as possible.

Moreover, at its best, a well-drafted contract can also serve as a guide to the performance of both parties rather than a mere "contingency blueprint," as it were, to be used only when people start fighting. In the case of Smith and Jones, for example, a contract drafted effectively for their relationship would clearly define both the rights and the duties of each party. Thus, under the contract, Smith might be obligated not only to write the lyrics for the song and to provide the vocals, but also to undertake good faith efforts to market the song commercially. If the contract specifically enumerates the details of

such marketing efforts, it will force the parties to clearly define their battle-plan, whereas they might have otherwise simply left the subject unaddressed.

Though there may be costs involved in procuring a "fancy" contract, the important issue is not how much these costs will run; the real question is how much money will be saved down the line by eliminating time-consuming arguments, and, ultimately, avoiding costly litigation. As any former party of litigation will attest to, the costs of taking your dispute to court (or even arbitration or mediation) can be *enormous*. Investing a bit more money up front in the venture to secure a well-drafted contract is never financially irresponsible and this is true no matter whether the parties ultimately end up completing their relationship or mutual undertaking without dispute or not.

Put simply, a detailed, well-drafted, and yes, "fancy" contract forces both parties to think through their relationship (and its implications) at a point when the costs of changing your mind are still negligible. The time to ask fundamental questions about the nature of the obligations mandated by an agreement is *not* after that agreement is executed; think *before* you sign!

In other words, if a lawyer's fancy contract forces you to ask questions, and in the process think more clearly about the agreement, be not afraid. This is exactly the medicine one needs.

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