

Controlled Compositions Language
By Alan S. Bergman

I was at the New York City Museum of Modern Art the other day to hear Dave Stryker's performance. Dave and I got into a conversation about publishing royalties which I will describe in some detail as it concerns the extremely important situation where the artist records his own compositions on his own album. This area is referred to in the vernacular of record business contracts as "Controlled Compositions Language."

There are three parts of the calculation of royalties payable by a record label to the writer/publisher. First, in almost all record contracts the artist recording his own compositions must agree in advance that the record company will get a reduced rate on the mechanical publisher royalty payable for each composition (typically 75% of the otherwise applicable statutory rate). Second, this royalty rate will never be more than the rate on a five minute composition, although the copyright law provides a rate of 1.3 cent per minute for compositions over five minutes. Third, the record company will in no event pay more than ten times this reduced rate for the entire album.

This often creates disastrous complications for the jazz artist, because jazz compositions are typically longer than five minutes, and jazz artists quite often also record standards on the same album. Publishers of those standards are not obligated to issue licenses at a reduced rate and in fact they rarely ever do. What this means then, is that if an artist records a standard, and worse yet if that standard is more than five minutes long, the full statutory rate will have to be paid to the publisher of that standard and that royalty is deducted from the maximum album rate which is artificially established by the artist's contract to be no more than ten times $\frac{3}{4}$ of the minimum statutory rate. At the present time, the minimum statutory rate is \$0.0695 which would mean the total album rate can be no more than 52 cents ($\frac{3}{4}$ of $10 \times .0695$). It doesn't take Big Blue to be able to figure out that if a full rate standard composition is ten minutes long and the rate is 1.3 cents per minute, that's 13 cents for that one song alone. So if the label doesn't have to pay more than 52 cents for the whole album, there's not much left over for the artist's own compositions. The more standards there are on an album the worse it gets. I've had situations were not only does the artist wind up with little or no mechanical royalty for his own compositions, but it's

entirely possible that the artist winds up in a negative position and owes money to the record company, which the record contract provides can be taken by the record company from any and all sources including budgets for subsequent albums, advances or artist royalties. Sometimes, the contract even gives the label the right to demand payment from the artist, and if he doesn't pay, they have the right to sue for collection.

I'm not going to editorialize on the fairness or unfairness of this concept. It just exists, and it's not going to change for a good long time. In summary then, keep in mind that when you are the artist recording your own compositions, you as writer/publisher must agree to a reduced mechanical royalty rate for those compositions, and if you record standards or compositions written by somebody else, there is a maximum per album rate in your contract limiting the total amount of mechanical royalty money that the record company is obligated to pay. Therefore any money which it must pay to third parties reduces the amount left over for the artist's own compositions. Since publishing royalties are probably the only royalties a jazz artist is ever going to see, being aware of and understanding the Controlled Compositions Language in your contract is critically important.

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