1. WALK ME THROUGH IT: HOW DOES A RECORDING CONTRACT WORK?

A recording contract is a legally binding agreement between a recording artist and label setting forth the business terms of their creative partnership. Under the contract, a label generally pays for making, distributing, and marketing the artist's recordings, as well as for the development of the artist more generally. The label also agrees to pay the artist a set share of money from recording sales or streams, known as a "royalty." The label typically advances funds to the artist—often very substantial sums of money, including in the millions of dollars—to cover such things as recording costs, artist development, and income for the artist's own use. The contract typically requires the artist to deliver multiple sound recordings to the record company over the term of the contract, such as albums, EPs, or singles, with the successive products structured as options, the exercise of which depends on the commercial success of the artist's delivered albums, among other factors. If the record company exercises an option, that option is accompanied by still more upfront payments to the artist, which are set forth in the contract.

2. WHAT HAPPENS WHEN AN ARTIST'S ALBUM IS SUCCESSFUL?

When artists are successful, they typically renegotiate their contracts with the record companies to provide the artists with significantly higher compensation. Labels strive to support their creative talent and to preserve their ongoing creative partnership with their artists, and successful artists can and do renegotiate their contracts mid-term to obtain larger advances, better royalty rates for subsequent albums, and even new agreements providing for delivery of more recordings—effectively extending the term of the parties' contractual relationship. The recordings also serve as springboards for other revenue sources that the artist frequently does not share with the record company, such as concert revenues and publishing and merchandising royalties. Successful artists, who are represented in these negotiations by high-powered and sophisticated attorneys, agents, and managers, can—and do—obviously enjoy lucrative careers under current law.

3. WHEN AN ARTIST NEGOTIATES A NEW CONTRACT, DOES THE SEVEN-YEAR CLOCK START OVER?

As a matter of logic and fundamental fairness, a contract renegotiation should start the seven-year clock over, as the terms of the parties' commercial relationship have changed. Unfortunately, the law on this point is unclear, with some authorities holding that a renegotiated contract starts the clock anew even where there has been no break in the employment relationship between contracts, *see Viacom Int'l v. Netflix, Inc.,* No. 18STCV00496 (Cal. Super. Ct. Dec. 10, 2020), while others hold that the seven-year clock runs from the date of the initial contract where there has been no break in the employment relationship. *See de la Hoya v. Top Rank, Inc.*, No. CV 00-10450-WMB, (C.D. Cal. Feb. 6, 2001).

4. WHY WAS THE RECORDING INDUSTRY GRANTED A CARVE-OUT IN THE SEVEN-YEAR RULE IN THE FIRST PLACE?

Recent press accounts have mistakenly asserted that the recording industry was "exempted" from the seven-year rule, but, in fact, the recording industry has never been exempted from the rule. Under the state's existing law, recording artists are free to stop rendering personal services under their record deals after seven years, just as any party providing personal services under any other contract in California can walk away. In 1987, however, the California Legislature did amend the law in recognition of at least two qualities unique to recording contracts:

- Performance under recording contracts is not meaningfully measured by time, but by deliverables – typically the number of albums delivered by an artist; and
- Recording artists (unlike, say, athletes and film stars) are in a position to control the results and the pace of their creative output – flexibility that allows them to work around touring schedules and other commitments and life events (e.g., filming a movie, having a baby, etc.) and to create new music on their own timeline.

Given these unique qualities of recording contracts, the law was amended to clarify that, while recording artists (like any other California employee) may unilaterally cease rendering personal services under their contracts after the seven-year period, record companies may collect damages for contractually-promised albums that the artist has not delivered prior to the date specified in the artist's notice to the record company as the date on which the artist will cease providing services under the contract. Without this provision, the Legislature realized, artists could sign a contract, receive all the benefits of the record company's investment in their careers (including, for example, advances, recording, production and tour support, artist development, marketing, etc.) and then do nothing (or do something else, like make movies) until the seven-year period expires, leaving the record company without a remedy for the album it was promised and did not receive.

Thus, current law in no way exempts the recording industry from the seven-year rule; it merely reaffirms that record labels have the right to the benefit of their bargain, and to receive damages for any recordings the artist did not deliver as promised under the contract.

5. DOES ANY OTHER STATE HAVE A SIMILAR SEVEN-YEAR RULE STATUTE?

California is alone in this respect. In every other state, contracts between private parties for personal services—including entertainment industry contracts—are enforceable for the term freely and voluntarily agreed to by the parties to the contract without any limitation as to time or available remedies. In California, a person who promises to perform personal services may walk away from his or her contractual obligations after seven years, permitting only the person delivering the services to enforce the contract beyond a period of seven years.

6. WHY IS IT BETTER FOR THE ARTIST IF THE LABEL HAS MORE TIME TO EXERCISE AN OPTION?

AB 2926 would add a new provision to existing law that would require record companies to exercise an option for additional albums in a multi-record deal within nine months of an album's commercial release– effectively reducing the seven-year rule to nine months.

That window would not provide sufficient time to evaluate an artist's commercial performance; record companies often need 12 months or more to evaluate whether an artist's commercial performance can justify the investment associated with exercising further options. Requiring contracts to limit such decisions to a nine month period would short circuit that evaluation in ways that undermine artist development and growth.

If options must be exercised within only nine months of release, record companies will invariably decline options and drop artists from their rosters, undercutting developing artists whose careers would be cut short by such forced actions. In addition, the expedited timeline would often conflict with effective marketing and release strategies – especially for less well-known artists where a longer "build" period can help them make a convincing commercial case for the exercise of options (and the new payments that would produce).

The art of making records is not susceptible to the strict, mechanical deadline that the proposed nine-month rule would impose. Each artist's circumstances are different, with some in a position to record and release a record more quickly, others more slowly, still others needing a hiatus from the recording process for any number of reasons, and still others needing more development before they are ready to make their ultimate recording. The creation of music is art, not math, and these many variable circumstances—which record companies, as the artists' creative partners, are able to accommodate under existing law and through existing contractual arrangements—would be brushed away by a strict, un-waivable nine-month rule, which would invariably harm artists and prevent them from delivering music in the manner and pace that they desire and their creativity dictates.

7. HOW WOULD AB 2926 IMPACT RENEGOTIATIONS BETWEEN ARTISTS AND LABELS?

Artists and labels often renegotiate contracts to recognize initial success and reflect deepening creative and commercial partnerships – indeed, it is very rare that any artist stays on their initial contract for a full seven year term. When deals are renegotiated, the seven year "clock" is reset to reflect the new commercial reality – if the clock does not reset, renegotiation becomes almost impossible because there simply isn't enough time for the parties to perform under the new agreement.

AB 2926 dictates a number of terms that must be included for a renegotiated contract to restart the seven year clock – including a limit that any new deal include only one additional album and that it constitute a "material improvement . . . financial and otherwise" over the original deal and include comparable to those received by "artists of similar commercial success or market value" (with those vague and ambiguous terms undefined).

By freezing contract terms in statutory law and introducing massive uncertainty around the enforceability of any renegotiated deal this provision would severely undermine dealmaking and tie the hands of artists seeking longer term partnerships (and the higher pay and greater label investment those bring). California's legislature should be encouraging flexibility and innovative contractual arrangements that create new opportunities for artists in the state, not mandating one-size-fits-all arrangements.

8. WHY IS FLEXIBILITY IMPORTANT?

Current law has provided all parties the flexibility to enter into bespoke contractual arrangements that have yielded the most robust and diverse music marketplace in history.

By providing protection for both parties to a sound recording contract, and by leaving room for accommodation of the unique circumstances, needs and desires of each artist and label, current law has encouraged risk-taking and investment in the development of new artists, facilitated the highest advances and royalty rates in the history of the music business, with more competition for talent and greater diversity of opportunities for artists than ever before, and encouraged routine renegotiation of deals as artist/label partnerships mature. Recording artists and their labels have successfully negotiated and performed contracts within the framework of current law for decades and disagreements are almost always resolved by negotiation, which is why there have been very few court cases regarding the current law, and why the legislature rejected calls to amend it in 2001-2002.

Both record companies and artists benefit under the current law. Although a longer term would be even more beneficial, a seven-year contract term still gives a record company time to work with an artist to create a successful act, build the artist's career, produce albums and—provided it receives the benefit of the bargain it struck with the artist--to reach profitability. Artists benefit because record companies have the security of an enforceable contract that enables them to invest heavily in artists through substantial advances of capital (both monetary and human) and creative support, and artists have breathing room for their creative processes to flourish. Under the current system, advances, recording budgets, and royalties are higher and more competitive than ever. The number of deliverable albums required, as well as the barriers to entry, are lower than ever. Artists have more choices, and the industry is more diversified than ever.

9. IF AB 2926 BECOMES LAW, HOW WILL ARTISTS BE IMPACTED?

AB 2926 would discourage labels from investing in California artists whose prospects of commercial success are not obvious and would force decisions on optioned records to be made on an unreasonably short timeline, cutting tours and other revenue opportunities for artists. The result is fewer artists signed, artists losing control of timing based on creativity, and fewer costly options being exercised.

Record companies invest billions of dollars each year in new musical artists, most of whom do not achieve widespread commercial success. For example, according to MRC Data, more than 160,000 albums were released in 2020, but less than 1.5% of them (about 2,200 releases) sold or streamed the equivalent of 100,000 album sales. The record company absorbs the entirety of any financial losses related to this activity, which are often considerable because the costs of signing and developing an artist and marketing a record are extremely high. For the few artists who achieve widespread commercial success, labels must be able to realize the contractual benefits for which they bargained and to which they are entitled. And, indeed, the revenues derived from those arrangements allow labels to, among other things, invest in artists who may achieve success by other measures, but who record in less commercially remunerative, but no less important, musical genres like jazz, classical, gospel, folk, Tejano, and so on.

Amending the law to impose a nine-month deadline on options, undermine renegotiation of existing deals, and further restrict the ability of record companies to realize the fruits of their investments in California artists could have serious consequences not only for those California artists and the record companies, but also for the thousands of Californians that record companies employ. Any amendment shortening the length of recording contracts, hampering renegotiations, or restricting the availability of damages would invariably lead to such adverse consequences as:

- Reduction in advances and recording budgets, which are based on deliverables.

- Reduction in royalty rates.
- Decrease in the number of artists signed and increase the number of artists dropped, which would unfairly benefit the wealthiest artists while hurting middle class working artists.
- Putting pressure on artists to deliver albums before they are creatively ready.
- Hurting tour support since record companies will want artists in the recording studio to get promised deliverables while the clock is running.
- Shortening artist development time with quicker release of albums.

Amendments to the law are unnecessary and, indeed, would be harmful to the very artists the bill purports to protect. There is no need, nor any wisdom, in fashioning an untested solution to a "problem" that does not exist, and that benefits only the most successful artists at the expense of all others.

10. IF AB 2926 IS BAD FOR ARTISTS, WHY ARE THEY SUPPORTING IT?

Largely because certain self-interested parties are disingenuously feeding a false narrative that record companies are "exempt" from the seven-year rule. They aren't. Those same parties are portraying AB 2926 as a bill to "free artists" from their contracts. In reality, as noted earlier, recording artists are able to walk away from their obligations to deliver personal services under recording contracts after seven years, just like any other provider of personal services under the law. The law recognizes, however, that recording contracts are uniquely measured in deliverables rather than time, and thus clarifies that record companies can recover damages for any albums promised during the full contract term that have not been delivered. AB 2926 would do away with that common-sense protection. It's no mystery why the prospect of being unilaterally relieved of the obligation to satisfy the terms of a contract—a contract that invariably has been negotiated and renegotiated by sophisticated representatives of the artist—may be appealing, but the appeal is shortsighted given the resulting toll such limitations would take on artist advances, royalties, and creative freedom for all but the most successful artists, who need no such giveaways.

Of course, the issue of recovering damages has little effect on the vast majority of California artists anyway. While record companies invest in and develop artists at all levels of their careers, most artists at both major and independent labels do not remain under contract for more than seven years, for any number of reasons. In many cases, it may be because the artist has not achieved a level of success that would cause the record company to opt for more albums; in other cases, the record company may simply accede to an artist's request to be relieved of his or her contract. Or there yet may be other reasons for the relationship to end. But whatever the reason, the personal services term of most record contracts ends well prior to seven years, mutually, with no obligation of the artist to repay the record company for its investments in the artist. It is only the superstars—the artists most capable of protecting their own interests via their batteries of sophisticated lawyers, agents and managers—whose contracts implicate the seven-year limitation under current law.

The provision regarding recovery of damages under current law does not disadvantage California artists. It simply confirms that labels can seek from California artists the same damages they can seek everywhere else when artists fail to deliver the albums they promised under their contracts.

11. HOW OFTEN ARE THE DELIVERY TERMS OF A CONTRACT UPHELD? DO LABELS SUE ARTISTS WHEN THEY DO NOT MEET THE DELIVERY TERMS IN THEIR CONTRACTS?

Delivery of albums is frequently delayed – often substantially – and labels and artists (and their representatives) work closely together to accommodate the artists' individual needs and circumstances, all with the ultimate goal of optimizing the prospects of a successful recording for the benefit of all parties. Labels recognize that creativity operates on its own schedule, which is why recording contracts are by nature based on deliverables rather than time. Labels have no desire to sue artists, and it almost never comes to that. Labels and their artists are creative as well as business partners, and decisions regarding delivery terms are generally made mutually. AB 2926 would upend that essential relationship, helping no one.

12. WHY IS AN ARTIST LIABLE FOR DAMAGES IF THEY TERMINATE THEIR AGREEMENT WITHOUT MEETING THE TERMS OF THEIR CONTRACT UNDER CURRENT LAW? AB 2926 WOULD ELIMINATE THE DAMAGES PROVISION IN THE LABOR CODE – WHAT WOULD THAT MEAN?

As with any other legal agreement, if an artist fails to perform a material term of a contract (such as delivering recordings called for by the agreement) within the seven years, he or she could be liable for breach of contract. If an artist terminates a contract after seven years, current law makes clear that record companies may still recover for any remaining albums that a recording artist promised to deliver under the relevant contract. After all, the contract would be rendered meaningless without the availability of damages for breach. AB 2926, however, turns that axiomatic rule of contracts on its head, allowing one party to simply walk away from its obligations after an arbitrarily set period, while, perversely, still being able to enforce the terms of the agreement against the other party.

13. HOW OFTEN DOES A RECORD COMPANY SUE FOR DAMAGES WHEN AN ARTIST LEAVES?

Almost never. The number of cases filed by record companies against artists for damages under the existing seven-year statute is vanishingly small and can probably be counted on one hand. In fact, as noted above, most recording contracts end well within seven years and the parties part ways mutually, with the label alone bearing the loss of its investment.

14. WOULD AB 2926 IMPACT AN OUT-OF-STATE COMPANY CONTRACTING WITH A CALIFORNIA RESIDENT? OR A CALIFORNIA-BASED COMPANY CONTRACTING WITH AN OUT-OF-STATE ARTIST?

The application of the seven-year statute to a given contractual arrangement will depend on a wide variety of factors, including what jurisdiction's laws the parties have chosen to apply to the contract (a so-called "choice of law" provision) and the degree to which that chosen jurisdiction bears a reasonable relationship to the parties or their transaction. There is no hard-and-fast answer to this question, and whether California law will govern a given contractual arrangement will always be highly fact-dependent.