April 8, 2022

The Honorable Tasha Boerner Horvath, Chair
Assembly Committee on Arts, Entertainment, Sports, Tourism & Internet Media
State Capitol
Sacramento, CA 95814

Re: AB 2926 (Kalra) -- OPPOSE

Dear Chair Boerner Horvath:

As members of California's world-leading music community, we are writing to voice our deep opposition to AB 2926. We believe the bill is unnecessary and unconstitutional, would destabilize California's music business, cut opportunities for working artists, and weaken the state's economic recovery.

Recording contracts are – and have always been – subject to California's seven-year limitation on personal service contracts. Recording contracts typically require an artist, in exchange for substantial upfront payments and other investments, to deliver to the record company at least one album and subsequent optional albums over the term of the contract. Under the current seven-year rule, if an artist fails to deliver the contractually-agreed albums (despite, in many cases, having already received an advance for those albums), the record company can seek to recover its losses – just as any party to a contract can normally do when the other party fails to fulfill its end of the bargain. This creates strong incentives for both sides to deliver as promised during the life of a recording contract.

AB 2926 proposes major changes to the law that would upend this balance:

- It would eliminate any recourse for the record company if an artist fails to deliver promised recordings;
- It would force record companies to decide whether to exercise options for subsequent records within nine months of the previous album, effectively reducing the seven-year rule for recording contracts to only nine months;
- It would freeze into statutory law specific conditions for renegotiations of contracts that will discourage renegotiations and tie the hands of artists seeking longer term partnerships (and the higher pay and greater label investment those bring);
- It would effectively destroy the use of exclusive employment agreements in every industry in the state; and
- It would apply retroactively to all "existing" employment contracts, in violation of both the federal and state constitutions.

If enacted, AB 2926 would harm California's music ecosystem and the vast majority of our state's artists. In particular, AB 2926 would:

Reduce investment in artists. Record companies invest significant human and financial resources in artists to help them achieve their creative and commercial potential. AB 2926 introduces new uncertainty that will disincentivize these investments, leading to lower advance payments to artists, fewer artist signings, and reduced development and promotion of new acts.

Reduce opportunities for aspiring artists. By removing any recourse for a record label if an artist chooses to end their contract after seven years without delivering the recordings promised in their contract, AB 2926 greatly increases the financial risk for record companies. This will have predictable results: fewer artists will be signed to record deals and those who do will be paid less.

Put artists "on the clock." Today's model allows artists and labels flexibility in the recording schedule and to decide when a record is ready for delivery. By forcing premature option decisions on an unreasonably narrow timeframe, AB 2926 will force artists to truncate tours, limit development and marketing opportunities, and, perversely, discourage labels from exercising options that artists negotiated and encourage.

Pose a threat to diverse voices and genres. By disincentivizing financial risks for labels, AB 2926 would hurt diverse voices, niche genres, and artists seeking to break new ground and take creative risks. Acts without an obvious and immediate path to commercial success would be unviable. Record labels could no longer take chances on new artists. Vital but less commercial genres like jazz, classical, gospel, folk, and Tejano would wither.

Unnecessarily restrict choices available to artists. By freezing into statute contractual terms that are traditionally negotiated, AB 2926 makes artists' choices for them and eliminates the flexibility necessary to establish creative and mutually beneficial partnerships between artists and their labels. For instance, some artists may want to renegotiate for multiple additional albums to secure larger advances or ensure longer-term stability, yet AB 2926 would effectively limit renegotiations to "no more than one additional album." Others may prefer more time between the release of one album and a record company's exercise of an option on additional albums to obtain more favorable data demonstrating success. Still others may desire flexibility to allow them to tour, act, or pursue other interests. AB 2926 would tie the parties' hands, foreclose those opportunities, and cause many potentially valuable options – and the artist payments they produce – to be declined.

Largely foreclose exclusive employment contracts throughout the state. With remarkable sweep, AB 2926 would prohibit any "contract for the personal or professional services of an employee" from being exclusive to the employer, except in the most limited of circumstances. This broad – and unprecedented – prohibition would upend businesses in every industry in the state (not limited to the record industry, or even the entertainment industry more generally) and would have far-reaching and harmful consequences for the state's economy.

Undermine California's economic recovery. Music currently adds nearly $40 billion annually to California's GDP, supporting over 430,000 jobs and 72,000 venues across the state. Destabilizing a major California industry will drive down pay and penalize thousands of working artists and the businesses that support them.

In addition, by purporting to change the terms of existing music contracts, AB 2926 is unconstitutional and would mire artists and the music industry in years of costly and harmful litigation.

AB 2926 would gut the existing framework at the heart of every recording contract and upend the existing healthy ecosystem, benefitting only a small number of commercially successful, established superstars. This legislation represents a purported "solution" in search of a non-existent problem and risks doing severe harm just as our state's music community is starting to enjoy real momentum after years of decline. California is today an undisputed music capital of the world. The current system is producing the highest artist advances and royalties for artists in the history of the music business, with a record number of new artists choosing a diverse number of options with record labels. This bill would reduce options and result in lower royalties to new and middle-class artists.

Respectfully, we implore you not to move forward with this legislation. We deeply appreciate your consideration on this important matter.

Sincerely,

10:22 PM
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Blue Note Records
Buena Vista Records
Capitol Music Group
Columbia Records
Disa Records
Epic Records
Fonovisa Records
Harvest Records
Hollywood Records
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Motown Records
RCA Records
Recording Industry Association of America (RIAA)
Rhino Records
Sony Music Entertainment
Universal Music Enterprises
Universal Music Group
Universal Music Latin Entertainment
Universal Music Latino
Virgin Label and Artist Services
Walt Disney Records
Warner Music Group
Warner Records

CC: Members of Assembly Committee on Arts, Entertainment, Sports, Tourism & Internet Media
Calvin Rusch, Assembly Republican Caucus
The Honorable Ash Kalra, California State Assembly