MUSIC **DISTRIBUTION AGREEMENT** FACT SHEET

REMEMBER TO CHECK OUT THE MUSIC DISTRIBUTION AGREEMENT CHECKLIST THAT GOES WITH THIS FACT SHEET. THE CHECKLIST OUTLINES KEY TERMS IN A MUSIC DISTRIBUTION AGREEMENT, AND THIS FACT SHEET PROVIDES MORE DETAILS ON THOSE TERMS.

WHAT IS A MUSIC DISTRIBUTOR AND WHAT DO THEY DO?

It can be hard to promote and sell physical albums or EPs by yourself. This is because for anything other than direct sales at gigs or online orders, you would have to negotiate contracts with music retailers (and would likely end up paying high rates for selling your product to, or through, them). Similarly, the big digital music services like Spotify, Apple Music and Amazon rarely deal with individual artists.

Specialist distributors are well established in the market and have developed huge networks of retailers. They can negotiate favourable rates with those retailers. By using a distributor, you have the opportunity of 'piggy–backing' on their favourable rates as well as distributing your product to places and through networks you would never have had the chance of securing by yourself. This is true for both digital and physical distribution.

What is the difference between a 'traditional' music distributor and a digital music aggregator?

In theory, digital technologies allow individual artists many of the same opportunities that major labels have to promote their music over the internet. Digital music aggregators can help you distribute your music globally via streaming services and digital music stores. You can think about them as a new "normal" of music distribution.

This table shows some common differences between 'traditional' music distributors (who manage both digital and physical distribution) and digital music aggregators:

TRADITIONAL MUSIC DISTRIBUTON	DIGITAL MUSIC AGGREGATORS
Physical and digital distribution	Digital distribution only
Possible additional services – marketing, promotion, seeking licensing opportunities, monetising social media channels	Usually no additional services (but platforms may offer some online pay-per-use marketing and promotion)
Higher distribution fees	Lower distribution fees

The efficiencies of digital distribution are attractive to labels and artists alike. However, given the demand for special vinyl pressings and the like, you will need to weigh up whether you also need to explore physical distribution services.

WHAT IS A DISTRIBUTION AGREEMENT?

A distribution agreement sets out the terms and conditions on which the distributor will manufacture and get your product to the market. It will set out the fees that the distributor will charge, the limits on what the distributor can do with your records, how the distributor will account to you for sales, how long the distributor has the right to distribute your material, and the territory or format in which they can do so. For digital distributors, these terms are usually set out in a comprehensive set of terms and conditions that are in most cases non-negotiable, so if you want to use the service, you must read those terms carefully, and ensure you understand them.

Key Terms of a Music Distribution Agreement

TERM

OPTIONS FOR FURTHER RECORDINGS

The distributor often requires that they have the option to distribute the artist's next release (like a future EP or album). That is, once the term of this agreement ends, the distributor can decide whether they want to distribute the next album or simply finish up their relationship with the artist. This option prevents the distributor from being forced to decide at the outset of the agreement whether or not they will release two albums or just one — instead, they can wait to see how the first album sells, review their financials and then decide whether or not they will release album two.

Digital music aggregators are less likely to insist on options, but they are not unheard of.

TERRITORY

The territory is usually worldwide for digital distributors, due to the global nature of the internet. But not always: it is possible to geo-block access from certain territories to reflect the rights-owner's preferences, or other rights licensing arrangement for the music.

For physical distributors, you must satisfy yourself that they can actually service the market in the territory they are asking for. Does the distributor have the resources and networks to adequately distribute the release?

RIGHTS

Under a distribution agreement, the artist usually gives the distributor the exclusive right to reproduce, manufacture, distribute and sell the artist's release in a territory.

In addition to these 'core' rights, distributors now commonly require that they retain rights that had previously only been provided under a master licence agreement (for more information on this, please see our Master Licence Agreement Fact Sheet and Checklist). These additional rights may allow the distributor to licence individual recordings for media production or advertising (known as "synchronisation licences"). Distributors may request these rights because they provide additional ways to promote and earn income from the release.

Distributors usually also require the right to set and vary the price of releases they sell. For example, if they find that a recording is not selling well, they may drop the price to encourage sales at the lower rate.

With widespread use of social media, distributors have also begun to seek administrative control of your social media channels or rights to monetise those channels (e.g. through brand partnerships). If a distributor has the right networks, expertise and resources, this can unlock new sources of income for you and the distributor.

With these 'additional' rights, some distributors are taking a more hands-on approach to monetising your music, like the role traditionally played by record labels. When thinking about the rights you are giving a distributor, it is important to look at the distributor's expertise and resources, and the deal as a whole. For example, does the distributor have networks and connections with the media, production and gaming industries, to facilitate lucrative synchronisation licences? Does the distributor have sophisticated tracking and metrics technology for streaming platforms and social media? The rights you are granting should match up with what the distributor is able to do, and what they have promised to do in the agreement (see Distribution Services below).

The distribution agreement should also state whether the physical stock is the property of the owner or the distributor. If the distributor gets into financial trouble, the owner might need to get the stock back. It may be possible for the owner to negotiate to negotiate a security interest over the stock so that if the distributor becomes insolvent, the stock is not available to other creditors to sell off to recover their debts.

DELIVERY

Generally, for physical distribution, the distributor either distributes finished product that has been manufactured and packaged by the owner, or the distributor takes delivery of mixed and mastered recordings in the relevant format and artwork, etc, and manufactures the product on the owner's behalf.

For digital distribution, all the distributor generally requires is mixed and mastered digital sound file and digital art files, as well as relevant metadata for the recordings.

Each distributor will have requirements for what is delivered, such as the format, bit-rate for digital files, categories of metadata and so on. Owners must pay close attention to the delivery requirements of the distributor, to avoid unnecessary delays that might affect the timely availability of the recordings to the market.

DISTRIBUTION SERVICES

If the distribution services are for physical product, the owner will want to be sure that the distributor has sufficient systems for manufacturing storage, insurance and the capacity to meet physical market demand. The owner might also want to satisfy themselves that the distributor has solid terms of trade with retailers that govern ordering, payment, and if sales are on a consignment model (the retailer pays only on what they sell) proper arrangements for monitoring stock and, if necessary, getting it back for refurbishment and re-issue.

The distribution agreement should set out clearly the scope of the services being provided by the distributor. Is it simply a "pressing and distribution" ("P&D") deal? Does it include digital distribution rights (if so, to which platforms)? What additional marketing and promotion will the distributor carry out as part of the services?

It is common for physical distribution agreements to refer to point of sale advertising and promotion. This is the advertising for releases that you see inside retail stores. Distributors may be required to provide retailers with such advertising and ensure that they are being displayed in the appropriate ways.

ADVANCE AND DISTRIBUTION FEES

DISTRIBUTOR'S ADVANCE

Advances are the up-front payments a distributor agrees to pay the owner. A distributor's advance may be offered as a one-off payment as an incentive to sign with the particular distributor. Note that this is a loan against future income, and is not "free money" — it must be paid back at some point and will usually be deducted before the owner sees any income from sales.

DISTRIBUTOR'S FEE

Distributors are usually paid a percentage from all of sales — ranging from 15%-25% for physical product, with rates of up to 50% for digital distribution. Physical sales are generally calculated less returns, meaning that if the distributor sells 2,000 units to a retailer, but then the retailer returns 500 copies for credit, the fee that the distributor will keep will be based on 1,500 sales (not the 2,000 units originally shipped out).

The distribution agreement may also permit the distributor make deductions to cover any special costs of sale. For example, it is common for distributors to give retailers discounts if they buy product in bulk. That is why owners should be aware of the distributor's terms of trade with its retailers.

RESERVES

Reserves are best explained by use of an example: if a distributor sells 200 units of a vinyl LP to a retailer for $2,000 (i.e. $10 per LP) and that retailer returns 50 LPs, then under usual terms of trade, the distributor must then return (or credit) $500 to the retailer, being the money they initially paid for those 50 LPs.

But, what if the retailer returned the LPs after the distributor has paid out the owner on the basis of 200 LPs? It means that the owner was paid too much — as the owner's share was calculated on 200 sales, when it should have been 150. The distributor would be out of pocket. So, the distributor usually includes in the distribution agreement a "reserves against returns" provision, to create a buffer to protect the distributor from being out of pocket from such returns. Under this clause the distributor can keep back an agreed percentage of sales income from one accounting period (say, 20%), and doesn't credit that income to the owner until a subsequent period, thus leaving time for any returns to be processed and refunded. The negotiation points for the owner are the percentage of the reserve, and how quickly it gets released.

OTHER PRICING MODELS

Digital music distributors have a range of different pricing models that do not always follow the traditional approach outlined above. Some platforms ask for a fixed upfront fee to release your single or album on streaming platforms (instead of a percentage of all income)

Others charge a recurring subscription fee for their services. Others just take up to 50% of any sales or licensing income and may want the right to control the monetisation of the owner's social media channels as well, to share in that income. Others will also add a menu of additional fee-for-service options such as promotional or playlist pitching.

While the fee-for-service options are often advertised as 'the artist keeps 100% of the royalties', it is important for you to weigh up the fees being charged against the distribution services being promised. You should be cautious, for example, if a platform is charging very high recurring fees but is only promising to upload your album to streaming platforms (i.e. no other marketing, promotion, or assistance).

TERMINATION

The termination clause sets out how and when the parties to the contract can end the deal, and the consequences of doing so. Commonly, you will be permitted to end the agreement (i) if the other party breaches a key term and doesn't fix the breach within a pre-agreed "cure" period, or (ii) if the other party has become insolvent. In some cases, though, you may be able to terminate the agreement without a reason (i.e. for convenience). This is more common in digital distribution arrangements where the distributor hasn't sunk a significant amount of money into manufacturing and distributing physical stock.

Once the distribution agreement is terminated, the distributor may require an additional time to sell off any of its physical stock of any CDs. The sell off period is usually 6 months following termination of the agreement. If the artist provided all the stock to the distributor, then the agreement should stipulate that the distributor must return any remaining stock on termination. Alternatively, if the distributor manufactured the stock, then the owner should have the chance to buy back the remaining copies.

For more information, you can speak to your local Industry Association, the Arts Law Centre of Australia or a legal practitioner.