

Copyright Wars and the Music Industry
Fall 2004
Prof. Peter Yu

Problem Set 2

Your client, Joe Schmoe, III, was given this standard songwriter's agreement. (All of these songwriter's agreements are called *standard* agreements, but they all look different from each other.) Would you advise Joe to sign it? If not, what provisions would you change? You can provide your answer in the form of contract mark-ups, an attached memo of no more than 2 single-spaced pages, or both. We will discuss the answer in class. You can turn in the answer immediately after class. Should need be, you can also send it to me via email by October 4.

STANDARD SONGWRITER'S AGREEMENT

DATED: September 15, 2004

WRITER: JOE SCHMOE, III

PUBLISHER: MUSICIAN EXPLOITATION PUBLISHING, INC.

For and in consideration of the mutual covenants herein set forth, the parties hereby agree as follows:

1. *Engagement.* Publisher hereby engages Writer to render Writer's services as a songwriter and composer and otherwise as may hereinafter be set forth. Writer hereby accepts such engagement and agrees to render such services exclusively for Publisher during the term hereof, upon the terms and conditions set forth herein.

2. *Term.* The initial period of the term of this Agreement shall commence as of December 1, 2004 and shall continue through November 30, 2014. Writer hereby grants to Publisher five (5) separate and irrevocable options, each to renew the term of this agreement for a two (2) year renewal period, such renewal periods to run consecutively beginning at the expiration of the initial period, all upon the same terms and conditions as are applicable to the initial period except as otherwise provided herein. Each option shall be exercised only by written notice to be sent by Publisher to Writer not less than seven (7) days prior to the commencement of the renewal period for which the option is exercised.

3. *Grant of Rights.*

(a) Writer hereby irrevocably and absolutely assigns, conveys and grants to Publisher, its successors and assigns (i) all rights and interests of every kind, nature and description in and to all original musical compositions and all original arrangements of musical compositions in the public domain (collectively referred to below as "Musical Material") which have heretofore been written, composed or created by Writer, in whole or in part, alone or in collaboration with others, including but not limited to the titles, lyrics and music thereof and all world-wide copyrights and renewals and extensions thereof under any present or future laws throughout the world (collectively referred to below as "Ownership Interests"),

to the extent any of the foregoing shall not heretofore have been conveyed by Writer to an unrelated third party; and (ii) all rights and interests of every kind, nature and description in and to all Musical Material (including Partial Compositions) created by Writer during the term hereof, as well as the Ownership Interests therein; and (iii) all rights and interests of every kind, nature and description in and to all Musical Material and the Ownership Interests therein which are now directly or indirectly owned or controlled by Writer, in whole or in part, alone or with others, or the direct or indirect ownership or control of which shall be acquired by Writer during the term hereof, in whole or in part, alone or with others, as the employer or transferee of the writers or composers thereof or otherwise, all of which Musical Material and Ownership Interests Writer hereby warrants and represents are and shall at all times be Publisher's exclusive property as the sole owner thereof, free from any adverse claims or rights therein by any other party (all such Musical Material hereinafter being referred to as "Compositions").

(b) Without limiting the generality of the foregoing, Writer acknowledges that the rights and interests hereinabove set forth include Writer's irrevocable grant to Publisher, its successors and assigns, of the sole and exclusive right, license, privilege and authority throughout the entire world with respect to all Compositions, whether now in existence or whether created during the term hereof, as follows:

(i) To perform and license others to perform the Compositions publicly or privately by means of public or private performance, radio broadcast, television, or any and all other means of media, whether now known or hereafter conceived or developed.

(ii) To substitute a new title or titles for the Compositions or any of them and to make any arrangement, adaptation, translation, dramatization or transposition of any or all of the Compositions or of the titles, lyrics or music thereof, in whole or in part, and in connection with any other musical, literary or dramatic material, and to add new lyrics to the music of any Compositions or new music to the lyrics of any Compositions, all as Publisher may deem necessary or desirable in its best business judgment.

(iii) To secure copyright registration and protection of the Ownership Interests in the Compositions in Publisher's name or otherwise, as Publisher may desire, to the extent that Publisher, in its best business judgment, deems it necessary to protect such Ownership Interests, including any and all

renewals and extensions of copyright under any present or future laws throughout the world, and to have and to hold said copyrights, renewals and extensions and all rights existing thereunder, for and during the full term of all said copyrights and all renewals and extensions and all rights existing thereunder, for and during the full term of all said copyrights and all renewals and extensions thereof.

(iv) To make or cause to be made, and to license others to make, at Writer's own cost and expense master records, transcriptions, soundtracks, pressings and any other mechanical, electrical or other reproductions of the Compositions, in whole or in part, in such form or manner and as frequently as Publisher shall determine, including the right to synchronize the Compositions with sound motion pictures and to use, manufacture, advertise, license or sell such reproductions for any and all purposes, including, without limitation private and public performances, radio broadcast, television, sound motion pictures, wired radio, phonograph records, home video devices and any and all other means or devices, whether now known or hereafter conceived or developed.

(v) To print, publish and sell, and to license others to print, publish and sell, sheet music, orchestrations, arrangements and other editions of the Compositions in all forms, including, without limitation, the inclusion of any or all of the Compositions in song folios, compilations, song books, mixed folios, personality folios and lyric magazines with or without music.

(vi) (aa) Any and all other rights now or hereafter existing in all Compositions under and by virtue of any common law rights and all copyrights and renewals and extensions thereof including the grand rights and so-called small performance rights. Writer grants to Publisher, without any compensation other than as specified herein, the perpetual right to use and publish and to permit others to use and publish Writer's name (including any professional name heretofore or hereafter adopted by Writer), Writer's photograph or other likeness, or any reproduction or simulation thereof, and biographical material concerning Writer, and the titles of any and all of the Compositions, in connection with the printing, sale, advertising, performance, distribution and other exploitation of the Compositions, and for any other purposes. This right shall be exclusive in the music publishing field during the term hereof and nonexclusive thereafter.

(bb) Writer shall not authorize or permit the use of Writer's name or likeness, or any

reproduction or simulation thereof, or biographical material concerning Writer, for or in connection with any musical compositions or under any other circumstances. Writer grants Publisher the right to refer to Writer as Publisher's "Exclusive Songwriter and Composer" or to use any other similar and appropriate appellation, during the term hereof.

4. *Exclusivity.* During the term of this agreement, Writer shall not write or compose, or furnish or convey, any Musical Material or any rights or Ownership Interests therein, nor participate in any manner with regard to same, for or to any party other than Publisher, nor permit the use of his name or likeness as the writer or co-writer of any musical composition by any party other than Publisher (except as provided in paragraph 3(b)(vi)(bb) above).

5. *Warranties, Representations, Covenants and Agreements.*

6. *Power of Attorney.*

7. *Compensation.*

(a) Publisher shall pay Writer, for the rights acquired and to be acquired by Publisher hereunder, the following compensation based on uses of the Compositions:

(i) Seven cents (\$.07) per copy for each copy of sheet music in standard piano/vocal notation published and sold in the United States and Canada by Publisher and not returned, for which payment or final credit in reduction of an advance shall have been received by Publisher ("Net Paid Sales"). (As used herein, the terms "payments", "paid", "received" and other words of similar import in this Agreement shall be deemed in all instances to include such final credit.)

(ii) (1) Five percent (5%) of the wholesale selling price on Net Paid Sales of each printed copy of each other arrangement and edition printed, published and sold in the United States and Canada by Publisher or its affiliate, Warner Bros. Publications, Inc., except that in the event that any Compositions shall be used or caused to be used, in whole or in part, in conjunction with one or more other musical compositions in a folio, compilation, song book or other publication, Writer shall be entitled to receive that proportion of the foregoing royalty which the number of Compositions contained therein shall bear to the total number of royalty-bearing musical compositions contained therein.

(2) If, pursuant to a license granted by Publisher to a licensee not controlled by or affiliated with it, the Compositions are included in any printed edition published and sold in the United States and/or Canada by such licensee, a pro rata share of twenty-five percent (25%) of the gross amount received by Publisher from the licensee as the number of uses of the Compositions under the license and during the license period bears to the total number of uses of Publisher's copyrighted musical compositions (including the Compositions) under the license and during the license period.

(iii) Twenty-five percent (25%) of any and all Net Sums (i.e., gross receipts after deduction of foreign taxes [where applicable] and any costs for collection) received by Publisher in the United States from the exploitation in the United States and Canada by licensees of mechanical rights, grand rights, electrical transcription and reproduction rights, whether or not such licensees are affiliated with, owned in whole or in part by, or controlled by Publisher.

(iv)(aa) (1) Writer shall receive his public performance royalties throughout the world directly from the performing rights society with which he is affiliated, and shall have no claim whatsoever against Publisher for any royalties received by Publisher from any performing rights society which makes payment directly (or indirectly other than through Publisher) to writers, authors and composers.

(2) In the event of the enactment by Congress of a blank tape tax or other surcharge from which payments are to be made directly to songwriters and to publishers, or in the event of the coming into force of any other income source from which payments are made directly to songwriters and to publishers, Writer shall receive his share thereof directly from the source from which payments are made, and shall have no claim whatsoever against Publisher for any portion of any corresponding payment received by Publisher from such source.

(bb) However, if (and to the extent that) any such society is precluded (by legislation, court decree, or otherwise) from licensing performing rights and collecting fees or royalties therefor, and/or in the event (and to the extent that) Publisher undertakes a program of direct licensing of performing rights, Publisher shall have the right to license such rights and to collect both the Writer's and publisher's share of performance income directly and Publisher shall pay to Writer twenty-five percent (25%) of all such Net

Sums which are received by Publisher in the United States from the exploitation of such rights in the Compositions.

(v) Twenty-five percent (25%) of any and all Net Sums (other than public performance royalties covered in subparagraph 7(a)(iv)(aa) above), received by Publisher in the United States from the exploitation of the Compositions in countries outside of the United States and Canada, whether from collection agents, licensees, subpublishers or others, and whether or not same are affiliated with, owned in whole or in part by, or controlled by Publisher.

(vi) Publisher shall not be required to pay any royalties on reasonable numbers of professional or complimentary printed copies or records or on printed copies or records which are distributed gratuitously to performing artists, orchestra leaders and disc jockeys or for advertising, promotional or exploitation purposes for which Publisher receives no payment. Furthermore, no royalties shall be payable to Writer on consigned copies unless paid for, and not until the accounting statement for the period within which payment is received.

(vii) Royalties as hereinabove specified shall be payable solely to Writer in instances where Writer is the sole author of a Composition, including the lyrics and music thereof and shall be prorated in the case of a Partial Composition. However, in the event that one or more other songwriters under contract to Publisher are authors together with Writer of any Composition (including songwriters employed by Publisher to add, change or translate the lyrics or to revise or change the music), the foregoing royalties shall be divided equally among Writer and the other songwriters unless another division of royalties shall be agreed upon in writing between the parties concerned and timely written notice of such division is submitted to Publisher prior to payment.

(viii) Except as herein expressly provided, no other royalties or monies shall be paid to Writer. Specifically, and without limiting the generality of the foregoing, Writer shall not be entitled to share in any advance payments, guarantee payments or minimum royalty payments which Publisher shall receive in connection with any subpublishing agreement, collection agreement, licensing agreement or other agreement covering the Compositions or any of them.

(ix) Writer agrees and acknowledges that Publisher shall have the right to withhold from the royalties payable to Writer hereunder such amount, if any, as may be required under the provisions of all applicable Federal, State and other tax laws and regulations, and Writer agrees to execute such forms and other documents as may be required in connection therewith.

(b) Publisher shall make the following payments to Writer, each of which shall constitute an advance recoupable from royalties hereunder:

- (i) Upon execution of this agreement, Ten Thousand Dollars (\$10,000);
- (ii) Upon exercise of each renewal option, One Thousand Dollars (\$1,000).

8. *Accounting.*

9. *Collaboration.*

10. *Separate Agreements.*

11. *Writer's Services.*

(a)(i) Writer shall duly comply with all requirements and requests made by Publisher in accordance with the terms and conditions of this Agreement. Writer shall deliver a manuscript copy or tape copy of each Composition immediately upon the completion or acquisition of such Composition. Publisher's failure to exploit any or all of said Compositions shall not be deemed a breach hereof. Publisher shall at its sole discretion make studio facilities available for Writer so that Writer, subject to the general supervision of Publisher, may produce demonstration records of the Compositions, and Writer shall have the right to perform at such recording sessions. Publisher shall also have the right to produce demonstration records hereunder.

(ii) Writer shall not incur any liability for which Publisher shall be responsible in connection with any demonstration record session or otherwise without having obtained Publisher's prior written approval as to the nature, extent and limit of such liability. Writer shall not be entitled to any compensation (except for such compensation as is otherwise provided for herein) with respect to services rendered in connection with any such demonstration record sessions. Subject to the foregoing, Publisher shall advance the costs for the production of demonstration records, and one-half (1/2) of such costs shall be deemed

additional advances to Writer hereunder and shall be recouped by Publisher from royalties payable to Writer by Publisher under this Agreement or any other agreement between Writer and Publisher or its affiliates.

(iii) All recordings and reproductions made at demonstration record sessions hereunder shall become the sole and exclusive property of Publisher, free of any claims whatsoever by Writer or any person deriving any rights from Writer, but such recordings shall not be exploited commercially without Writer's prior written consent which may be withheld in Writer's sole discretion.

(b) Writer shall, from time to time, at Publisher's reasonable request and whenever same will not interfere with prior professional engagements of Writer, appear for photography, artwork and other similar purposes under the direction of Publisher or its duly authorized agent, appear for interviews and other promotional purposes, and confer and consult with Publisher regarding Writer's services hereunder. Writer shall also cooperate with Publisher in promoting, publicizing and exploiting the Compositions and for any other purpose related to the business of Publisher. Writer shall not be entitled to any compensation (other than applicable union scale if appropriate) for rendering such services.

12. *Unique Services.*
13. *Actions.*
14. *Indemnity.*
15. *Notices; Approvals and Consents.*
16. *Entire Agreement.*
17. *Modification, Waiver, Invalidity, and Controlling Law.*
18. *Assignment.*
19. *Additional Definitions.*
20. *Suspension and Termination.*
21. *Headings.*
22. *Notice and Cure.*
23. *Co-Ownership and Administration.*

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

/s/ Gerry Greedyman
Senior Vice President
Legal & Business Affairs

Birth Date: July 28, 2004
Social Security No. _____