

INDEX

- ACCOUNTANTS, 215
- ACTRA, 210
- ADMINISTRATION. *See* COPYRIGHT ADMINISTRATION; MUSIC PUBLISHING, contracts
- ADVANCES, 102-104, 298-301, 554
- AGENTS. *See* BOOKING AGENTS AND AFM; PERSONAL MANAGEMENT AGREEMENT
- AMERICAN FEDERATION OF MUSICIANS (AFM/CFM)
 - AFM agreements, 189-197
 - international, 190-196
 - broadcasting, 192-194
 - film, 194-195
 - generally, 190
 - legitimate theatre, 196
 - recording, 190-191
 - local and individual, 196-197
 - generally, 196
 - types of contracts, 197
 - national, 196
 - common law actions against, 201-205
 - breach of contract and *ultra vires*, 204
 - conspiracy, 202
 - inducing breach of trade, 203
 - intimidation, 203
 - restraint of trade, 201
 - Competition Act* and, 205-206
 - defences, 206
 - possible offences, 205
 - described, 179
 - functions, 181-189
 - dispute resolution, 185-186
 - member vs. engagers, 186
 - member vs. member, 185
 - membership services, 182-184

- generally, 184
- insurance, 182
- trust funds, 182-184
- regulation of members, 187-189
 - field services representatives, 187
 - licensed booking agents, 187
 - lobbying, 189
 - tariff of fees, 187
 - transfer membership, 189
 - travelling musicians, 188
 - unfair lists, 188
- legal capacity, 199-201
 - collective agreements unenforceable at common law, 200
 - suit in own name, 199
- legal status, 198
- membership, 180
- objects, 180
- Quebec statute and, 209
- review by court, 206
- Status of the Artist Act* and, 208
- structure and jurisdiction, 180-181
 - international, 180
 - locals, 181

ANONYMOUS WORKS, 33

ARTS COUNCIL FUNDING. *See* BUSINESS, funding programs;
INCOME TAX

ASSIGNMENT AND LICENSING

- audiovisual recordings, 51-54
 - licences required, 51-53
 - master use licence, 53, 622
 - mechanical licence, 53, 561, 567
 - other rights, 53-54
 - synchronization licence, 52-53, 569
- compulsory, 48-49
- generally, 47
- mechanical rights, 49
 - Canadian industry standard rate, 49
 - Canadian Mechanical Reproduction Rights Agency, 49
- CONNECT, 50

- SOPROQ, 50
 - sound recordings, 50
 - synchronization rates, 51
 - U.S. mechanical rate, 50
 - motion pictures and television, 54
 - voluntary, 48
 - assignments, 48
 - performing rights, 48
 - reproduction and publication rights, 48
- AUDIOVISUAL RECORDINGS. *See* ASSIGNMENT AND LICENSING;
COPYRIGHT; VIDEO
- BOOKING AGENTS AND AFM, *see also* PERSONAL MANAGEMENT
AGREEMENT
- AFM bylaws, 222
 - AFM Exclusive Agent-Musician Agreement, 218-220, 582
 - AFM Personal Management Agreement, 225, 586
 - national agreement for use in Canada, 221-222
 - non-union agent agreements, 220-221
- BROADCASTERS, 23
- BUSINESS
- agreement with musician for services, 483-485
 - checklist, 633
 - compensation, 484
 - general provisions, 484-485
 - generally, 483
 - services, 483
 - term, 484
 - termination, 485
 - business name registration, 485
 - choice of business entity, 465-474
 - financial factors, 470-471
 - borrowing, 470
 - costs and maintenance, ongoing, 470
 - fluctuating income, 471
 - insurance, 471
 - generally, 465
 - limitation of liability, 465-466
 - corporate aspects, 466

- directors' liability, 466
- generally, 465-466
- miscellaneous factors, 474
- persons involved, 467-469
 - active vs. passive participation, 468
 - citizenship and residence, 468
 - formal structure, 467
 - number, 467
- tax factors, 472-474
 - corporations, 473
 - family members, 474
 - personal service corporations, 473
 - sole proprietorships and partnerships, 472
- corporation, 464
- entities
 - choice of. *See* choice of business entity
 - types of, 463-465
- family law issues, 486-488
 - generally, 486
 - structuring agreements, 487-488
- financing, 489-515
 - corporation, 493-494
 - crowdfunding, 511-513
 - donation, 512
 - generally, 511
 - investment, 512
 - funding programs. *See* funding programs
 - generally, 489-490
 - limited partnership, 492-493
 - partnership, 491-492
 - securities. *See* securities issues
 - sole proprietorship, 491
 - sponsorship agreements, 513-515
 - generally, 513
 - terms to consider, 514-515
 - types, 514
- funding programs, 497-511
 - Canada Council for the Arts, 508-509
 - Canadian Sound Recording Policy, 497-499
 - collective initiatives component, 498
 - music entrepreneur component, 499
 - new musical works component, 498

- FACTOR/Musicaction, 499-505
 - business development program, 503
 - business travel program, 503
 - comprehensive artist program, 501
 - comprehensive music company, 501
 - demo recordings, 500
 - juried sound recordings, 500
 - jury system, 505
 - live performance, 502
 - loans and grants, 504
 - marketing and promotion, 502
 - video program, 503
- MuchFACT, 505-506
- Ontario Arts Council, 509
- Ontario Music Fund, 506-508
 - generally, 506
 - live music, 507
 - music company development, 506
 - music futures, 507
 - music industry development, 507
- Ontario Sound Recording Tax Credit, 510
- provincial/municipal funding, generally, 508, 510
- group partnership agreement, 475-483
 - assets, 477-478
 - copyrights, 477
 - equipment, 478
 - insurance, 477
 - miscellaneous, 478
 - name, 477
 - checklist, 630
 - contributions, 476-476
 - money, 476
 - name, 476
 - dissolution, 480-482
 - assets, 482
 - generally, 480
 - live performance and merchandising, 481
 - post-dissolution income, 482
 - publishing contract, 481
 - recording contract, 481
 - members' provisions, 479
 - profit determination, 478

- profit ratio, 479
 - purposes, 475
 - responsibilities, 475-476
 - manager, 476
 - musician, 475
 - term and termination, 482
 - partnership, 464
 - securities issues, 494-497
 - accredited investor, 496
 - family, friends and business associates, 495
 - founder, control person and family, 496
 - generally, 494
 - minimum investment amount, 496
 - private issuer, 495
 - sole proprietorship, 463
- BUSINESS NAME, 389-390, 485
- CANADIAN ACTORS' EQUITY ASSOCIATION, 210
- CANADIAN CONTENT, 75-77
- CANADIAN FEDERATION OF MUSICIANS. *See* AMERICAN FEDERATION OF MUSICIANS
- CANADIAN FILM OR VIDEO TAX CREDIT, 541
- CANCOPY, 67
- CHOREOGRAPHY, 37, 38
- CMRRA, 49, 51 59, 61, 561
- CO-MANAGEMENT AGREEMENTS, 242
- COMMISSIONED WORKS, 29
- COMPETITION ACT, 205
- COMPOSER-PUBLISHER MUSIC PUBLISHING CONTRACT. *See* MUSIC PUBLISHING, contracts

COMPUTERS, 38-39

CONSUMER PACKAGING AND LABELLING ACT, 366-368

CONTRACTS. *See* AMERICAN FEDERATION OF MUSICIANS (AFM/
CFM);

BUSINESS; agreement with musician for service, group partnership
agreement; EXCLUSIVE TERM CONTRACT; LICENSING AND
MERCHANDISING AGREEMENTS; LIVE PERFORMANCE
CONTRACTS; MUSIC PUBLISHING, contracts; PERSONAL
SERVICE CONTRACTS; RECORDING, exclusive term record
contract

CONTROLLED COMPOSITIONS, 95, 320-322

CO-PUBLISHING AGREEMENT, 89, 116-118, 576

COPYRIGHT, *see also* COPYRIGHT ADMINISTRATION; COPYRIGHT
INFRINGEMENT; MUSIC PUBLISHING

acquisition of, 4-5

 fixation/identification requirement, 5

 originality requirement, 4

 qualified persons, 4

assignment of, 10-12

audiovisual productions, 35-37

 choreographic works, 37

 music videos, 35-37

 video soundtrack, 37

blank audiotape and private copying, 24-25

broadcasters, rights of, 23

choreography, 37, 38

computers, music and, 38-39

Copyright Act, basis of, 2

Creative Commons, 11-12

droite to suite, 16

economic copyrights, 3

“ephemeral” recordings, exemption re, 16

generally, 1-2

infringement. *See* COPYRIGHT INFRINGEMENT

Internet, music and, 40-46

 cloud computing, 43

- derivative works, 44
- distribution, 44
- downloading, 41
- generally, 40
- jurisdictional issues, 45
- rights clearance, 46
- ringtones, 42
- song previews, 42
- streaming, 42
- licence of, 10-12
- major characteristics of, 2
- minors, 13
- moral rights, 13-15
 - assignment and waiver, 15
 - infringement, 15
 - integrity right, 14
 - paternity right, 14
 - term of protection, 15
- multimedia, music and, 39-40
- musical works, 25-33
 - defined, 25-26
 - duration of ownership, 32-33
 - anonymous and pseudonymous works, 33
 - Crown copyright, 33
 - general rule and public domain, 32
 - joint works, 32
 - posthumous works, 32
 - ownership, 27-33
 - commissioned works, 29
 - compilations, 28-29
 - Crown works, 30
 - derivative works, 30
 - duration of. *See* duration of ownership
 - generally, 27
 - infringing works, 31
 - legal entities, 31
 - songs/song titles, status under *Copyright Act*, 26-27
- neighbouring rights, 17-24
 - broadcasters, rights of, 23
 - generally, 23-24
 - performer's performances, 17-20
 - remuneration, right to, 22-23

- royalties, 23
- sound recordings, 20-21
- public lending rights, 16
- registration of, 6-10
 - Canada, in, 6-7
 - assignments, 7
 - SOCAN registration, 6
 - systemic problems, 7
 - reasons for, 6
 - U.S., in, 8-10
 - Berne Convention, effects of, 8
 - copyright notices, 8-9
 - deposit, 10
 - registration, 9
 - sound recordings, 9
- remuneration, right to, 22-23
- reversion, 12-13
 - contract, by, 13
 - Copyright Act*, under, 12
- royalties, 23
- sound recordings, 20-21, 33-35
 - defined, 33
 - generally, 33
 - maker, 34-35

COPYRIGHT ADMINISTRATION

- assignment and licensing. *See* ASSIGNMENT AND LICENSING
- collective administration, 55-58
 - collective societies, 55-57
 - Copyright Act*, rights under, 56-57
 - public performance, 56
 - retransmission rights, 57-58
- copyright administrators, 58-71
 - Access Copyright and COPIBEC, 67-69
 - Canadian Private Copying Collective, 71
 - CONNECT music licensing, 66-67
 - mechanical licence, 561
 - music publishers. *See* MUSIC PUBLISHING
 - performing rights. *See* SOCAN
 - reproduction rights, 58-62
 - CMRRA, 59, 561
 - CMRRA-SODRAC Inc., 61-62

- generally, 58
- online tariff, 62
- SODRAC, 60-61, 566
- Re:Sound, 70
- retransmission collectives, 69
- SODRAC affiliation statement, 566
- Copyright Board, 71-74
 - functions of, 71-74
 - jurisdiction of, 72-73
 - musical works performed/communicated, 72-73
 - retransmission rights, 73
- CRTC, 74-77
 - Canadian content regulations, 75-77
 - described, 74-75
- SOCAN, 63-65
 - assignment, 562
 - described, 63
 - functions of, 64
 - membership requirements, 65
 - private copying, 65
 - SOCAN agreement, 63-64, 562, 564
 - telecommunication of music on Internet, 65
- social media. *See* SOCIAL MEDIA, LEGAL ISSUES

COPYRIGHT BOARD. *See* COPYRIGHT ADMINISTRATION

COPYRIGHT COLLECTIVES. *See* COPYRIGHT ADMINISTRATION;
GOODS AND SERVICES TAX

COPYRIGHT INFRINGEMENT

- defences to infringement, civil, 166-167
 - generally, 166
 - innocence, 167
- described, generally, 129-130
- direct infringement, 130-148
 - access, 136-138
 - arranging/adapting music, 147
 - authorized infringement, 143-146
 - common law copyright and ownership evidence, 138-139
 - communication by telecommunication, 141
 - conversions
 - into dramatic forms, 147

- into films, 148
- lyrics, translation of, 148
- neighbouring rights, 146
 - performer's performances, 146
 - sound recordings, 146
- plagiarism, 136-138
 - access, 138
 - authorship and ownership, 136
 - independent creation, 138
 - substantial copying, 137
- public performance, 140-141
- publication, 143
 - unpublished music, 143
- recording music, 139-140
 - audiovisual recordings, 139-140
 - sound recordings, 139
- retransmission right, 142
- subconscious copying, 136
- substantial reproduction, 130-135
 - digital sampling, 131-135
- moral rights, infringement of, 177-178
- non-infringement acts/things, 167-177
 - agricultural exhibitions, religious/fraternal/educational institutions, 171
 - ephemeral recordings, 172
 - fair dealing, 167-170
 - criticism, 170
 - news reporting, 170
 - parody/satire, 169
 - research/private study/education, 168
 - format shifting, 175
 - ideas, 176
 - miscellaneous categories, 175
 - non-commercial user-generated content, 172
 - non-theatre radio performance, 171
 - private purposes, reproduction for, 173
 - technological protection measures, 176-177
 - time shifting, 174
 - titles, 176
- remedies, 154-166
 - civil, 154-164
 - Anton Piller order, 156-158

- damages, generally, 158-159
- defendant's profits, 161
- delivery up of infringing articles, 161
- exemplary and punitive damages, 159-160
- generally, 154
- interlocutory injunction, 155
- limitation period, 164
- Mareva injunction, 158
- permanent injunction, 156
- statutory damages, 162-163
- criminal, 164-166
 - Copyright Act*, under, 164-166
 - Criminal Code*, under, 166
- secondary infringement, 148-154
 - distribution, 150
 - generally, 148-150
 - importation, 151
 - knowledge element, 149
 - lessons, 153
 - onus of proof, 150
 - provision of services, 153
 - public performance for profit, 152
 - sell/rent/expose/offer for sale, 150
- types of, 129-130

CREDIT. *See* RECORDING

CROWN WORKS, 30, 33

CRTC. *See* COPYRIGHT ADMINISTRATION

CUSTOMS ACT, 270-272

DERIVATIVE WORKS, 30, 44

DIGITAL SAMPLING, 131-135

DISTRIBUTION. *See* RECORD COMPANIES; RECORDING

EMPLOYMENT STATUS. *See* GOODS AND SERVICES TAX; INCOME TAX

ENDORSEMENTS. *See* LICENSING AND MERCHANDISING AGREEMENTS

ENFORCEMENT

imitators, 421

personality rights, 420

trade-marks. *See* TRADE-MARKS ENFORCEMENT

EPHEMERAL RECORDINGS, 16, 172

EXCLUSIVE TERM CONTRACT, *see also* RECORDING

composer's obligations, 92-102

assignment of copyright/employment/work for hire, 92-93

grant of other rights, 99-101

options, 100

personality, 100

power of attorney, 99

grant of rights, 94-99

alterations/moral rights, 98

collaboration, 96

controlled compositions, 95

exclusivity, 98

generally, 94

renewals and extensions, 97

territory, 95

tied deals, 95

unspecified uses, 99

indemnity, 101

joint and several, 92

non-assignment of obligations, 93

representations and warranties, 101

general provisions, 113-116

default and care, 115

governing law, 113

independent legal advice, 115

miscellaneous, 116

prior contracts, 114

term and options/reversion, 114

termination, 115

music publisher's obligations, 102-113

accounting and audit, 109

advances, 102-104

- cross-collateralization, 110
- infringement actions, 113
- ownership of professional copies, 110
- reversion, 111-113
 - bankruptcy, 112
 - by contract and under Act, 113
 - failure to account/allow audit, 111
 - failure to exploit, 111
- royalties/net income, 104-109
 - collaboration, 108
 - folio and print income, 106
 - foreign income/"at source", 106-107
 - mechanical and performing rights, 106
 - piano/vocal copies, 105
 - professional copies, 108
 - reserves, 108-109
 - synchronization licensing income, 107
 - unspecified uses, 108

FAIR DEALING. *See* COPYRIGHT INFRINGEMENT, non-infringement acts/things

FINANCING. *See* BUSINESS

FUNDING. *See* BUSINESS

GOODS AND SERVICES TAX

- agency relationships, 553
- business expenses, 551
- copyright collectives, 554
- employment status, 552
- generally, 548, 551-552
- government fees, 557
- invoices/documentation, 550
- management commissions, 554
- membership fees, 553
- music lessons, 556
- musical instruments, 555
- payment timing, 551
- persons/small supplier, 550
- record production transactions, 566
- royalties/advances/reserves, 554

taxable supply/commercial activity, 548-550

GROUP PARTNERSHIP AGREEMENT. *See* BUSINESS

GROUPS. *See* PERSONAL MANAGEMENT AGREEMENT

IMITATORS, 421

INCOME TAX

arts council grants and prizes, 533

assessment appeals, 532-533

 generally, 532

 proving assessments incorrect, 532

basis for taxation, 518

carrying on business, test re, 524-526

copyright income, 534-536

 foreign royalties and withholding tax, 536

 generally, 534-536

deductions, 527-531

 employees, 527

 expenses, allowable, 528-531

 self-employment, 528-531

employee vs. self-employed, 519-524

 contract of vs. contract for services, 519-524

 generally, 519

income sources, 517-518

reasonable expectation of profit, 524-526

record masters and videos, 537-542

 certification of videotapes, 539-542

 film and video tax credits, 541

 income tax aspects, 537-538

 relevant issues, 530

residency basis, 518

trade-marks and trade names, 536-537

INDUCEMENT LETTER, 348-349

INJUNCTIONS, 154-164, 259, 449

INTEGRITY RIGHT, 14

INTERNET. *See* COPYRIGHT

JURISDICTION, 45, 180, 416

LABELLING, CREDIT AND NOTICES. *See* RECORDING

LABOUR ORGANIZATIONS

ACTRA, 210AFM. *See* AMERICAN FEDERATION OF MUSICIANS
Canadian Actors' Equity Association, 210

LAWYERS, 214-215

LICENSING AND ASSIGNMENT. *See* ASSIGNMENT AND LICENSING

LICENSING AND MERCHANDISING, *see also* NAMES; TRADE-MARKS
agreements. *See* LICENSING AND MERCHANDISING AGREEMENTS
artistic works, 402-403
commercial tie-ins, 379
copyrights, 402-403
 generally, 402
 ownership, 403
generally, 375-376, 377
merchandising, importance of, 378

LICENSING AND MERCHANDISING AGREEMENTS

contractual issues, 409-415
 concert venue, 414
 endorsements, 413
 generally, 409-413
 key business terms, 410-413
 retail merchandising, 414
endorsement agreement checklist, 626
merchandising licence checklist, 628
names and trade-marks, 405-407
 assignment, 406
 licence, 405
 licensing provisions, 406
personality, 407-408
 assignment and devolution, 407
 licence, 407

LIVE PERFORMANCE

contracts. *See* LIVE PERFORMANCE CONTRACTS
defined, 243

- entities involved, 244-247
 - AFM/CFM, 245
 - booking agent, 245
 - engager, 246
 - merchandiser, 247
 - personal manager, 245
 - promoter, 246
 - publicist, 246
 - sponsor, 246
- legal issues, 262-276
 - audience's rights, 264
 - contract, 262
 - copyright, 262
 - house concerts, 268
 - immoral theatrical performances, 265-268
 - Charter* issues, 265-266
 - community standard test, 266
 - nudity, 267
 - prohibition of, 265
 - simulating sex, 268
 - postering, 263
 - travelling musicians. *See* travelling musicians
- occupational characteristics, 244
- travelling musicians, 269-276
 - AFM bylaws, 269
 - customs issues, 270
 - leaving Canada, 270
 - returning to Canada, 271
 - U.S. customs, 272
 - immigration, 273-276
 - U.S. immigration law, 273-276
- types of, 243

LIVE PERFORMANCE CONTRACTS

- AFM standard, 248, 592
- agreements, miscellaneous, 260-261
- generally, 247
- musician's rider provisions, 252-258
 - advertising and promotion/merchandising, 252-253
 - benefits, 257
 - billing, 252
 - cancellation, 255-256

- insurance, 257
- miscellaneous specifications, 258
- permits, 258
- production equipment, 254
- production personnel, 254
- recordings, 257
- rehearsal and sound check, 255
- security, 255
- supporting act, 257
- tickets, 253-254
 - complimentary, 253
 - discounts, 253
 - manifest, 253
 - scale, 253
 - specifications, other, 254
 - time and place, 254
- non-AFM contract, 249-252
 - basic terms, 249
 - general provisions, 251-252
 - parties, 249
 - payment, 249-250
- other musicians, agreements with, 260
- promoter's rider, 258-260
 - control of production, 259
 - injunctions and nuisance, 259
 - miscellaneous terms, 259
 - restrictive covenants, 258
 - ticket scalping, 260
- rider checklist, 594
- riders, 248
- sound and lighting agreement, 261
- transportation agreement, 261

MANAGERS. *See* PERSONAL MANAGEMENT AGREEMENT;
PERSONAL REPRESENTATIVES

MASTER USE LICENCE, 53, 286, 316, 349-350, 622

MASTERS

- acceptance of, 347
- exclusive term record contract, 309
- income tax issues, 537-542

- MECHANICAL LICENCE, 53, 561, 567
- MECHANICAL RIGHT. *See* ASSIGNMENT AND LICENSING
- MERCHANDISING. *See* LICENSING AND MERCHANDISING;
NAMES; TRADE-MARKS
- MINORS, 13, 454-458
- MORAL RIGHTS. *See* COPYRIGHT
- MOTION PICTURE, 54, 148, 194-195
- MULTIMEDIA, 39-40
- MUSIC PUBLISHER. *See* MUSIC PUBLISHING
- MUSIC PUBLISHING
- contracts, 88-127
 - administration agreement checklist, 575
 - administrative publishers, 89-91, 119-120
 - administration, 90
 - co-publishing, 89
 - generally, 119
 - negotiable elements, 120
 - other contracts, 91
 - participation, 91
 - sale of publisher's catalogue, 91
 - sub-publishing, 90
 - composer-publisher, 88
 - composer-publisher agreement checklist, 570
 - composer-publisher single song. *See* EXCLUSIVE TERM CONTRACT
 - co-publishing, 89, 116-118
 - agreement checklist, 576
 - generally, 116
 - negotiable elements, 117
 - exclusive term. *See* EXCLUSIVE TERM CONTRACT
 - participation, 91, 118-119
 - co-publishing vs., 118
 - generally, 118-119
 - sale of publisher's catalogue, 91, 124-127

- after sale, 127
- agreement checklist, 580
- evaluation, 126
- generally, 124-126
- purchase price, 126
- sub-publishing, 90, 121-124
 - agreement checklist, 578
 - generally, 121
 - negotiable elements, 122
 - problems with, 123
- copyrights and revenue sources, 85-88
 - mechanical rights, 86
 - performing rights, 85
 - print rights, 87
 - subsidiary rights, 87-88
 - synchronization rights, 86
- definitions, 79-80
 - generally, 92
- mechanical licence checklist, 567
- music publishers, 80-84
 - classes of, 83-84
 - legitimate, 83
 - song sharks, 84
 - functions of, 80-83
 - administrative, 82
 - advocacy, 82
 - business, 81
 - creative, 80
 - promotional, 80
- music publishing, business of, 79-80

MUSICAL WORKS. *See* COPYRIGHT

MUSICIAN'S SERVICES. *See* BUSINESS; GOODS AND SERVICES
TAX; INCOME TAX; RECORDING

NAMES, *see also* LICENSING AND MERCHANDISING AGREEMENTS;
PERSONALITY; TRADE-MARKS

- endorsements, 378
- generally, 375-376
- name selection, 376
- protection of. *See* TRADE-MARKS

selection process, 379-382
trespass, 402

NEIGHBOURING RIGHTS. *See* COPYRIGHT

NOTICES. *See* LABELLING, CREDIT AND NOTICES

ONTARIO. *See* BUSINESS, funding

PARTICIPATION AGREEMENT, 91, 118-119

PARTNERSHIP

financing, 491-493
group partnership. *See* BUSINESS

PASSING OFF, 400-402, 418

PERFORMING RIGHT, 48, 63-65, 85, 106

PERSONAL MANAGEMENT AGREEMENT

accounting and audit, 240
“agent and principal” relationship, 223
arbitration, 241
business relationship, 225
co-management agreements, 242
definitions, 225
exclusivity, 227-228
fiduciary duties of manager, 223-224
finances, 236-237
 expenses, 236
 loans, 237
group provisions, 237-238
 joint and severable obligations, 238
 leaving/joining members, 238
 name, 237
independent contractors basis, 227
independent legal advice, 226
key person and assignment, 238
legal relationship, 223-224
manager’s authority, 229-232
 limitations, 230
 power of attorney, 230-231

- power of attorney coupled with interest, 231
- scope, 229
- manager's compensation, 232-236
 - commission, 232-236
 - continuing commissions, 234-236
 - exclusion, 234
 - gross, 232-233
 - net, 233-234
 - reduction, 234
 - time of payment, 236
- manager's services, 228
- partnership, not, 227
- performance obligations, 239
- representations, warranties and indemnity, 239
- term and options, 239
- termination, 241
- trial basis, 225

PERSONAL REPRESENTATIVES

- accountants, 215
- agents vs. managers, 213
- booking agents, 213-214
- generally, 217-218
- lawyers, 214-215
 - conflicts of interest, 215
 - generally, 214
- managers, 216-218
 - business, 217
 - personal, 216
 - road, 217
- publicists, 216
- role of, 213-218

PERSONAL SERVICE CONTRACTS

- breach of, remedies, 448-454
 - between parties, 448-451
 - damages, 448
 - injunction, 449
 - specific performance, 449-451
 - groups, re, 453
 - individuals, re, 451-452
 - third parties, 453

- conflict of laws issues, 458-461
 - Canada, in, 458-459
 - U.S., in, 459-461
- defined, 423
- drafting guidelines, 445-448
- generally, 423
- legal doctrines re, 424-448
- minors, 454-458
 - beneficial test, 454-455
 - contract of service, 455-456
 - enforceable contracts, types of, 454
 - Kinks* case, 457
 - special contract measures, 457
 - void and voidable contracts, 456
- restraint of trade issues, 425-443
 - bargaining power inequality, 427
 - case law re musicians, 429-442
 - Elton John* case, 433-435
 - Fleetwood Mac* case, 430-431
 - Frankie Goes to Hollywood* case, 436-437
 - George Michael* case, 439-442
 - O'Sullivan v. Management Agency*, 432
 - public policy and, 425
 - restrictive covenants, 425
 - Schroeder v. Macauley*, 429
 - Stone Roses* case, 437-439
 - 360 deals, 442
 - unconscionability, 427
 - undue influence, 428
- 360 deals, 442

PERSONALITY

- enforcement of rights, 420
- generally, 403
- misappropriation of, 404-405

PHOTOGRAPHS, 372

POSTERING, 263

POSTHUMOUS WORKS, 32

PRIVATE COPYING, 65, 71

PRODUCER AGREEMENT. *See* RECORDING

PROMOTER, 246, 258-260

PSEUDONYMOUS WORKS, 33

PUBLICIST, 216, 246

RECORD COMPANIES

functions, 277-279

 generally, 277

 manufacturing, 278

 production, 278

majors vs. independents, 282

role and object, 277

structure, 279-281

 artists and repertoire, 279

 distribution and sales, 281

 finance, 280

 legal and business affairs, 280

 marketing, promotion and publicity, 280-281

 physical and digital distribution, 281

RECORDING

agreements, generally, 283

credit. *See* labelling, credit and notices

distribution agreement, 284, 355-361

 checklist, 611

 considerations, 357-360

 generally, 355-357

 letters of credit/security interest, 361

 payment/accounting/reserves, 360-361

exclusive term record contract, 287-329

 advances, 298-301

 generally, 298

 label/licence advances, 299-301

 minimum/maximum formula, 299

 miscellaneous, 301

 tour support, 301

 artistic/creative control, 295-296

- material, 295
- merchandising and artwork, 296
- producer, 295
- quality, 296
- audits, 323
- checklist, 598
- commitment, 301-305
 - product, 301
 - promotion/advertising and publicity, 303
 - recording and video budgets, 304
 - release, 302-303
 - tour support, 304
 - websites, 305
- controlled compositions, 320
- copyright revision, 327
- credits, 326
- cross-collateralization, 319-320
- default and cure, 328
- definitions, 289-292
 - album, 291
 - generally, 289
 - master/outtakes, 290
 - miscellaneous terms, 292
 - record, 290
 - recording, 291
 - recording costs, 292
 - royalty rates, 292
 - term, 291
 - territory, 291
- distribution, 326
- force majeure, 327
- generally, 287
- leaving members provision, 324-325
- musician's rights and obligations, 287-297
 - artistic/creative control. *See* artistic/creative control
 - assignment, 297
 - contracting entity/personal liability/joint and several obligations, 295
 - definitions. *See* definitions
 - exclusive personal services, 287-288
 - generally, 287
 - personality/merchandising rights, 294

- representations, warranties, indemnity, 288
- payment, 298-301
 - advances. *See* advances
 - generally, 298
- record company's rights and obligations, 297
 - commitment. *See* commitment
 - generally, 297
 - payment. *See* payment
 - recordings. *See* recordings
 - royalties. *See* royalties
- record royalties, computation of, 317-322
 - controlled compositions, 320-322
 - coupling, 319
 - cross-collateralization, 319-320
 - digital, 318
 - generally, 317-318
 - joint performances, 319
 - physical, 317
- recordings, 305-310
 - costs, 305
 - location, 307
 - masters, 309
 - number/overcalls, 306
 - pay or play, 308
 - re-recording restriction, 309
 - sessions, 307
 - special, 308
- royalties, 310-323
 - accounting and payment, 322
 - budget/premium/mid-price, 314
 - computation of. *See* record royalties, computation of
 - deletes, 314
 - domestic and foreign base, 310-312
 - institutional/tv sales, 314
 - master use licences, 316, 622
 - new technologies, 312
 - offstage/website sales, 316
 - packaging deductions from, 316
 - promotional/free goods, 313
 - record club, 313
 - record royalties. *See* record royalties
 - records/sales configurations, 312

- reserves, 323
- royalty statements, 322
- special, 313
- videos, 315
- suspension, 328
- term and options, 324
- termination, 329
- labelling, credit and notices, 365-371
 - checklist, 615
 - Consumer Packaging and Labelling Act* requirements, 366-368
 - copyright notices, 365
 - credit, 368
 - false accreditation, 369
 - industry codes, 370
 - industry notices, 370
 - trade-marks notices, 366
 - warning stickers, 371
- Library and Archives of Canada Act* requirements, 373
- master purchase/sale agreement, 286, 618
- master use licence, 286, 622
- model releases, 372
- multi-rights agreements. *See* 360 deals
- notices. *See* labelling, credit and notices
- producer agreement, 284-285, 338-349
 - generally, 285, 338
 - inducement letter, 348-349
 - letter of direction checklist, 609
 - producer's role, 284
 - record company, with, 341-347
 - acceptance of masters, 347
 - checklist, 607
 - credit, 347
 - generally, 341
 - over-budget, 343
 - payment, 343-346
 - producer's services, 342
 - royalty override checklist, 624
 - "spec" deal, 338-341
- production agreement, 330-333
 - generally, 330-331
 - recoupment/off-the-top, 331-333
- record companies. *See* RECORD COMPANIES

- record licence agreement, 284
- record master agreement, 349-355
 - licence of, 352-355
 - checklist, 613
 - general provisions, 354-355
 - grant of rights, 352
 - payment, 353
 - term/termination/options, 354
 - master purchase/sale agreement, 351-352, 618
 - master use licence 349-350
 - checklist, 622
 - considerations, 350
 - generally, 349
- 360 deals, 362-365
 - conflicts of interest, 364
 - generally, 362
 - rights and revenue sources, 362-364
- video production agreement, 285, 335-337
 - checklist, 620
 - costs, 336
 - failure to deliver, 337
 - generally, 333, 335
 - key provisions, 334
 - standard provisions, 337
 - underlying rights, 334-335
 - video producer's compensation, 336
 - video producer's services, 336

REPRODUCTION RIGHT, 48, 49, 58-62

RESERVES, 108-109, 323, 360, 554

RESTRAINT OF TRADE. *See* PERSONAL SERVICE CONTRACT

RETRANSMISSION RIGHT, 57-58, 73, 142

ROYALTIES. *See* COPYRIGHT; EXCLUSIVE TERM CONTRACT, music publisher' obligations; GOODS AND SERVICES TAX; INCOME TAX; RECORDING, exclusive term record contract

SECURITIES. *See* BUSINESS

SOCAN. *See* COPYRIGHT ADMINISTRATION

SOCIAL MEDIA, LEGAL ISSUES

copyright infringement, 77
defamation, 78
generally, 77
privacy rights, 78
trade-mark infringement, 78

SODRAC, 60-62, 566

SOLE PROPRIETORSHIP, 463, 472, 491

SONG SHARKS, 84

SUB-PUBLISHING AGREEMENT, 90, 121-124

SYNCHRONIZATION LICENCE, 52-53, 569

TAX

amusement tax, 543
Goods and Services Tax. *See* GOODS AND SERVICES TAX
HST, 542
income tax. *See* INCOME TAX
planning. *See* TAX PLANNING
retail sales tax, 542-543
U.S. tax, 543-546

TAX PLANNING

generally, 546-547
trust, estate and gift suggestions, 547

TELECOMMUNICATION, 65, 141

TELEVISION, 54, 314

360 DEALS, 362-365, 442

TRADE-MARKS, *see also* LICENSING AND MERCHANDISING; NAMES

applications and registrations, 382
described, 387
enforcement. *See* TRADE-MARKS ENFORCEMENT

- generally, 375-376
- ownership confirmation, 383-384
- passing off, 400-402
- proper trade-mark use, 384-386
- registered trade-marks, 388-398
 - advantages of, 393-395
 - business name registration vs., 389-390
 - domain name issues, 390
 - expungement of, 398
 - generally, 388
 - grounds for registration, 393
 - notice of, 398
 - persons entitled to register, 397
 - registration system described, 392-393
 - unregistered and prohibited trade-marks, 395-396
 - website legal issues, 392
- unregistered, 399
- use or lose, 386

TRADE-MARKS ENFORCEMENT

- causes of action, generally, 417
- criminal offences, 419
- Customs Act*, use of, 420
- infringement actions, 415-416
 - generally, 425
 - jurisdiction issues, 416
- passing off, 418

TRAVELLING MUSICIANS. *See* LIVE PERFORMANCE

UNCONSCIONABILITY/UNDUE INFLUENCE, 427, 428

VIDEO, 35-37, 304, 315, 503, 537-542

VIDEO PRODUCTION AGREEMENT. *See* RECORDING

WEBSITES, 305, 316, 392