



### **What is the FAIR Act?**

Californians are protected under a simple rule: no person should have to work for a company exclusively for longer than 7 years. In 1987, the record labels came together and effectively carved recording artists out of this protection.

The FAIR Act asks the legislators in Sacramento to allow recording artists the same benefits as any other Californian. The FAIR Act puts limitations on option period terms and restores the law to its original intent and remove the 1987 exclusion.

### **Why were recording artists excluded from the Seven Year Statute?**

The labels argued back in the late 80s that it took longer than 7 years for a record label to become profitable from the sale of music. This claim was false then. It is certainly false now.

With modern day streaming, there is a huge upward trend, with the 3 major labels now being valued collectively at over 100 billion dollars. More on that below.

Artists have become more vocal about advocating for themselves, and for the next generation of artists.

### **How long are record deals?**

Record deals are actually not for a specific period of time, but instead an artist is only freed from their contract when they have delivered a specified number of albums.

It is important to keep in mind that a label owns and controls every recording an artist makes during the term of a record contract; however, not every recording satisfies the artist delivery obligation. A massive hit by one artist - that generates more streams than an entire album by another artist - and is very profitable for a label would not satisfy the artist's delivery obligation.

As a result, artists can be held in one record contract for their entire career. More on this below.

### **Do record labels pay all the costs for the albums?**

Hardly. Artists are responsible for recording costs (producer advances, lodging, studio, mixing, mastering, remixes); the music video, lyric video, and other audiovisual production costs; radio promotion costs; independent publicity costs; internet advertising expenses; artwork; paying side artists; promotional events and release parties; and legal costs for all album clearances.

The artists must “repay” the label from their share of royalties. The labels recover the costs from gross revenue, but the artists “recoup” at their much smaller share of that revenue. So, if a record cost \$10, the label would “break even” and start to earn profits when fans have spent \$10. If the artist had a 20% royalty, the artist would be unrecouped and not be paid royalties, until the fans had paid \$50! So, at \$10, the label starts to earn profits, but the artist doesn’t earn royalties until \$50 because they have to recoup expenses at their royalty rate.

Record labels also do not commit to multiple albums. They commit to one album (with an escape clause for that album) and then are granted a series of unilateral options that only the record label can exercise. The label gives the artist an advance before each new committed album to cover living and other expenses, which the label can recoup from the artists, along with the costs outlined above.

### **Don’t record labels build up the brand of a recording artist?**

Here is something the labels lose sight of: there is no business without the artists. The artists have people who help them in their career - managers, agents, lawyers, and publicists - but recording artists aren’t forced to stay in 7+ year contracts with anyone except record labels.

Marketing and promotion has changed considerably in the digital era with free social media platforms. More and more artists rely on their own personal teams to build a brand and fan base (i.e., followers). Oftentimes an artist’s existing social media presence and brand deals will make them more desirable for a record deal in the first place.

### **Do labels need 4 exclusive albums to be profitable?**

Absolutely not.

With the streaming boom, labels are approaching profitability levels that were only seen at the height of the history of the industry. Morgan Stanley and other major investment banks predict this growth to only continue and exponentially grow. Many labels that benefit from this exclusion are multi-national, multi-billion-dollar companies, either listed on the public markets or foreign owned. So, from a macro perspective, they seem to be doing quite well.

Zooming in a bit, the creation and distribution of music is quicker and more fluid than ever. Artists record and release music very quickly, and, with no distribution or manufacturing hurdles, can get to the consumer literally overnight. You've probably seen this with the huge number of surprise releases, multiple albums and EPs a year from any one artist. Not to mention collaboration projects, remixes, alternate versions. There is more music released now than ever for record labels to profit from. Gone are the days where you need years to release an album.

It is important to remember that recording contracts are a one-way street: the label decides how long they last because they have unilateral options. If a label is losing money, they can exit the contract at any time.

### **If recording artists are making so much music, why is it so difficult for them to satisfy the album requirement in the contract?**

There are numerous hurdles that make it impossible for recording artists to meet their album requirement within 7 years to be released from the deal.

The label largely controls the timeline. The artist is generally enthused and motivated to make and deliver music, especially when first signing. But the record label can delay approval, delay release, and then delay the option period (which can last 12 months from the release of an album) to decide whether or not to even do another album with the artist.

Record labels also have to "accept" the album, which means it can send the artist back to the studio if it doesn't hear a "hit." Labels will not accept singles, EPs, songs in a soundtrack, compilations, remixes, live albums, alternative versions, or collaborations with other artists. But often times, labels will begin an artist's release plan with the release of multiple singles and/or EPs. In fact, the streaming economy has created a new singles market that we have not seen since the 1960's. An artist could be as prolific as Prince or Thom Yorke and still fail to meet the requirements of record deals within 7 years. In fact, record labels actually discourage artists from creating some of their more innovative work that fans love. Today's music business is driven by songs and hits. It is no longer an album driven business. Yet these record deals still require delivery of an album to continue through the contract.

Collaborations between artists and soundtrack albums don't satisfy the delivery obligation of an artist. So, if an artist delivers a huge album with another artist or has multiple songs on a soundtrack album, the label owns those records, profits from them, but those records don't "count" toward the artist's delivery obligation.

### **How do option periods further complicate the production and release process?**

It is an industry standard that record labels be given 12 months from the time of the prior album's release to decide whether or not it wants to exercise an option for a recording artist's next album. This is the broken dreams problem.

Keep in mind that record labels are unlikely to want to do a second album with an artist. That also means most signed recording artists wait, under exclusivity no less, for upwards of 12 months after their first album's release to be told "No." They also might have delivered the album to the label a year prior to its release.

This is an unacceptable period of time for an entertainment worker to be held off the market to only get rejected in the end. Hundreds of Californians are promised the moon by labels and then left with debt if they fail to produce a hit right away. Long option periods are due to the labels dragging their feet to the detriment of emerging artists.

The Fair Act limits these option periods to 9 months, which is more than enough time to make a decision.

### **Why don't we hear about these problems every day in the papers?**

There are numerous public examples of recording artists protesting the onerous terms of record label deals; however, most of these stories are kept private.

It may be that the artist got into a legal dispute with the label and is now bound to a nondisclosure or non-disparagement clauses that prevent them from being able to talk about it to the public.

A lot of artists are still under recording contracts and are afraid to speak out publicly out of fear of retaliation or, again, they are bound to nondisclosure or non-disparagement clauses.

The artist may be private and not want their personal and financial struggles disclosed to the public.

### **Can the record label end the contract within 7 years?**

Yes, they do that all the time. Remember the option is theirs, not the artist's.

From the label's perspective, record deal commitments are album by album. Labels have the one-sided right to either drop a recording artist after an album or exercise an option to make another album. They also have the right to delay the process, which traps recording artists in long-term contracts despite no new album releases.

### **So why should recording artists be the only Californians excluded from the 7 Year Statute?**

In short: they shouldn't be. It's a simple ask.

The Seven Year Statute protected all Californians for decades, and the record companies were just fine. An amendment was added in 1987 that effectively excluded recording artists. The 1987 Amendment wasn't fair back then and it clearly isn't fair now. Major labels are hugely

profitable, multi-national, multi-billion-dollar corporations. No one needs more than 7 years to turn a profit on music. Especially when it's causing the recording artist to go into debt at the same time.

**AB 2926, the FAIR Act, brings recording artists back into the protections that all Californians enjoy and places limits on bad industry practices. This legislation will allow artists the flexibility and freedom of movement that is vital to the creative community.**