AN INTERNATIONAL LEGAL SYMPOSIUM ON THE WORLD OF MUSIC, FILM, TELEVISION AND SPORTS

Working with Creatives

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American Bar Association
Forum on the Entertainment and Sports Industries

International Legal Symposium on the
World of Music, Film, Television, and Sports

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Working with Creatives

Employee Noncompetes - A State by State Survey

Sample Band Member Agreements

Sample Band Partnership Agreement

Sample Confidentiality Agreement

Sample Exclusive Talent Management Agreement with Co-Publishing Provision Form

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<tr>
<th>State</th>
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<th>Reformation Blue Pencil Red Pencil</th>
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<tbody>
<tr>
<td>AL</td>
<td>Yes. Ala. Code §§ 8-1-190-197 (Sec. 8-1-1 repealed effective 1/1/2016)</td>
<td>Trade secrets; confidential information; commercial relationships or contacts with specific prospective or existing customers, patients, vendors, or clients; customer, patient, vendor, or client goodwill; specialized and unique training involving substantial business expenditure specifically directed to a particular agent, servant, or employee (if identified in writing as consideration for the restriction).</td>
<td>Must be in writing, signed by all parties, and be supported by adequate consideration. Must preserve a protectable interest. A two-year restriction is presumptively reasonable. Employee has burden of proving undue hardship, if raised as a defense.</td>
<td>Professionals</td>
<td>Yes (pre-amendment)</td>
<td>Reformation</td>
<td>Yes, likely (pre-amendment)</td>
</tr>
<tr>
<td>AK</td>
<td>Yes</td>
<td>Trade secrets; confidential information; customer relationship (where employee was sole contact)</td>
<td>Factors: Limitations in time and space; whether employee was sole contact with customer; employee's possession of trade secrets or confidential information; whether restriction eliminates unfair or ordinary competition; whether the covenant stifles employee's inherent skill and experience; proportionality of benefit to employer and detriment to employee; whether employee's sole means of support is barred; whether employee's talent was developed during employment; whether forbidden employment is incidental to the main employment.</td>
<td>-</td>
<td>Undecided</td>
<td>Reformation</td>
<td>Undecided</td>
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<tr>
<td>AZ</td>
<td>Yes</td>
<td>Trade Secrets; Confidential Information; Customer Relationships</td>
<td>No broader than necessary to protect the employer's legitimate business interest; not unreasonably restrictive; not contrary to public policy; ancillary to another contract.</td>
<td>Broadcasters; maybe Physicians</td>
<td>Yes</td>
<td>Blue Pencil</td>
<td>Undecided</td>
</tr>
<tr>
<td>AR</td>
<td>Yes. Ark. Code 4-70-207 (effective 8/6/2015)</td>
<td>Trade secrets; intellectual property; customer lists; goodwill with customers; knowledge of business practices; methods; profit margins; costs; other confidential information (that is confidential, proprietary, and increases in value from not being known by a competitor); training and education; other valuable employer data (if provided to employee and an employer would reasonably seek to protect or safeguard from a competitor in the interest of fairness).</td>
<td>Limited with respect to time and scope in a manner that is not greater than necessary to defend the protectable business interest of the employer. The lack of a geographic limit does not render the agreement unenforceable, provided that the time and scope limits appropriately limit the restriction. Factors to consider include the nature of the employer's business interest; the geographic scope, including whether a geographic limit is feasible; whether the restriction is limited to specific group of customers or others; and the nature of the employer's business. A two-year restriction is presumptively reasonable unless clearly demonstrated otherwise.</td>
<td>Various professionals (medical, veterinary, social workers, others)</td>
<td>Yes</td>
<td>Reformation (mandatory)</td>
<td>Undecided</td>
</tr>
<tr>
<td>CA</td>
<td>No, except maybe as to trade secrets. Cal. Business &amp; Professions Code § 16600</td>
<td>Trade Secrets</td>
<td>Uncertain status as to trade secrets.</td>
<td>-</td>
<td>-</td>
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<td>CO</td>
<td>Yes, as to executive or management employees and professional staff or to protect trade secrets or recover cost of training. Colo. Rev. Stat. § 8-2-113</td>
<td>Trade secrets; recovery of training expenses for short-term employees.</td>
<td>Must fall within statutory exception; be reasonable; and be narrowly-tailored.</td>
<td>Physicians (damages not barred).</td>
<td>Yes</td>
<td>Reformation</td>
<td>Undecided</td>
</tr>
<tr>
<td>CT</td>
<td>Yes</td>
<td>Trade secrets; confidential information; customer relationships.</td>
<td>Factors: time; geographic reach; fairness of protection afforded to employer; extent of restraint on employee; extent of interference with public interest.</td>
<td>Broadcasters; Security Guards</td>
<td>Yes, likely</td>
<td>Blue Pencil</td>
<td>Yes</td>
</tr>
<tr>
<td>DE</td>
<td>Yes</td>
<td>Trade secrets; confidential information; customer relationships.</td>
<td>Reasonable in time and geographic reach; protects legitimate economic interests; survives balance of equities.</td>
<td>Physicians</td>
<td>Yes</td>
<td>Reformation</td>
<td>Yes</td>
</tr>
<tr>
<td>DC</td>
<td>Yes</td>
<td>Trade secrets; confidential knowledge; expert training; fruits of employment</td>
<td>Reasonable in time and geographic area; necessary to protect legitimate business interests; promisee's need outweighs promisor's hardship. [Follows Restatement (Second) of Contracts, secs. 186-88.]</td>
<td>Broadcasters</td>
<td>Yes (if employment continued for sufficient duration)</td>
<td>Reformation or Blue Pencil</td>
<td>No</td>
</tr>
<tr>
<td>FL</td>
<td>Yes. Fla. Stat. Ann. § 542.335</td>
<td>Trade secrets; confidential business information; substantial customer relationships and goodwill; extraordinary or specialized training</td>
<td>Legitimate business interest; reasonably necessary to protect legitimate business interest. [Rebuttal presumptions exist.]</td>
<td>Mediators</td>
<td>Yes</td>
<td>Reformation (mandatory)</td>
<td>Undecided</td>
</tr>
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<td>GA</td>
<td>Yes. Ga. Const., Art. III, Sec. VI, Par. V(c), as amended. [NOTE: Pre-amendment law was more restrictive and applies to pre-amendment agreements]</td>
<td>Proprietary confidential information and relationships; goodwill; economic advantage; time and monetary investment in employee's skill and training.</td>
<td>Not overbroad in time, space, and scope; interest of individuals in gaining and pursuing a livelihood; commercial concerns in protecting legitimate business interests; public policy.</td>
<td>-</td>
<td>Yes</td>
<td></td>
<td>Yes, but it's a factor to be considered.</td>
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## Employee Noncompetes
### A State by State Survey

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<td>ID</td>
<td>Yes as to &quot;key employees&quot; (defined in statute). Idaho Code §§ 44-2701-2704.</td>
<td>Trade secrets; technologies; intellectual property; business plans; business processes and methods of operation; goodwill; customers; customer contacts and referral sources; vendors and vendor contacts; financial and marketing information; potentially others.</td>
<td>Reasonable as to duration, geographical area, type of employment or line of business, and does not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interests; reasonable as to covenantor, covenantee, and public. Rebuttable presumptions of reasonableness: 18 months; geographic area restricted to areas employee provided services or had significant presence or influence; limited to line of business in which employee worked. Presumption that employee is &quot;key employee&quot; if in highest paid 5% employees in company.</td>
<td>Non-&quot;key employees.&quot; (&quot;Key employees&quot; are those who have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer, and as a result, have the ability to harm or threaten an employer's legitimate business interests).</td>
<td>Yes</td>
<td>Reformation</td>
<td>Yes</td>
</tr>
<tr>
<td>IL</td>
<td>Yes</td>
<td>Legitimate business interests are based on the totality of the facts and circumstances of the case. Trade secrets, confidential information, and near permanent business relationships are factors.</td>
<td>Ancillary to a valid employment relationship; no greater than required to protect a legitimate business interest; does not impose undue hardship on the employee; not injurious to the public; and reasonable in time, space, and scope. [May require two years of employment before any noncompete can be enforced.]</td>
<td>Broadcasters; Government Contractors; Physicians</td>
<td>Yes (if employment continued for sufficient duration)</td>
<td>Reformation</td>
<td>Yes</td>
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<tr>
<td>IN</td>
<td>Yes</td>
<td>Trade secrets; confidential information; goodwill; special training or techniques.</td>
<td>Clear and specific (not general) restraint must be reasonable in light of the legitimate interests to be protected; reasonableness is measured by totality of interrelationship of the interest, and the time, space, and scope of the restriction, judged by the needs for the restriction, the effect on the employee, and the public interest.</td>
<td>-</td>
<td>Yes</td>
<td>Blue Pencil</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IA</td>
<td>Yes</td>
<td>Trade secrets; goodwill; specialized training.</td>
<td>Whether the restriction is reasonably necessary to protect the employer's business, unreasonably restrictive (time and space), and prejudicial to the public interest.</td>
<td>Franchisees (where franchisor does not renew) Yes</td>
<td>Reformation</td>
<td>Yes, but it's a factor to be considered</td>
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</tr>
<tr>
<td>KS</td>
<td>Yes</td>
<td>Trade secrets; confidential business information; loss of clients; goodwill; preserving contact with clients; customer contracts; referral sources; reputation; special training.</td>
<td>Protects a legitimate business interest; not undue burden on employee; not injurious to public welfare; reasonable in time and space.</td>
<td>Accountants (limited) Yes</td>
<td>Reformation</td>
<td>Yes</td>
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</tr>
<tr>
<td>KY</td>
<td>Yes</td>
<td>Confidential business information; customer lists; competition; employee aiding; investment in training.</td>
<td>Reasonable in scope and purpose; reasonableness determined by the time, space, and &quot;charter&quot; of the restriction; no undue hardship; does not interfere with public interest.</td>
<td>-</td>
<td>No, although threatened loss of job might be a factor.</td>
<td>Reformation</td>
<td>Undecided (but it can be a factor)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LA</td>
<td>Yes. La. Rev. Stat. Ann. Sec. 23:921</td>
<td>Trade secrets; financial information; management techniques; extensive training (if such training is unrecouped through employee's work).</td>
<td>No more than two years; specifies the specific geographic reach (by parishes, municipalities, or their respective parts); defines employer's business; strict compliance with statute.</td>
<td>Automotive Salesman; Real Estate Broker's Licensees (procedural requirements) Yes</td>
<td>Blue Pencil, if allowed by the noncompete</td>
<td>Yes, likely.</td>
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<td>ME</td>
<td>Yes</td>
<td>Trade secrets; confidential information; goodwill.</td>
<td>No broader than necessary to protect the employer's legitimate business interest; reasonable as to time, space, and interests to be protected; no undue hardship to employee.</td>
<td>Broadcast Industry (presumption)</td>
<td>Yes</td>
<td>Reformation</td>
<td>Yes, likely.</td>
</tr>
<tr>
<td>MD</td>
<td>Yes</td>
<td>Trade secrets; routes; client lists; established customer relationships; goodwill; unique services.</td>
<td>Duration and space no wider than reasonably necessary to protect legitimate interests; no undue hardship to employee; not contrary to public policy; ancillary to the employment.</td>
<td>-</td>
<td>Yes</td>
<td>Blue Pencil</td>
<td>No, likely.</td>
</tr>
<tr>
<td>MA</td>
<td>Yes</td>
<td>Trade secrets; confidential information; goodwill.</td>
<td>Narrowly tailored to protect legitimate business interest; limited in time, space, and scope; consonant with public policy; harm to employer outweighs harm to employee.</td>
<td>Broadcasters; Physicians; Nurses; Social Workers; Psychologists</td>
<td>Yes</td>
<td>Reformation</td>
<td>Yes</td>
</tr>
<tr>
<td>MI</td>
<td>Yes, Mich. Comp. Laws § 445.774a</td>
<td>Trade secrets; confidential business information; goodwill.</td>
<td>Must have an honest and just purpose and to protect legitimate business interests; reasonable in time, space, and scope or line of business; not injurious to the public.</td>
<td>-</td>
<td>Yes</td>
<td>Reformation</td>
<td>Yes</td>
</tr>
<tr>
<td>MN</td>
<td>Yes</td>
<td>Trade secrets; confidential business information; goodwill; prevention of unfair competition.</td>
<td>No broader than necessary to protect the employer's legitimate business interest; does not impose unnecessary hardship on employee.</td>
<td>-</td>
<td>No</td>
<td>Reformation</td>
<td>Yes</td>
</tr>
<tr>
<td>MS</td>
<td>Yes</td>
<td>Trade secrets; confidential business information; goodwill; ability to succeed in a competitive market.</td>
<td>Reasonableness and specificity of restriction, primarily, in time and space; hardship to employer and employee; public interest.</td>
<td>-</td>
<td>Yes (though questioned if employee terminated shortly after)</td>
<td>Reformation</td>
<td>Yes</td>
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## Employee Noncompete Sates by State Survey

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<td>MO</td>
<td>Yes. 28 Mo. Stat. Ann. § 431.202 (related)</td>
<td>Trade secrets; confidential business information; customer or supplier relationships, goodwill, or loyalty; customer lists; protection from unfair competition; stability in the workforce.</td>
<td>Reasonably necessary to protect legitimate interests; reasonable in time and space; not an unreasonable restraint on employee; purpose served; situation of the parties; limits of the restraint; specialization of the business. [Absence of legitimate business interest impacts duration, which can be no more than one year.]</td>
<td>Secretaries (limited); Clerks (limited)</td>
<td>Yes, generally</td>
<td>Reformation</td>
<td>Yes</td>
</tr>
<tr>
<td>MT</td>
<td>Yes. Mont. Code Ann. §§ 28-703-05</td>
<td>Trade secrets; proprietary information that would provide an employee with an unfair advantage; goodwill; customer relationships.</td>
<td>Necessary to protect a legitimate business interest; reasonable in time or space; reasonable protection for employer; does not impose unreasonable burden on the employee or public.</td>
<td>-</td>
<td>No</td>
<td>Blue Pencil, likely</td>
<td>No</td>
</tr>
<tr>
<td>NE</td>
<td>Yes</td>
<td>Trade secrets; confidential information; goodwill.</td>
<td>Reasonably necessary to protect legitimate interests; not unduly harsh or oppressive to employee; not injurious to the public. Considerations include: inequality in bargaining power; risk of loss of customers; extent of participation in securing and retaining customers; good faith of employer; employee's job, training, health, education, and family needs; current employment conditions; need for employee to change his calling or residence; relation of restriction to legitimate interest being protected.</td>
<td>-</td>
<td>Yes, likely</td>
<td>Red Pencil</td>
<td>Undecided</td>
</tr>
<tr>
<td>NV</td>
<td>Yes. Nev. Rev. Stat. § 613.200</td>
<td>Trade secrets; goodwill.</td>
<td>Not greater than reasonably necessary to protect the business and goodwill of the employer; no undue hardship on employee. Time and space are considerations for reasonableness.</td>
<td>-</td>
<td>Yes</td>
<td>Reformation</td>
<td>Undecided</td>
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<td>NH</td>
<td>Yes. RSA 275:70</td>
<td>Trade secrets; confidential business information; goodwill; employee's special influence over the employer's customers.</td>
<td>Not greater than necessary to protect the employer's legitimate business interests; no undue or disproportionate hardship to employee; not injurious to public interest; new employees must be given a copy of the noncompete prior to acceptance of offer for employment.</td>
<td>-</td>
<td>Yes</td>
<td>Reformation</td>
<td>Undecided</td>
</tr>
<tr>
<td>NJ</td>
<td>Yes</td>
<td>Trade secrets; confidential business information; goodwill in existing customers; preventing employee from working with customer at lower cost than working through employer.</td>
<td>Protects a legitimate business interest; not undue burden on employee; not injurious to the public; not overbroad in time, space, and scope.</td>
<td>-</td>
<td>Yes</td>
<td>Reformation</td>
<td>Yes, but it's a factor to be considered.</td>
</tr>
<tr>
<td>NM</td>
<td>Yes [N. M. S. A. 1978, §§ 24-11-1-5 (creates health care practitioner exemption only)]</td>
<td>Maintaining workforce; limitation of competition (but not to stifle competition); customer relationships.</td>
<td>Reasonable as applied to the employer, employee, and public; not great hardship to employee in exchange for small benefits to employer.</td>
<td>-</td>
<td>Yes, likely</td>
<td>Undecided</td>
<td>Undecided</td>
</tr>
<tr>
<td>NY</td>
<td>Yes</td>
<td>Trade secrets; confidential information; goodwill; on-air persona of broadcasters; employee's unique or extraordinary services.</td>
<td>Reasonable in time and space, and no greater than is required for the protection of the legitimate interest of the employer; does not impose undue hardship on the employee; not injurious to the public.</td>
<td>-</td>
<td>Yes</td>
<td>Reformation</td>
<td>Yes, with exceptions.</td>
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## Employee Noncompete

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<td>NC</td>
<td>Yes. N.C. Gen. Stat. sec. 75-4; 21 N.C. Admin. Code § 29.0502(e)(5)</td>
<td>Trade secrets; confidential business information; goodwill.</td>
<td>In writing; part of an employment contract; reasonably necessary to protect legitimate business interest; reasonable in time and space; not against public policy.</td>
<td>Possible limits on use with locksmiths.</td>
<td>No</td>
<td>Blue Pencil</td>
<td>Yes, likely.</td>
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<td>ND</td>
<td>No. N.D. Cent. Code § 9-08-06</td>
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<td>OH</td>
<td>Yes</td>
<td>Trade secrets; confidential information; customer relationships; prevention of the use of proprietary customer information to solicit customers.</td>
<td>Not greater than necessary to protect the employer's legitimate business interests; no undue hardship to employee; not injurious to public interest. Considerations: absence or presence of limitations as to time and space; whether employee is sole contact with customer; employee's possession of trade secrets or confidential information; purpose of restriction (elimination of unfair competition vs. ordinary competition and whether seeks to stifle employee's inherent skill and experience); proportionality of benefit to employer as compared to the detriment to the employee; other means of support for employee; when employee's talent was developed; whether forbidden employment is merely incidental to the main employment.</td>
<td>-</td>
<td>Yes</td>
<td>Reformation</td>
<td>Yes</td>
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<td>OK</td>
<td>No. OK Stat. § 15-219A</td>
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<td>OR</td>
<td>Yes, Or. Rev. Stat. § 653.295</td>
<td>Trade secrets; confidential business or professional information; investment in certain on-air broadcasters; customer contacts and goodwill.</td>
<td>Noncompete provided at least two weeks before employment or with bona fide advancement; employee meets minimum compensation threshold; restricted in time or space; application of restriction should afford only a fair protection of the employer's interests; must not interfere with public interest. Currently, noncompetes may be no longer than two years, but starting 1/1/2016, noncompetes will be limited to 18 months. [Qualifying garden leave clauses are enforceable.]</td>
<td>-</td>
<td>No</td>
<td>Reformation</td>
<td>Undecided</td>
<td></td>
</tr>
<tr>
<td>PA</td>
<td>Yes</td>
<td>Trade secrets; confidential information; goodwill; investment in specialized training; unique or extraordinary skills.</td>
<td>Ancillary to employment relation or other transaction; reasonably necessary to protect the employer's legitimate interests; reasonable in time and space.</td>
<td>-</td>
<td>No</td>
<td>Reformation</td>
<td>Yes, but it's a factor to be considered</td>
<td></td>
</tr>
<tr>
<td>RI</td>
<td>Yes</td>
<td>Trade secrets; confidential information; customer lists; goodwill; special training or skills.</td>
<td>Reasonable in light of protectable interests.</td>
<td>-</td>
<td>Undecided, but likely</td>
<td>Blue Pencil, but may allow Reformation</td>
<td>Undecided</td>
<td></td>
</tr>
<tr>
<td>SC</td>
<td>Yes</td>
<td>Business and customer contacts; existing employees; existing payroll deduction accounts.</td>
<td>Necessary to protect legitimate business interest; reasonably limited in time and space; not unduly harsh and oppressive to employee's efforts to earn a living; reasonable from standpoint of public policy.</td>
<td>-</td>
<td>No</td>
<td>Red Pencil, likely. (SC S.Ct rejected blue pencil doctrine by name, but case involved reformation.)</td>
<td>Undecided</td>
<td></td>
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<tr>
<td>State</td>
<td>Permitted</td>
<td>Protectable / Legitimate Interests</td>
<td>Standards</td>
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<td>Continued Employment is Sufficient Consideration</td>
<td>Reformation Blue Pencil Red Pencil</td>
<td>Enforceable Against Discharged Employees</td>
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<td>SD</td>
<td>Yes</td>
<td>Trade secrets; protection from unfair competition; existing customers.</td>
<td>Restriction is in the same business or profession as that carried on by employer and does not exceed two years and in a specified geographic area; reasonableness in time, space, and scope is a factor only in certain circumstances.</td>
<td>-</td>
<td>Yes</td>
<td>Reformation, likely.</td>
<td>Yes, but it’s a factor to be considered.</td>
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<tr>
<td>TN</td>
<td>Yes</td>
<td>Trade secrets; confidential information; retention of existing customers; investment in training or enhancing the employee's skill and experience.</td>
<td>Restriction must be reasonable in time and space and necessary to protect legitimate interest; public interest no adversely affected; no undue hardship to the employee.</td>
<td>Physicians (in certain circumstances).</td>
<td>Yes (if employment continued for appreciably long period)</td>
<td>Reformation</td>
<td>Yes, but it’s a factor to be considered.</td>
<td></td>
</tr>
<tr>
<td>TX</td>
<td>Yes</td>
<td>Trade secrets; confidential or proprietary information; goodwill; special training or knowledge acquired during employment.</td>
<td>Ancillary to an otherwise enforceable agreement; reasonable in time, space, and scope; does not impose a greater restraint than necessary to protect legitimate business interest. *In December 2011, the Texas Supreme Court withdrew its June 2011 landmark decision, but still eliminated the requirement that the consideration given by the employer in exchange for the noncompete must give rise to the interest protected by the noncompete, and held that the consideration for the noncompete agreement must be reasonably related to the company's interest sought to be protected.</td>
<td>Physicians (in certain circumstances).</td>
<td>No</td>
<td>Reformation (mandatory)</td>
<td>Yes</td>
<td></td>
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<tr>
<td>State</td>
<td>Permitted</td>
<td>Protectable / Legitimate Interests</td>
<td>Standards</td>
<td>Exemptions</td>
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<tr>
<td>UT</td>
<td>Yes</td>
<td>Trade secrets; goodwill; extraordinary investment in training or education.</td>
<td>No bad faith in the negotiations; necessary to protect legitimate business interest; reasonable in time, space, and scope; consideration of hardship.</td>
<td>-</td>
<td>Yes</td>
<td>Undecided</td>
<td>Yes</td>
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</tr>
<tr>
<td>VT</td>
<td>Yes</td>
<td>Proprietary confidential information; goodwill; relationships with customers; investments in special training.</td>
<td>Necessary to protect legitimate business interest; not unnecessarily restrictive to employee; limited in time, space, and/or industry; not contrary to public policy.</td>
<td>Beauticians and Cosmetologists (by their school)</td>
<td>Yes</td>
<td>No, but possibly if contract provides.</td>
<td>Undecided.</td>
<td></td>
</tr>
<tr>
<td>VA</td>
<td>Yes</td>
<td>Trade secrets; confidential information; knowledge of methods of operation; protection from detrimental competition; customer contacts.</td>
<td>Narrowly drawn to protect the employer's legitimate business interest (reasonable in time, space, and scope); not unduly burdensome on the employee's ability to earn a living; not against public policy.</td>
<td>-</td>
<td>Yes</td>
<td>Red Pencil, but severable portions can be enforced if remaining restrictions are otherwise enforceable.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>Yes</td>
<td>Customer information and contacts; goodwill.</td>
<td>Restriction is necessary to protect employer's business or goodwill; restriction is no greater than reasonably necessary to secure employer's business or goodwill; reasonable in time and space; injury to public does not outweigh benefit to employer.</td>
<td>Broadcasters (under certain circumstances)</td>
<td>No</td>
<td>Reformation</td>
<td>Yes, likely.</td>
<td></td>
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</tbody>
</table>
### Employee Noncompete
#### A State by State Survey

<table>
<thead>
<tr>
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<th>Standards</th>
<th>Exemptions</th>
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<th>Reformation</th>
<th>Enforceable Against Discharged Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>WV</td>
<td>Yes</td>
<td>Trade secrets; confidential or unique information; customer lists; direct investment in employee's skills; goodwill.</td>
<td>Ancillary to a lawful contract; not greater than reasonably necessary to protect legitimate business interest; reasonable in time and space; no undue hardship on employee; not injurious to public.</td>
<td>-</td>
<td>No</td>
<td>Reformation</td>
<td>Undecided</td>
</tr>
<tr>
<td>WI</td>
<td>Yes. Wis. Stat. Ann. § 103.465</td>
<td>Trade secrets; confidential business information; customer relationships.</td>
<td>Necessary to protect legitimate business interest; reasonable in time and space; not harsh or oppressive to the employee; not contrary to public policy.</td>
<td>-</td>
<td>Yes</td>
<td>Red pencil. But, courts (and legislature) may be moving toward a more tolerant approach.</td>
<td>Undecided</td>
</tr>
<tr>
<td>WY</td>
<td>Yes</td>
<td>Trade secrets; confidential information; special influence of employee over customers to the extent gained during employment.</td>
<td>Restraint must be ancillary to otherwise valid agreement and fair; no greater than necessary to protect legitimate business interests; reasonable in time and space; no undue hardship on employee; employer's need outweighs harm to employee and public; not injurious to public.</td>
<td>-</td>
<td>No</td>
<td>Reformation</td>
<td>Yes, likely.</td>
</tr>
</tbody>
</table>
**Employee Noncompetes**  
**A State by State Survey**

<table>
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<tr>
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<tr>
<td></td>
<td></td>
<td>Customer lists are frequently considered trade secrets or confidential information. Some states, however, separately identify them as protectable interests.</td>
<td>Consideration for the noncompete is always a requirement. That requirement is not typically an issue when the agreement is entered into at the inception of an employment relationship.</td>
<td>Attorneys and certain persons in the financial services industry are subject to industry regulations not addressed in this chart.</td>
<td>The continued employment issue addresses only at-will employment relationships.</td>
<td>Reformation is also sometimes called &quot;Judicial Modification,&quot; the &quot;Rule of Reasonableness,&quot; the &quot;Reasonable Alteration Approach,&quot; or the &quot;Partial-Enforcement&quot; rule. Red Pencil is also sometimes called the &quot;All or Nothing&quot; rule.</td>
<td>Assumes no breach or bad faith by the employer.</td>
</tr>
</tbody>
</table>

Originally drafted in 2010, this chart is updated periodically and is current as of the date indicated. Please contact Russell Beck (rbeck@beckreed.com | 617-500-8670) if you would like to receive updates.
FOR DISCUSSION PURPOSES ONLY

BAND MEMBER AGREEMENTS:
Questions to be asked. Topics to be considered.

The following is an outline of the issues that a band should consider regarding the terms that would govern the business relationship among its members, a relationship that today is normally structured as a partnership or limited liability company (“LLC”).

1. Partnership vs. LLC:

   In general, bands no longer use corporations to conduct business because partnerships and LLCs offer more flexibility in allocating income among the band members. An LLC is generally favored over a partnership because its members are not personally liable for the acts of another partner. In all cases, the band should consult with a tax advisor before deciding whether to set up a partnership, an LLC, a corporation or some other entity.

2. Ownership: Sharing in Profits:

   (a) Typically an LLC is owned equally by all of the members of the band. This does not always have to be the case, as for example, newer members may receive a smaller ownership interest. In addition, there is no requirement that everyone performing in the band have an ownership interest in the LLC. For example, someone playing in the band could be an employee or an independent contractor, sometimes for a period of time before receiving an ownership interest.

   (b) The members of the LLC usually share in its profits in proportion to each member’s ownership interest. However, this too does not always need to be the case as members of an LLC may receive different shares of income from different sources. Most often this is the case with respect to publishing income as will be discussed below.

3. Scope of the LLC:

   (a) The band’s activities are typically run through the LLC: recording records, performing live, publishing, merchandising, corporate sponsorships, promotion and publicity as well as performing for videos, concert videos, motion pictures, television and other audiovisual works. There are exceptions, most notably to protect non-touring income from claims arising from touring, a separate touring entity is formed. In addition, music publishing can become complicated if the members are writing songs outside of the band.

   (b) The LLC becomes the contracting party for all agreements entered into by the band, collects all monies payable to the band, and pays all of the band’s bills. If the band has already entered into agreements before the LLC is formed, those agreements are assigned by the band to the LLC.

   (c) A perplexing issue for which there is no easy answer: whether a work of authorship (e.g., a song or a recording) should (i) be deemed a work for hire in the band agreement or (ii) be owned by the individual members and then assigned by them to the LLC. In the US, an assignment of a copyright that is not a work for hire (i.e. initially owned by an individual) may be terminated 35 years after the assignment. In contrast, a copyright that is a work made for hire may be assigned in perpetuity and the grant cannot be terminated. Therefore, if the band agreement states that a song or recording is a work made for hire, then neither the individual members nor their heirs can terminate that assignment – good news for
the band that sticks together for more than 35 years and intends to keep its copyrights. Problems arise, however, if the band had assigned its copyright to a third party (e.g., a third party music publisher). The band members may want to terminate that grant of the copyright; however, if the band agreement states that the copyrighted material is a work made for hire, then it is highly unlikely that the assignment can be terminated.

4. Name:

(a) Usually the name of the LLC is the same as the name of the band. Again, this does not need to be the case and the LLC, like any business entity, may adopt additional fictitious business names where needed. For example, the band’s publishing company typically has a different name than the name of the LLC.

(b) The name(s) used by the LLC and/or the band are usually owned by the LLC rather than by its individual members. It does happen, however, that the name is owned by one or more of the individual members and then licensed to the LLC.

(c) Key issues: (i) who owns the band name if certain members leave the band? In some cases, a particular member is so central to the band that it only makes sense for that person to take the name upon his departure from the band; (ii) Who owns the name if the band disbands? Often the band agreement will provide that the name may be used only if certain individuals reform the band or if a majority of the people who were members when the band disbanded reform the group.

5. Management:

(a) Band decisions can be made by a majority vote, a unanimous vote or by any variation thereof. For example, in order for there to a “majority,” certain specific individuals would have to be voting in the “majority” (i.e., all members may not have equal voting rights). Band decisions may also be made by one or more of the members selected to be the “managing members.” In general, some decisions require a majority vote and other decisions require a unanimous vote.

(b) To avoid most deadlocks, a band would want to limit the number of issues that require a unanimous vote. Typical issues that may require a unanimous vote: (i) Expelling a member from the LLC; (ii) Admitting a new member; and (iii) Amending the operating agreement which governs the relationship of the members.

(c) The following are the types of decisions that typically are made by the managing member(s), or, if none exists, by a majority vote: (i) general business decisions such as how to invest the LLC’s monies, how much to draw as salaries, when and how to tour, the designation of any managing members, and the selection of the band’s business manager, attorney, agent, auditor and manager; (ii) creative decisions such as what songs to record, put on an album and play on tour, as well as the choice of a producer, album artwork and merchandise, to name but a few.

6. Terminated Members: The term “Terminated Member” applies to someone who leaves the band, whether due to his expulsion, his own decision to leave, or his death or disability.

(a) Expelled Member: A difficult issue is how a member can be expelled from the band. Most bands require a unanimous vote because this decision is so important. In some
cases, the operating agreement will provide for a warning to put the member on notice that he is going to be expelled if a certain behavior doesn’t change. This warning notice may provide for a probationary period during which monies are withheld.

(b) Leaving Member: It is difficult, if not futile, to try to force a member to continue to perform with the band if he no longer wants to do so. So while each member should be free to leave, the band operating agreement should provide that the leaving member will be responsible for any liabilities or expenses the band incurs as a result of his departure. For example, if a member leaves prior to a scheduled tour, he should be responsible for the band’s out-of-pocket costs if the tour has to be cancelled and for claims against the band caused by the cancellation. Expecting the leaving member to cover the band’s lost “profits” due to the tour’s cancellation, however, is going too far.

(c) Continuing Payments to a Terminated Member (or to his estate if he is deceased):

(i) A Terminated Member generally continues to share in all income attributable to activities of the band during the period when he was a member (e.g. his share of record royalties and publishing income from tracks recorded and songs written while he was in the group). This income would be subject to all management commissions, legal fees and other expenses of the band applicable to that income, as well as often an administration fee to be retained by the LLC (e.g., 10%).

(ii) A frequent exception is if the Terminated Member does not tour in support of a particular album. In that case, the remaining members may not want to give the leaving member his full share of the royalties from that album, a position further reinforced if the remaining members need to hire a tour replacement. In this situation the operating agreement may provide that the leaving member be paid one-half (or some other fraction) of the royalties that he would otherwise receive for that album.

(iii) The band often treats more favorably a member who has left or is expelled from the band due to his disability (through no fault of his own) than they would treat a leaving or expelled member.

(d) Buy-Out Provisions: In almost all cases, the LLC operating agreement would have the option, if not the obligation, to buy-out a Terminated Member’s interest in the LLC. In general, the parties negotiate a buy-out price for all of the band’s tangible assets, (e.g., equipment, cases, etc.), but if the parties are unable to agree to a price, the operating agreement should provide for an independent appraisal.

(e) LLC’s usually continue after the death, expulsion or withdrawal of a member. However, operating agreements often provide that the LLC would not continue unless a certain minimum number of members remain, such as at least three members in a six member band.

7. Publishing: Songwriting and music publishing raise a host of unique issues.

(a) Publishing income is made up of two parts: the songwriters’ share and the publisher’s share, which are equal amounts. In some bands, the actual writers of the songs get all of the publishing income from those songs. In other bands, a portion of the publisher’s share goes to the non-writers while the songwriters share remains with the actual writers. And in other
bands, a portion of both the songwriters’ royalties and the publisher’s share goes to the non-writer. Determining which route to follow is often the biggest challenge facing a new band.

(b) Administration & Ownership:

(i) Typically publishing rights are administered by the LLC. This may be the case even if, as set forth above, the copyrights are actually owned by the individual members rather than by the LLC. Note that if band enters into a publishing agreement with a third party music publisher, administration rights are almost always assigned to the publisher.

(ii) More tough questions: what happens to the administration rights and ownership in the songs if the band breaks up or if a member dies? Philosophically it would be consistent that the last members of the band would continue to own and, by a majority vote, administer the songs. However, should a deceased member’s estate have administration rights and ownership interests? And what if all of the members die?

(c) A more immediate question: should the band have the first option to record a song? In other words, if one of the members writes a song, must he give the band the first opportunity to record it or can he present the song to another recording artist to record first or can he decide to record the song for his solo album?

8. Like all legal documents the band member agreement should be reviewed by a music attorney before it is signed. However, the band can save a substantial amount of money if it addresses the above issues before consulting with an attorney.

Written by:
Mario F. Gonzalez, Esq.
Andrew G. Tavel, Esq.
Sample Band Partnership Agreement Form

This Band Partnership Agreement (the “Agreement”) is made and entered into as of [Date], with effect as of [Date] (the “Effective Date”), by and between the current members of [Name of Band]: [Band Member 1], [Band Member 2], [Band Member 3] and [Band Member 4] (each hereinafter individually referred to as a “Partner” and collectively as the “Partners”) and is made with reference to the following facts:

WHEREAS, since on or about the Effective Date, the Partners have been conducting business as a partnership under the name of [Name of Band], under which each of the Partners has been sharing in the profits and losses of the business;

AND WHEREAS, the Partners desire to continue conducting their business as a partnership and to commit their agreement to writing;

NOW THEREFORE, in consideration of the mutual promises herein contained, it is agreed and understood as follows:

1. **THE PARTNERSHIP**: The Partners hereby enter into this Agreement to govern their affairs as a general partnership (the “Partnership”) under the laws of the [Jurisdiction]. The Partnership shall operate and conduct business under the name of [Name of Band]. The principal office and place of business of the Partnership shall be such place as the Partners may designate from time to time.

2. **TERM**: The Partnership shall commence on the Effective Date, and shall continue thereafter until dissolved in any manner provided herein.

3. **PURPOSE**: The purpose of the Partnership is for the Partners to engage in the entertainment, music, recording and publishing industries (the “entertainment field”) as the musical group (the “Band”) known as [Name of Band] (the “Band Name”), including, without limitation, writing musical compositions, recording records, performing personal appearances, exploiting and merchandising the names (both legal and professional), likeness, biographical materials of each Partner, either individually or collectively as members of the Band, and the Band Name (“Merchandising Rights”), and all other present and future activities of the Partners and the Partnership in the entertainment field during the term of this Agreement.

4. **CONTRIBUTIONS**:

a) Services: In order to fulfill the Partnership purposes, each Partner shall contribute entertainment field services to the Partnership. Such contributions shall include, but not be limited to, services:

i. as a writer of musical compositions and lyrics;

ii. as a recording artist with respect to sound recordings;
iii. as a musical performer in all media and on the live stage; and

iv. related to Merchandising Rights with respect to activities as a member of the Band.

b) **Other Activities:** Each Partner is permitted to engage in one or more businesses, including other musical entertainment efforts, but only to the extent that such activities do not directly interfere with the business and obligations of the Partnership. Neither the Partnership nor any other Partner shall have any right to any income or profit derived by a Partner from any non-Partnership business activity permitted under this paragraph.

c) **Instruments, Equipment, Etc.:**

i. All of the instruments, musical, sound, video and/or other equipment paid for and/or provided by an individual Partner and used in connection with the activities of the Partnership shall belong to such Partner according to his individual ownership therein. However, during the term of the Partnership, during which such Partner remains a Partner, the Partnership shall be entitled to the full use thereof, free of expense, provided that the Partnership shall be responsible for insurance, repairs and maintenance, and providing road cases.

ii. All of the instruments and musical, sound, video and/or other equipment paid for by the Partnership and acquired in connection with the Partnership activities shall be owned by the Partnership and deemed additional capital of the Partnership.

d) **Additional Capital:** Whenever it is determined by the unanimous approval of the Partners that the capital of the Partnership is insufficient for the conduct of the Partnership business, the Partners shall make additional equal capital contributions.

5. **BAND NAME:** Each Partner acknowledges and agrees that the Band Name is the exclusive property of the Partnership and not owned by any individual member of the Band and, unless otherwise authorized in writing, Leaving Members (defined below) shall have no interest whatsoever in the Band Name, apart from the limited right to be known as an ex-member of the Band. In the event of a dissolution of the Partnership (described in greater detail in Section 12 below), no individual member shall have a right to use the Band Name apart from the limited right to be known as an ex-member of the Band.

6. **DIVISION OF PROFITS AND LOSSES:**

a) **Record Sales Royalties:** Twenty percent (20%) of all net royalties earned and received for each record sold which contains Partnership sound recordings shall be deposited into the Partnership Bank Account (defined below), and the remaining eighty percent (80%) of the net royalties shall be shared equally amongst each of the Partners who performed on such record; provided, however, that the Partners may agree to change the percentages in this Section 6(a) from time to time depending on the Partnership’s cash flow.
b) **Mechanical Royalties:** Ten percent (10%) of all net mechanical royalties earned and received for each Partnership musical composition shall be deposited into the Partnership Bank Account, and the remaining ninety percent (90%) of the net mechanical royalties shall be shared equally amongst each of the Partners who performed on the record containing such musical composition; provided, however, that the Partners may agree to change the percentages in this Section 6(b) from time to time depending on the Partnership’s cash flow.

c) **Publishing Royalties:** Twenty percent (20%) of all other net music publishing royalties (excluding publishing royalties from SOCAN, BMI, ASCAP or any other organization that pays the writer directly) earned and received for each Partnership musical composition shall be deposited into the Partnership Bank Account (defined below), and the remaining eighty percent (80%) shall be shared equally amongst each of the Partners who wrote or co-wrote such musical composition; provided, however, that the Partners may agree to change the percentages in this Section 6(c) from time to time depending on the Partnership’s cash flow.

d) **Live Revenues:** The net profits from each of the Band’s live performances shall be shared equally amongst each of the Partners who performed in such live performance.

e) **Division and Distribution of Other Revenues:** Unless otherwise provided for herein, or otherwise agreed to in writing by the Partners, the Partners shall share equally in all of the net profits, losses, rights and obligations of the Partnership. Net profits shall be distributed in cash to the Partners from time to time as expressly authorized by the unanimous consent of the Partners.

f) For the purpose of this Agreement, the word “net” used prior to any word(s) representing a form of income, including but not limited to commissions, advances, royalties, bonuses, payments (other than repayment of loans), dividends, stock bonuses, interests or monies of any kind or nature paid to the Partnership or to any Partner, as a result of the Partnership’s or any Partner’s activities in the entertainment field (individually and collectively, the “Partnership Earnings”) shall be used to indicate the amount of such Partnership Earnings after deducting the sum total of all reasonable salaries, management and agency fees, rent, promotional costs, travel costs, office expenditures, telephone costs, accounting and legal fees, entertainment costs and any and all legitimate Partnership expenses incurred by the Partnership while conducting Partnership business.

7. **BANK ACCOUNT:**

a) The Partnership bank account (the “Partnership Bank Account”) as of the date of this Agreement is an account at [Financial Institution] which is currently in the name of [Band Member 1]. [Band Member 2] also has signing authority on such account. [Band Member 1] and/or [Band Member 2] shall have the right to sign any cheques drawn on the Partnership Bank Account, endorse cheques for deposit or make any other withdrawals from or deposits to the Partnership Bank Account.

b) The Partners may agree at any time to change the Partnership Bank Account to another account which may be in the name of the Partnership or the name(s) of any
Partner or Partners. At that time the Partnership will also decide which Partners shall have signing authority with respect to such new account.

8. **BOOKS OF ACCOUNT AND RECORDS**: The books of the Partnership and all other documents relating to the business of the Partnership shall be maintained at its principal place of business and shall be available for inspection at reasonable times by any Partner (or any designated representative of any Partner). The fiscal year of the Partnership shall end on December 31st. Financial statements shall be provided to the Partners, upon reasonable request, within four (4) months of such request. In any event, financial statements shall be provided no less frequently than once annually. Other revenue and cash flow statements may also be provided to the Partners from time to time as available.

9. **MANAGEMENT**:

   a) Each Partner shall have the right to participate equally in the control, management and direction of the business of the Partnership. Each Partner shall have one (1) vote on all matters to be decided by the Partnership (unless such matter is obviously an insignificant or day-to-day matter), and a unanimous vote of the Partners shall be required to adopt any Partnership decision. Such decisions include, but are not limited to: making any amendment to this Agreement; entering into new agreements binding the Partnership; expelling a Partner (except for the Partner to be expelled); admission of a new Partner; incurring any obligation such as borrowing or lending money; selling, leasing or transferring any Partnership property; making expenditures on behalf of the Partnership; and any other material Partnership decision.

   b) All agreements of the Partnership must be signed by all Partners.

   c) Meetings of the Partnership may be called by any member of the Partnership upon reasonable notice.

10. **NEW PARTNERS**:

   a) A new partner (a “**New Partner**”) may be admitted to the Partnership but only with the unanimous written consent of the Partners. Such New Partner shall be admitted only if he/she executes an agreement with the Partnership under the terms of which such New Partner agrees to be bound by all of the provisions of this Agreement, as amended, as if a signatory hereto.

   b) A New Partner shall not have any rights to the Partnership property or assets existing at the time of admission to the Partnership, including, but not limited to, musical compositions, sound recordings, records or other materials created prior to the New Partner’s admission (collectively, the “**Existing Property**”), or in any proceeds, revenues or royalties derived from the Existing Property.

   c) A New Partner’s capital contribution, if any, and share of the Partnership’s net profits and losses shall be agreed upon in the written consent of all of the Partners approving the admission of the New Partner.
11. LEAVING MEMBERS:

a) A Partner may leave the Partnership (a “Leaving Member”) voluntarily (by resignation) or involuntarily (by reason of death, disability or being expelled). A Partner who resigns shall give thirty (30) days prior written notice to each of the other Partners. Likewise, the Partnership shall provide thirty (30) days prior written notice to any Partner that it expels. The Partnership shall have, at its option, the right to immediately exclude any expelled Partner from live performances during this 30-day notice period.

b) A Leaving Member shall be entitled to receive:

i. his pro-rata share of ongoing net record sales royalties received by the Partnership for each record sold embodying such Leaving Member’s performance(s), after deducting twenty percent (20%) of such net royalties, and which pro-rata share shall be determined based on the number of songs that the Leaving Member actually performed on the given record; the Leaving Member shall receive an accounting of such royalties accompanying each payment, but in any event shall receive such accountings no less frequently than once annually;

ii. his equal share of ongoing net mechanical royalties received by the Partnership for each musical composition that such Leaving Member wrote or co-wrote, after deducting ten percent (10%) of such net mechanical royalties; the Leaving Member shall receive an accounting of such royalties accompanying each payment, but in any event shall receive such accountings no less frequently than once annually;

iii. his equal share of other ongoing net music publishing royalties received by the Partnership for each musical composition that such Leaving Member wrote or co-wrote, after deducting twenty percent (20%) of such royalties; the Leaving Member shall receive an accounting of such royalties accompanying each payment, but in any event shall receive such accountings no less frequently than once annually;

iv. his equal share of the balance of the Partnership Bank Account on the date of his departure, after the deduction of current debts; the Leaving Member shall receive an accounting of the Partnership Bank Account balance and current debts as of the date of his departure;

v. his equal share of net live revenue as and when paid to the continuing Partners from performances and sales of merchandise for six (6) months following the date of such Leaving Member’s departure;

vi. his equal share of any other net profits earned by the Partnership prior to the date of such Leaving Member’s departure, provided that, to the extent such net profits are received by the Partnership after the date of such Leaving Member’s departure, the Leaving Member shall only receive an equal share of such net profits that are received within one (1) year following the date of his departure; and
vii. an additional amount of [Lump Sum Payment] plus [Per Year Payment], pro-rated, for every year that such Leaving Member was a member of the Band since [Insert Date], payable in equal monthly installments over a period of one (1) year.

c) Except for the amounts listed in Section 11(b) above, the Leaving Member shall not be entitled to any of the earnings of the Partnership received after the date of such Leaving Member’s departure, and all assets not specifically listed above shall remain one hundred percent (100%) with the continuing Partners.

d) Upon the date of departure, a Leaving Member shall assign and release to the continuing Partners all of the share and interest of the Leaving Member in the business of the Partnership and the goodwill thereof. The Leaving Member shall appoint the continuing Partners or any one of them to be his attorney(s) to do and perform all acts and things on his behalf as required in relation to the business of the Partnership.

e) Subject to the continuing Partners and the Partnership fulfilling their obligations under this Section 11, the Leaving Member shall release and discharge the continuing Partners, the Partnership, and their respective heirs, administrators, successors, and assigns from all manner of action, cause of action, suits, dues, sums of money, claims, demands or damages whatsoever, at law or in equity, statutory or otherwise, which the Leaving Member has had or may have in the future, from or in respect of or arising out of the Leaving Member having been a Partner in the Partnership and the Leaving Member having disassociated from the Partnership.

f) Subject to the Leaving Member fulfilling his obligations under this Section 11, the continuing Partners and the Partnership hereby release and discharge the Leaving Member and his heirs, administrators, successors, and assigns from all manner of action, cause of action, suits, dues, sums of money, claims, demands or damages whatsoever, at law or in equity, statutory or otherwise, which the continuing Partners and the Partnership have had or may have in the future, from or in respect of or arising out of the continuing Partners having been Partners in Partnership with the Leaving Member.

g) A Leaving Member shall not represent himself as being a member of the Partnership or the Band, but may refer to himself as a former member of the Band.

h) After the date of departure of a Leaving Member, the continuing Partners shall exercise their best efforts to cease using materials bearing the image of the Leaving Member, other than images as contained in existing records and videos.

12. **DISSOLUTION:**

a) This Agreement shall terminate, and the Partnership shall be dissolved, upon the first to occur of the following events:

i. the written agreement of all of the Partners to dissolve the Partnership; or

ii. by operation of law, except as otherwise provided herein.
The addition of a New Partner (as provided in Section 10) or the departure of a Partner (as provided in Section 11) shall not terminate the Agreement, and it shall remain in full force and effect among the remaining Partners.

b) Upon termination of the Partnership, the Partnership’s receivables shall be collected and its assets liquidated forthwith. The proceeds from the liquidation of the Partnership assets and collection of the Partnership receivables shall be applied in the following order:

i. first, to the expense of liquidation and debts of the Partnership other than debts owing to the Partners;

ii. next, to the debts owing to any of the Partners, including debts arising from loans made to or for the benefit of the Partnership, except that if the amount of such proceeds is insufficient to pay such debts in full, payment shall be made on a pro rata basis;

iii. next, in payment to each Partner of any financial capital investment made by him in the Partnership belonging to him, except that if the amount of such proceeds is insufficient to pay such financial capital investment in full, payment shall be made on a pro rata basis;

iv. next, in payment to each Partner on a pro rata basis of any of such proceeds remaining.

c) The Partners shall execute all such instruments for facilitating the collection of the Partnership receivables and liquidation of the Partnership assets, and for the mutual indemnity or release of the Partners as may be appropriate.

d) Any property, including but not limited to, all rights and interest in contract, agreements, options, choses in actions and Merchandising Rights, owned or controlled by the Partnership at the time of dissolution from which income is being derived shall not be sold but shall be retained. Any such property owned by the Partnership and the continuing earnings received as a result of the exploitation thereof shall be valued by an accountant selected by the Partners who is experienced in the entertainment field. Such property shall then be distributed as nearly as possible, in equal shares among the Partners.

13. Warranties, Liability and Indemnity:

a) Warranties and Representations: Each Partner warrants and represents that the Partner:

i. is not under any disability, restriction or prohibition, either contractual or otherwise, with respect to Partner’s right to execute this Agreement or to fully perform its terms and conditions;

ii. has not committed, and will refrain from committing, any acts or omissions that are to the material detriment of the Partnership;

iii. will not sell or transfer any interest in the Partnership without the prior written consent of the other Partners.
b) **Liability**: The liability of the Partnership or the Partners arising out of any activities of the Partnership shall to the extent possible be covered by appropriate policies of insurance. In the event that any liability shall not be adequately covered by insurance, the amount of liability not so insured against shall first be satisfied out of the assets of the Partnership.

c) **Indemnity**: Each Partner hereby indemnifies the other Partners and holds such other Partners harmless against and from all claims, demands, actions and rights of action which shall or may arise by virtue of anything done or admitted to be done by such Partner (through or by agents, employees or other representatives) outside the scope of or in breach of the terms of this Agreement. Each Partner shall promptly notify the other Partners if such Partner knows the existence of a claim, demand, action or right of action.

14. **MISCELLANEOUS**:  
a) **Entire Agreement; Amendment**: This Agreement constitutes the entire agreement between the Partners relating to the subject matter hereof; it supersedes any previous agreements and discussions between the Partners. This Agreement may only be amended by a written document signed by each of the Partners.

b) **Severability**: The invalidity or unenforceability of any particular provision of this Agreement will not affect or limit the validity or enforceability of the remaining provisions.

c) **Waiver**: No waiver of satisfaction of a condition or non-performance of an obligation under this Agreement is effective unless it is in writing and signed by the party granting the waiver. No waiver under this Section affects the exercise of any other rights under this Agreement.

d) **Mediation; Arbitration**: If any dispute arises between the Partners with respect to this Agreement or its interpretation, such dispute shall be referred by any party hereto to mediation. Should the parties be unable to resolve a dispute by mediation, then any party to this Agreement may refer such matter for binding arbitration to be carried out in accordance with the [Arbitration Legislation of Jurisdiction]. The mediator, and the arbitrator (if necessary) shall be a person acceptable to all parties to this Agreement, failing which the mediator and arbitrator (if necessary) shall be appointed by a judge of the [Court of Jurisdiction]. The decision of such arbitrator shall be final and binding upon all of the parties hereto.

e) **Successors and Assigns**: Subject to the restrictions on assignments set forth in this Agreement, the provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Partnership.

f) **Assignment**: No Partner shall sell, assign or transfer all or any portion of his financial or other interest in the Partnership or right to receive a share of Partnership assets, profits or other distributions, other than to a corporation owned or controlled by such Partner, without the prior written consent of all of the other Partners and any such purported sale, assignment or transfer in contravention of the foregoing shall be null and void. The Partners acknowledge that a part of the capital contribution of each
Partner is the unique personal services required to be rendered on the exclusive account of the Partnership by each Partner, for which no presently adequate substitute exists; and that the other Partners are the sole and exclusive judges of the adequacy of any future substitution.

**g) Notices:** All accountings and notices required under this Agreement shall be given in writing by personal delivery or mail at the addresses of the Partners set forth below (or at any other addresses designated by the Partners).

**h) Governing Law:** This Agreement shall be deemed to have been made in the [Jurisdiction] and its validity, construction, performance and breach shall be governed by the laws of [Country of Jurisdiction]. The parties irrevocably attorn to the jurisdiction of the courts of [Jurisdiction], which will have non-exclusive jurisdiction over any matter arising out of this Agreement.

**i) Independent Counsel:** Each of the parties hereto warrant and represent that in executing this Agreement (i) they have relied solely upon their own judgment, belief and knowledge and the advice and recommendations of their own independently selected and retained counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing this Agreement by any representations or statements with respect to any matters made by any party or representative of any party; or (ii) they have intentionally refrained from doing so, have fully read and understand the terms of this Agreement, and have knowingly and voluntarily waived the right to independent counsel.

**j) Counterparts:** This Agreement may be executed in any number of counterparts and by facsimile signature, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

[The remainder of this page has been left intentionally blank]
This Agreement has been executed by the Partners, who agree that they have read and understand the terms of this Agreement.

DATED: _____________________________

Witness Name: ________________________
SIN#:
Address:

Witness Name: ________________________
SIN#:
Address:

Witness Name: ________________________
SIN#:
Address:

Witness Name: ________________________
SIN#:
Address:
In entering discussions for [describe project here] (the “Project”) with [Owner’s name] (“Owner”) with an address at [Owner’s address], Design Group, P.C., including its subsidiaries, affiliates, consultants or other representatives (“The Group”), with an address at 123 Milky Way, New York, NY 10003, agrees to the following terms:

1. During the course of discussions between Owner and Design Group, Owner may disclose confidential and proprietary information (“Confidential Information”) to Design Group. Design Group agrees that any discussions prior to the execution of this Agreement shall be subject to the terms of the Agreement.

2. Confidential Information includes, but is not limited to, trade secrets, technology, knowledge, designs, concepts, ideas, information, formulas, patterns compilations, programs, devices, methods, any study, plan, report or data pertaining to Owner, marketing plans and strategies, customers, and other business, financial and accounting information of a confidential and proprietary nature.

3. No title or license to the Confidential Information is conveyed by its disclosure. Confidential Information may not be appropriated, drawn from, or otherwise used by Design Group in any manner whatsoever, other than for completion of the Project.

4. Confidential Information shall not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Design Group; (ii) was lawfully in Design Group’s possession free of any obligation of confidence at or subsequent to the time it was communicated to Design Group; or (iii) was developed by Design Group independently of and without use of any Confidential Information of Owner. Design Group will treat all Confidential Information of Owner in strict secrecy and confidence and will not disclose it to any person or firm without the prior written consent of Owner, except to the extent required by applicable law or regulation or court order. Upon Owner’s request, Design Group shall return all copies of the materials or destroy the materials as directed.

5. Nothing in this Agreement shall be construed as creating any obligation for or an expectation on the part of Owner to enter into a business relationship or consummate any transaction with Design Group, or an obligation to refrain from entering into a business relationship or consummating any transaction with any third party. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership or employment relationship between the parties.

6. This Agreement shall be effective for a term of three (3) years.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its conflict of laws principles.

Agreed to and Accepted:

Design Group

By: __________________________

Name: _________________________

Title: __________________________

Date: __________________________

FOR DISCUSSION PURPOSES ONLY
SAMPLE CONFIDENTIALITY AGREEMENT FORM
SAMPLE EXCLUSIVE TALENT MANAGEMENT AGREEMENT WITH CO-PUBLISHING
PROVISION FORM

THIS EXCLUSIVE TALENT MANAGEMENT AGREEMENT (the “Agreement”), made and effective
as of this ___ day of ___________, 201___ (the “Effective Date”), by and between ________________,
with principal place of address at ________________________________ (“Manager”), and
_____________ p/k/a “_________________” with principal place of business at
______________________________ (“Talent”), will constitute a complete
and binding agreement between Talent and Manager.

WHEREAS, Talent is engaged in the entertainment profession and is desirous of engaging the services of
Manager to act as Talent’s personal advisor and counselor and to attend to certain business details in
connection with the development and furtherance of Talent’s professional career in the entertainment
industry;

WHEREAS, Manager, by reason of Manager’s contacts, experience and background, is qualified to
render such advice, guidance, counsel and direction to Talent; and

WHEREAS, Manager seeks to become associated with Talent and act as Manager for Talent upon the
terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, and
for other valuable consideration, it is agreed as follows:

1. **Scope of Manager’s Activities:**

   (a) Manager shall be Talent's exclusive personal manager throughout the Territory (as defined, below)
   and shall confer with, counsel, guide, advise and assist Talent in matters pertaining to Talent's career in
   the entertainment industry, including, without limitation, in connection with music production, music
   recording, music publishing, film, television, fashion, radio, publication, modeling, literary and
   commercial contracts, recording and other commercial contracts, product endorsements, sponsorships,
   personal appearances, including without limitation on any contracts relating to the merchandising and
   licensing of Talent's approved name[s] and likeness for commercial endorsements, merchandising and/or
   promotional purposes (collectively, the "Covered Activities"). Manager may consult with and retain
   competent counsel, accountants and advisors in connection with the negotiation and structure of any such
   contracts. Selection and retention of additional counsel, accountants and advisors retained on Talent’s
   behalf shall be mutually agreed upon in writing prior to the retention of same and such prior approval
   shall not be unreasonably withheld by either party. Talent shall be able to take into consideration factors,
   including, but not limited to, the cost of retaining such additional counsel, accountants and advisors in
determining whether or not approve retention of the same. Notwithstanding the foregoing, it is
understood by Talent that the cost of retaining such additional counsel, accountants and advisors shall be
part of the overall gross expenses to be paid by Talent.

   (b) Manager agrees, in connection with Covered Activities, to advise and counsel Talent in the selection
   of artistic, stylistic and all other materials used and issues addressed in connection with any and all
   matters pertaining to publicity, public relations and advertising; with relation to the adoption of the proper
   format for presentation of Talent's talents; in the determination of proper style, imaging, mood, and
   setting in keeping with Talent's talents and best interests; in the selection of artistic talents to assist,
   accompany, or embellish Talent's artistic presentation; concerning monies and privileges for similar
   artistic values; concerning the selection of theatrical agencies, and persons, firms and corporations who
   will counsel, advise, seek and procure employment and engagements for Talent; and in regard to general

Exclusive Talent Management Agreement
practices in the entertainment industry. Manager further agrees to use best efforts consistent with Manager's professional judgment to further Talent's professional career and business interests in the entertainment industry; render such other services as are customarily performed by persons who perform similar services in the entertainment industry. In connection therewith, (i) Manager may retain outside services to secure corporate sponsorship, endorsements or merchandising opportunities for Talent; and (ii) Manager may retain the services of other individuals or entities to secure bookings for professional engagements, literary, theatrical or television contracts. Manager shall be available when reasonably requested by Talent to render the foregoing. Manager shall not be required to travel or to meet with Talent at any particular place or places, except in Manager's discretion and following arrangements for costs and expenses of such travel.

(c) Manager is not required to render its exclusive services to Talent or to devote Manager’s entire time or the entire time of any of Manager’s employees to Talent’s affairs. Manager may have and maintain other interests of any kind, either of Manager’s own or in the activities or enterprises of others, and Manager shall have the right to render Manager’s services to anyone else (including owners of productions of any kind in which services or other attributes are utilized) either in the capacity in which Manager is employed by Talent hereunder, or otherwise.

2. **Scope of Talent’s Activities:**

(a) Talent agrees to use his best efforts during the term of this Agreement to pursue his/her career in the entertainment industry and will give due consideration to all advice and counsel proffered by Manager hereunder. Talent covenants and agrees that he shall not publicly perform any Covered Activities without Manager’s prior approval, which shall not be unreasonably withheld. In connection with such employment, Talent will comply with the rules and regulations covering such employment in all respects, including appearances at rehearsals, when required.

(b) Talent agrees to join and maintain his membership in all unions and guilds which he/she may from time to time be required to be a member of, at his sole cost and expense.

3. **Territory:** The Universe.

4. **Term:**

(a) The initial term of this Agreement (the "Initial Term") shall consist of a period of three (3) years commencing on the Effective Date. Talent hereby irrevocably grants to Manager three (3) irrevocable options to renew the Term, to be exercised in Manager’s sole discretion, each for an additional period of one (1) year (the "Option Periods"), each upon all of the same terms and conditions contained herein. The Option Periods shall be deemed automatically exercised unless Manager notifies Talent in writing to the contrary prior to the expiration of the initial three (3) year term hereof or relevant Option Period. Collectively, the Initial Term and Option Periods shall be considered as part of the “Term” of this Agreement as used herein.

(b) Notwithstanding the foregoing, in the event that Talent shall fail for any reason to fulfill any material obligation assumed by Talent hereunder, Manager shall be entitled, by written notice served upon Talent, to extend the duration of the Term of this Agreement for a period of time equal to the duration of such failure by Talent and until Talent shall fully cure such failure. It is understood that no failure or delay by Manager to enforce the rights of Manager under this Paragraph 4 shall be deemed a waiver of Manager’s subsequent right to assert the rights granted to Manager hereunder.
5. **Manager’s Commission:**

(a) As compensation for the services to be rendered hereunder by Manager, Talent agrees Manager shall receive during the Term and thereafter, the following compensation:

(i) A sum equal to twenty percent (20%) of any and all “Gross Compensation” (as defined, below) earned or received by or on behalf of Talent in connection with products created by Talent and services rendered by Talent during the Term hereof from Covered Activities ("Manager's Commission"): 

(ii) Following the expiration or termination of the Term hereof, in connection with any and all engagements, contracts and agreements entered into or substantially negotiated during the Term relating to any of the foregoing, and upon any and all extensions, modifications, renewals and substitutions thereof; and upon any such resumptions of such engagements, contracts, and agreements which may have been discontinued during the Term and resumed within six (6) months thereafter, a sum equal to:

   (A) Ten percent (10%) of any and all Gross Compensation which Talent earns within one (1) year after the expiration of the Term; and

   (B) Five percent (5%) of any and all Gross Compensation which Talent earns within the period beginning one (1) year after the expiration of the Term and ending two (2) years after said expiration date.

   (C) No commissions shall be payable to Manager with respect to any and all Gross Compensation which Talent earns following said two (2) year period after the expiration date.

(b) The commission(s) set forth in Paragraph 5(a) above shall be based on the Gross Compensation which Talent earns from all applicable engagements, contracts, and agreements, in connection with the Covered Activities, pursuant to the terms set forth in said engagements, contracts, and agreements or agreed upon prior to the expiration of the Term. Subject to the foregoing, Manager shall not commission any additional Gross Compensation which Talent earns and receives from any improved terms of such engagements, contracts, and agreements if such improved terms are agreed upon subsequent to the expiration of the Term.

(c) Gross Compensation as used herein shall include all forms of income, payments, compensation, emoluments and/or any other thing of value, (including, but not limited to, fees, salaries, earnings, contingent compensation, advances, royalties, proceeds of sales, partnership interests, amounts paid for packaged television, motion picture, radio programs, leases or licenses, gifts, bonuses, shares of receipt, stock and stock options), however denominated, directly or indirectly (i.e., any corporation, partnership, or other entity in which Talent has an interest), received by or credited to the account of the Talent or the Talent’s heirs, successors and assigns, or by anyone on the Talent’s behalf, from any professional activities of the Talent, whether as a writer, composer, author, lyricist, singer, musician, artist, performer, model, producer, director, creative director, actor, consultant, or as owner of any properties, or as stockholder or owner of any other kind of proprietary interest, and whether for the rendition of the Talent’s services or from the sale or other disposition of literary, dramatic or musical property, or any rights therein or thereto, product endorsements, merchandising, corporate sponsorships, or any use of the Talent’s name, likeness, talents or identity and other related activities for advertising purposes or otherwise, without any exclusion or deduction whatsoever, including all sums earned by the Talent during the Term of this Agreement and thereafter, or negotiated for during the Term hereof, or under any
extension, modification, addition or renewal of such contract or employment, regardless of when originally entered into, or under any substitute, direct or indirect, for such contract or employment, and regardless of by whom originally procured. Gross Compensation shall also include any payment for termination of a contract, agreement or employment, or any moneys or property recovered in connection with any litigation, claim, settlement, compromise or arbitration pertaining to such contract, agreement or employment and any amounts paid by the Talent’s employer or any party with whom the Talent has a contract or agreement, directly to the Talent’s creditors, either by virtue of legal process or otherwise, or paid to any person on the Talent’s behalf. As used in this agreement, “the Talent” shall include any corporation owned or controlled (directly or indirectly) by the Talent and the Talent agrees to cause any such corporation to enter into an agreement with the Manager on the same terms as contained herein. In the event the Talent receives, as all or a part of the Talent’s compensation for activities hereunder, stock or rights to buy stock in any corporation or if the Talent becomes the owner or packager of any entertainment property, or any other property, regardless of the form of such ownership, packaging interest or property, the percentage compensation hereunder shall apply to such interest, and the Manager shall be entitled to the appropriate percentage of such interest. Should the Talent be required to make any payment for such interest, the Manager will pay the Manager’s percentage share of such payment, unless the Manager elects not to acquire the Manager’s percentage share thereof. Nothing contained herein shall be construed to require Manager to acquire any such interest. Notwithstanding anything to the contrary contained herein, Gross Compensation shall include any and all amounts withheld as tax, union dues or other charges, the payment of which is legal obligation of the Talent.

(d) Notwithstanding the foregoing, with respect to Talent’s artistic and professional appearances and/or performances, there shall, for purposes of computing commissions hereunder, be deducted off the top from “Gross Compensation” earned by Talent in respect thereof, when applicable, the amount, if any, that is pre-approved by Manager, such approval not to be unreasonably withheld, which shall be payable by Talent or on Talent’s behalf in respect of so-called "sound and lights" for such engagements. In addition, the term “Gross Compensation” shall specifically not include actual, documented recording costs (records and videos) (documentation to be provided upon Manager’s reasonable request), paid by Talent or on Talent’s behalf, monies payable to Talent by any entity which such monies are contractually required to be paid to another record company (i.e., an "override"), payments used for tour support (documentation as to tour expenses incurred shall be provided upon Manager’s reasonable request) and bona fide loans. Notwithstanding anything to the contrary contained herein, in the event Manager pays for any recording, production or other costs on behalf of Talent, the amounts of such payments shall be considered a recoupable advance to Artist which shall be deducted “off the top” prior to calculation of Gross Compensation.

(e) If Talent forms a corporation during the Term hereof for the purpose of furnishing and exploiting Talent’s artistic talents, Talent agrees to cause any such corporation to enter into an agreement with the Manager on the same terms as contained herein.

(f) If in contravention of the terms hereof, Talent appears under the management of anyone other than Manager, any monies received therefore shall constitute Gross Compensation hereunder and Manager’s right to its commission hereunder shall remain unaltered. Manager’s receipt and acceptance of such commission shall not constitute a waiver by it of its rights hereunder. Notwithstanding the foregoing, Gross Compensation shall not include any income derived by Talent from any business investments, with the exception of the business/corporate interests, indirect and direct, which Talent may have as detailed above in Paragraph 5(c), or any bona fide third-party loans to Talent.

(g) Notwithstanding anything herein to the contrary, Gross Compensation shall include all advances and/or gross fees paid to Talent with respect to personal appearances.
(h) Unless otherwise agreed in writing by the Parties, all Gross Compensation shall be paid directly to, and collected by, Manager, or Manager’s accountant, CPA or business manager, and Manager shall render semi-annual accountings and payment hereunder (if any) to Talent after deducting Manager’s Commission and any costs/expenses in accordance with this Agreement. Manager shall pay Talent’s monies directly to Talent within fourteen (14) days after Manager’s actual receipt of any and all Gross Compensation. Notwithstanding the foregoing, Manager may provide written notice to Talent requiring Talent to pay Manager any and all reimbursable expenses pursuant to Paragraph 7 hereof at any reasonable time within Manager’s sole discretion, and Talent shall pay such reimbursable expenses to Manager within seven (7) days from receipt of such notice.

(i) Upon Manager’s written request, Talent shall promptly, upon such request, supply Letters of Direction to any third party with whom such third party has a contractual obligation to pay Talent for products created by Talent or services rendered by Talent requesting that payments of either Manager’s Commission or all monies due Talent pursuant to this Agreement be sent to the Manager directly.

(j) Talent and Manager will keep the aforesaid terms confidential and will not reveal the agreed upon Commissions to any outside parties, with the exception of Talent’s attorneys, accountant, and business manager.

6. **Co-Publishing and Joint Administration:** With respect to any of the musical compositions created, in whole or in part, by Talent during the Term (the “Compositions”), the following shall apply:

(a) In exchange for sufficient and valuable consideration, the receipt of which is hereby acknowledged by Talent, including, without limitation, payment by Manager of certain recording, production and marketing costs (to be determined at Manager’s sole discretion), Talent shall promptly, upon Manager’s written request, irrevocably and absolutely assign, convey and set over, and/or shall cause Talent’s publishing designee to irrevocably and absolutely assign, convey and set over, to Manager or Manager’s publishing designee (if applicable) (hereinafter referred to in this Paragraph 6 as “Publisher”) an undivided fifty percent (50%) interest in the worldwide copyright (and all renewals and extensions thereof, in accordance with all the terms and conditions of this Agreement) and a fifty percent (50%) interest and all other rights in and to the so-called “publisher’s share” of the Compositions. For clarity, Talent and/or Talent’s publishing designee, as applicable, shall retain the remaining fifty percent (50%) thereof.

(b) In addition to Manager’s good faith efforts hereunder to secure commercial placement, release and/or exploitation of the Compositions, Talent shall have the separate right throughout the world to administer Talent’s respective rights in and to the Compositions during the full term of copyright, including renewals, extensions and revised terms therein, in accordance with all the terms and conditions of this Agreement. Talent shall additionally have the right to enter into non-exclusive licenses and agreements with respect to Talent’s respective rights in the Compositions, including, but not limited to, licenses for mechanical reproduction, print uses, public performance and synchronization uses and subpublication; provided, however, the following conditions shall apply in regards to Talent’s efforts to secure and execute such licenses or agreements:

(i) No such licenses or agreements shall be exclusive;

(ii) No mechanical license shall be issued by Talent at less than the current statutory rate (except for those types of product sales or distributions for which music publishers customarily grant such reduced rates to non-affiliated record companies) without the prior written approval of Manager;
(iii) Synchronization licenses, licenses for commercials and other such licenses which are for lump sum “buy outs” may be issued by Talent provided written approval of the terms and conditions contained in such licenses is secured from Manager prior to such issuance;

(iv) All licenses and agreements shall provide for all proceeds to be paid directly to each party in accordance with each party’s respective share;

(v) No license issued by or on behalf of Talent shall restrict or prejudice any rights of Manager with respect to royalty rates or payments, audits of uses of the Compositions, free goods policies, or reserve policies;

(vi) A true copy of a license or agreement issued by either party hereto shall, upon request, be furnished to each other party;

(vii) All licenses secured by Talent shall provide that the party issuing such license shall notify its licensee that the licensee must seek a separate license from Manager with respect to Manager’s interest in the Compositions;

(viii) In the event that a conflict arises between any licenses (or the terms thereof) secured by the parties, any licenses secured by Manager shall take first priority over any licenses secured by Talent, and Talent shall at all times obtain Manager’s written approval prior to entering into any proposed licenses or agreements during or after the Term in regards to the Compositions, which approval shall not be unreasonably withheld, delayed or denied.

(c) Each party shall have the right to enter into subpublishing or collection agreements, for its benefit, for any one or more countries of the world, but only with respect to the share of the Compositions each party controls. Notwithstanding the foregoing or anything to the contrary contained herein, during the Term, Talent shall obtain Manager’s written approval prior to entering into any subpublishing or collection agreements.

(d) Each party shall be entitled to receive and collect directly its respective share of all Gross Receipts derived from the Compositions. Solely for the purposes of this Paragraph 6, “Gross Receipts” is defined as any and all revenue, income and sums derived and collected throughout the world (after deduction of any collection or other fees charged by the Harry Fox Agency, Inc., Copyright Management, Inc., CMRRA, or any other such collection agent which may be used by any party throughout the world) from the exploitation of the Compositions, including, without limitation, mechanical royalties, synchronization fees, printing income and the publisher’s share of public performance fees.

(e) Performing rights in the Compositions, to the extent permitted and/or required by law, shall be assigned to and licensed by the performing rights society to which each party belongs. Said societies shall be and are hereby authorized to collect and receive all monies earned from the public performance of the Compositions in the United States and Canada, and shall be and are hereby directed to pay directly to each party, in accordance with each party’s respective share, the amount allocated by each society as the publisher’s share of public performance fees from the Compositions for the United States and Canada.

(f) Mechanical royalties for the Compositions for the United States and Canada shall be collected according to each party’s respective share, either directly from the relevant distributor, or by The Harry Fox Agency, Inc., Copyright Management, Inc., CMRRA, or any other independent collection agent that may be designated by each of the parties hereto. Each of the parties shall direct such distributor and/or agent to pay said mechanical royalties (after deduction of such agent’s collection fee) directly to the parties, in each party’s respective share; provided, however, that each of the parties shall, in the case of
any distributor in the United States and Canada affiliated with it, have the right to issue mechanical licenses for its respective interests in the Compositions directly to said distributor (subject to the provisions of this Paragraph 6), in which event its respective share would not be subject to any collection fee.

(g) Talent represents and warrants that the Compositions are original and do not infringe or violate the rights of any other person and that Talent has the full and unencumbered right, power and authority to grant to Publisher and Manager all of the rights herein granted to Publisher and Manager. Talent will indemnify Publisher and Manager against any loss, damage, or expense (including reasonable attorneys’ fees) in respect of any claims, demands, liens or encumbrances arising out of Talent’s breach hereof. Publisher and Manager shall have the benefit of all warranties and representations given by the writers of the Compositions.

(h) Any assignment made of the ownership of copyright in, or right to license the use of, any Compositions referred to in this Paragraph 6 shall be made subject to the provisions hereof. The provisions of this Paragraph 6 are hereby acknowledged and accepted by Talent, on Talent’s behalf and on behalf of any other owner of any Compositions or any rights therein.

(i) Talent shall promptly provide Publisher and Manager with a copy of Talent’s songwriter agreement(s) with any third party writer(s) of each Composition or such other agreement evidencing Talent’s right in and to such Composition, as necessary.

(j) Talent shall promptly, upon Manager’s written request, execute and deliver to Publisher and Manager any documents which Publisher and/or Manager may reasonably require to vest in Manager, Publisher and/or their designees the copyright and other rights herein granted to Publisher and Manager in respect of each Composition.

7. **Manager's Power of Attorney:**

During the Term of this Agreement, Talent hereby irrevocably authorizes and appoints Manager as Talent's true and lawful agent and attorney-in-fact solely for the purposes of:

(a) executing contracts and any other agreements considered for execution by Talent in connection with his career in the entertainment industry;

(b) approving and permitting the use of, including, without limitation, the licensing and brand merchandising of, the Talent’s name (actual and professional), photographs, likenesses, voice and sound effects, caricatures, and the like for purposes of advertising and publicity and in the promotion of any and all products and Talent’s services;

(c) auditing and examining books and records of parties with whom Talent has contractual or other rights to audit and examine books and records.

The aforementioned Power of Attorney is coupled with an interest and is thereby irrevocable.

8. **Management Expenses:**

Subject to the terms and conditions contained herein, Talent will reimburse Manager for any and all expenses actually incurred by Manager on Talent's behalf in connection with the Covered Activities, provided that Talent will not be responsible for any portion of Manager’s overhead expenses, administrative or operating expenses of any kind (e.g., rent, secretarial assistance, insurance expenses,
FOR DISCUSSION PURPOSES ONLY

etc.). Manager shall not be required to obtain Talent’s approval prior to incurring any expenses on Talent's behalf in connection with the Covered Activities, provided that the expense does not exceed five hundred U.S. dollars (US $500.00) per calendar month. As detailed above, Manager may provide written notice to Talent requiring Talent to pay Manager any and all reimbursable expenses pursuant to this Paragraph 7 at any reasonable time within Manager’s sole discretion, and Talent shall pay such reimbursable expenses to Manager within seven (7) business days from receipt of such notice.

9. **Accounting and Audit Rights:**

Manager, Manager’s accountant, CPA or business manager, as applicable, shall maintain, to the best of their ability, true and correct books and records regarding Talent’s Gross Compensation. Talent shall have the right, at its sole expense, upon thirty (30) days prior written notice to Manager, to reasonable inspection of Manager’s books and records, which relate to the subject matter hereof, at a place where such books and records are normally maintained, in order to verify the accuracy of accountings, such inspection shall not take place more than once a year, and not more than once with respect to the accountings of any given time period; provided, however, that Talent shall be deemed to have consented to all accountings rendered hereunder and said accountings shall be binding upon Talent and not subject to objection for any reason unless specific written objection stating the basis thereof is given to Manager within six (6) months after the date rendered, unless any claim is made based on fraud, concealment, or misrepresentation at which time inspection of books shall have no time limitation. Notwithstanding the foregoing, Manager, Manager’s accountant, CPA or business manager shall not be required to retain any records for a period longer than three (3) years from the date rendered.

10. **Exclusivity:**

Talent agrees not to employ, during the Term hereof, any other person or entity to act for Talent in the capacity in which Talent has engaged Manager hereunder.

11. **Consultation:**

Talent shall immediately refer to Manager all verbal or written leads, communications, or requests for the rendition of Talent’s services reasonably related to the Covered Activities. Notwithstanding the foregoing, Talent may, but shall not be obligated to, refer to Manager any verbal or written leads, communications, or requests for the rendition of Talent’s services related to his career as a performer in motion pictures, television and theater. Talent shall consult with Manager concerning each and every engagement, performance, booking or contract offered to Talent related to the Covered Activities, and Talent shall also consult with Manager regarding each engagement, performance, booking or contract that Talent accepts related to the Covered Activities.

12. **Furtherance of Career:**

Talent agrees at all times to devote himself to the furtherance of Talent’s career and to do all the things necessary and desirable to promote Talent’s career and earnings therefrom. Talent will not enter into any agreement or commitment, which shall in any manner interfere with Manager carrying out the terms and conditions of this Agreement. Furthermore, Talent agrees that any engagement, employment, or deal presented by Manager to Talent shall be treated by Talent as a priority, and Talent shall endeavor to accept each of the foregoing on a “first priority basis” over other engagements, employments, or deals, subject to the approval of the terms of such engagement, employment or deal by Talent's attorney.

13. **Loans:**
Manager is not required to make any loans or advances to Talent or for Talent’s account, but if Manager does so, Talent shall repay them promptly upon Manager’s written request. The authority granted to Manager is coupled with an interest and shall be irrevocable during the Term hereof.

14. **Representations and Warranties:**

(a) Talent hereby represents and warrants the following:

(i) Talent shall use Talent’s best efforts to at all times engage and utilize proper talent agencies and theatrical agents to obtain engagements and employment for Talent. Talent understands that Manager is not a licensed talent agency and is not in the business of procuring employment or engagements. Although Manager shall advise Talent concerning prospective employment or engagements, Manager is not obligated to and Manager shall not seek employment or engagements for Talent, nor do any of the acts or things done by talent agencies or theatrical agents.

(ii) IT IS CLEARLY UNDERSTOOD THAT MANAGER IS NOT AN EMPLOYMENT AGENCY OR A THEATRICAL AGENT, THAT MANAGER HAS NOT OFFERED OR ATTEMPTED OR PROMISED TO OBTAIN, SEEK OR PROCURE EMPLOYMENT OR ENGAGEMENTS FOR TALENT, AND THAT MANAGER IS NOT OBLIGATED, AUTHORIZED, LICENSED OR EXPECTED TO DO SO;

(iii) Talent warrants that he is under no disability, restriction or prohibition with respect to Talent’s right to execute this Agreement and perform its terms and conditions;

(iv) No act or omission by Talent hereunder will violate any right or interest of any person or firm or will subject Manager to any liability, or claim of liability to any person or firm; and

(v) Talent has not entered into any agreements or contracts which interfere or conflict with the Talent’s obligations hereunder.

(b) Manager hereby represents and warrants the following:

(i) Manager is under no disability, restriction or prohibition with respect to Manager’s right to execute this Agreement and perform its terms and conditions;

(ii) No act or omission by Manager hereunder will violate any right or interest of any person or firm, or will subject Talent to any liability, or claim of liability of any person or firm; and

(iii) Manager agrees to exert Manager’s best efforts to further Talent’s career during the term of this agreement and to cooperate with Talent to the fullest extent in the interest of promoting Talent’s career.

15. **Indemnification:**

(a) Talent shall at all times defend, indemnify and hold Manager, and Manager’s respective agents, employees, representatives, affiliated entities, successors, heirs and designees or legatees, harmless from and against any and all claims, damages, liabilities, costs and expenses, including without limitation,
reasonable legal expenses and attorneys' fees, arising out of any breach by Talent of any warranty, representation or agreement made by Talent hereunder.

(b) Manager shall at all times defend, indemnify and hold Talent, and Talent’s respective agents, employees, representatives, affiliated entities, successors, heirs and designees or legatees, harmless from and against any and all claims, damages, liabilities, costs and expenses, including without limitation, reasonable legal expenses and attorneys' fees, arising out of any breach by Manager of any warranty, representation or agreement made by Manager hereunder.

16. Breach/Cure:

Talent and Manager agree that if at any time Talent or Manager, as applicable, believe that the terms of this Agreement are not being fully and faithfully performed hereunder, Talent or Manager, as applicable, shall so advise the other in writing by registered or certified mail, return receipt requested, of the specific nature of any such claim, non-performance or misfeasance, and the party receiving such notice shall have a period of thirty (30) days after receipt thereof within which to cure such claimed breach or, if such claimed breach is not reasonably capable of being cured within such thirty (30) day period, the non-performing party shall commence to cure such breach within said thirty (30) day time period, and proceed with reasonable diligence to complete the curing of such breach thereafter. In the event that such claimed breach cannot be cured within the foregoing time period, the non-breaching party shall have the right to elect to treat the non-breaching party’s obligations under this Agreement as terminated. In the event that legal action is taken in connection with the terms of this Agreement, the prevailing party in such legal action shall be entitled to reimbursement by other party of all legal fees' in connection with such legal action.

17. Independent Counsel:

Each of the parties hereto warrant and represent that in executing this Agreement (a) they have relied solely upon their own judgment, belief and knowledge and the advice and recommendations of their own independently selected and retained counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing this agreement by any representations or statements with respect to any matters made by any party or representative of any party; or (b) they have intentionally refrained from doing so and have knowingly and voluntarily waived such right.

18. Notices:

All notices pursuant to this Agreement shall be in writing and shall be given by via facsimile (with written confirmation), certified mail/return requested, or delivery by courier delivery (e.g., UPS, Federal Express, Airborne, DHL) at the respective addresses hereinafore set forth or such other address(es) as designated by either party. Such notices shall be deemed given when mailed, or, if by courier delivery, when delivered, except that a notice of change of address shall be effective only from the date of its receipt. Notwithstanding anything herein, this Agreement may be executed, and any notices may be delivered in counterparts and by fax signatures or signatures sent by a party in Portable Document Format (“.pdf”) via e-mail. A digital copy of this Agreement executed by all parties (whether in counterparts by facsimile, or emailed .pdf, etc.) shall have the same force and effect as the original. All digital copies of this Agreement and any notices shall be delivered to the following email addresses:

Manager:
with a copy of all notices to:

TALENT:

with a copy of all notices to:

19. **Jurisdiction:**

This Agreement shall be construed and interpreted in accordance with the laws of the State of California governing contracts executed and to be wholly performed therein, and shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, and successors and to the assignees of Manager, without regard to applicable conflict laws of such jurisdiction. The parties hereto do hereby consent to the jurisdiction of the State of California, County of Los Angeles, in connection with the resolution of any and all disputes, which may arise under this Agreement. It is agreed that only the courts of the State of California shall have jurisdiction in any lawsuit commenced by either party concerning the subject matter of this Agreement, and that service of process in any such lawsuit may be by certified or registered mail, return receipt requested addressed to the parties at their addresses herein set forth.

20. **Miscellaneous:**

(a) This instrument sets forth the entire agreement between Manager and Talent with respect to the subject matter hereof and no modification, amendment, waiver, termination or discharge of any provision hereof shall be binding upon the parties unless confirmed by a written instrument executed by both parties hereto. No waiver by either Manager or Talent of any term or provision of this Agreement or of any default or breach hereunder shall affect Manager’s or Talent’s right hereafter to enforce such term or provision, or to exercise any right or remedy in the event of any other default, whether or not similar. The parties hereby represent and warrant that no statement, promise, representation, or inducement, except as herein set forth, has been made on any party's behalf, or by any of such party's employees or representatives. Should any provision of this Agreement be void (or illegal) or unenforceable, such provision shall be deemed severed and this Agreement with such provision severed shall remain in full force and effect to the extent permitted by law (or the same shall not affect the validity or enforceability of the remaining provisions), provided, however, that in the event such severance shall materially affect Manager’s right to receive compensation under this Agreement, Manager shall have the right to elect to treat Manager’s obligations under this Agreement as terminated. This Agreement shall inure to the benefit of the parties hereto and to their respective successors and heirs.

(b) This Agreement does not and shall not be construed as creating a partnership or joint venture between Manager and Talent. It is specifically understood that the Parties are acting hereunder as independent contractors.
(c) Manager shall have the right to assign this Agreement only to any corporation or other entity in the business of personal management which is formed by Manager or into which Manager merges or which Manager now or hereafter owns, acquires or controls, in whole or in part, or of which Manager acquires a substantial interest or which acquires a substantial interest in the assets of Manager.

(d) Talent shall cause any corporation, partnership, trust or other business entity which Talent now owns or controls or may hereafter own or control or in which Talent has a direct or indirect interest of any nature or sort, or which is directly or indirectly controlled by Talent or under the common control of Talent and others (collectively hereinafter "firm") and which firm has the right to Talent services, to enter into an agreement with Manager on the same terms and conditions as contained in this agreement, and Talent agrees that all gross monies or other considerations directly or indirectly earned or received by such firm in connection with Talent’s activities in the entertainment, amusement, music, recording and literary fields shall be subject to Manager's commission hereunder. Any agreement with such firm shall provide that such firm has a right to furnish Talent’s services on the terms and conditions set forth in this contract, and the firm shall become a party to this contract. Talent shall personally guarantee the obligation of any such firm.

(e) In the event of any dispute under or relating to the terms of this Agreement, the prevailing party shall be entitled to recover any and all reasonable attorneys’ fees or other costs incurred in the enforcement of the terms of this Agreement or the breach thereof.

(f) The headings of the clauses of this Agreement are included for ease of references only, are not part of this Agreement, and are not to be used in the construction and interpretation of the terms hereof.

BOTH PARTIES HEREBY WARRANT AND REPRESENT THAT THEY HAVE HAD THE OPPORTUNITY TO CONSULT INDEPENDENT LEGAL COUNSEL BEFORE SIGNING THIS DOCUMENT AND HAVE EITHER SO CONSULTED INDEPENDENT LEGAL COUNSEL OR VOLUNTARILY WAIVES THEIR RIGHT TO DO SO.

IN WITNESS WHEREOF, the parties in this Agreement have caused it to be executed as of the Effective Date.

CONSENTED AND AGREED TO BY:

TALENT: 

MANAGER:

By: ___________________________ By: ___________________________, An Authorized Signatory

SSN: __________________________

DOB: __________________________
A Reflection Upon Moral Courage: Death in the Rue Nicolas Appert, or Freedom and the First Amendment

Vol. 32 No. 1

By Alexandra Darraby


....Freedom is just another word for nothing left to lose...

Nothing don’t mean nothing, honey, if it ain’t free...¹

Who doesn’t love Paris? Ask Woody Allen, whose Midnight in Paris starred the City of Light itself, with character appearances by Pont Bir Hakeim, le rue Galande, Left Bank boutiques, and the fabulous Hotel Bristol on the fashionable rue Faubourg St. Honore.

The cache-pot of ethnically diverse Paris is the 11th arrondissement. The 11th boasts the highest urban density in Europe and diverse demographics. It is home to clubs and hot bars, places to hook-up like Chez Justine and hang-outs like Bar Entre Potes. Nothing distinguishes the stretch of Rue Nicolas-Appert that runs 137 meters in the Right Bank neighborhood, except perhaps the Comedie Bastille at No. 5, and the nearby Musée Edith Piaf. The Nic has little of the history that surrounds its famous neighbor, the Place de la Bastille, nor is it historic by American standards, named just 30 years ago for an eponymous French businessman credited with airtight food preservation. The Nic is just a commercial street in the winding historic snail that Haussmann designed for urban Paris, a city that painters and filmmakers have deified thereafter.

About ESL

Entertainment and Sports Lawyer is published quarterly by the Forum on the Entertainment and Sports Industries of the American Bar Association. The Entertainment and Sports Lawyer is directed at lawyers who devote a major portion of their practice to entertainment, sports, arts, intellectual property law, and other related areas. It endeavors to provide current, practical information as well as public policy and scholarly viewpoints that it believes to be of professional and academic interest to Forum members and other readers.

If you have questions about this publication or would like to request more information, please contact Erin Remotigue at: erin.remotigue@americanbar.org.
Or, at least it was, until January 7, 2015, the first Wednesday of the New Year. The chic shops south toward the Seine were not yet open, and the fancy food shops that skirt the neighborhood were just opening. But at No. 10, Charlie Hebdo, a satiric weekly magazine that reportedly sells about half its weekly runs of 60,000, Wednesday mid-day was time for the editorial meeting, a late morning latte, and leftover breakfast brioche, with the day’s assignments in progress. In short, it was a day like any other work day.

Until 11:24 a.m., when two brothers entered No. 10 and gunned down the Charlie staff, discharging their AK-47 assault rifles, armed with Skorpion submachine guns. By the time the Kouachi brothers had fired off the Kalishnakovs, eleven were dead, including its editor in chief, Stephane Charbonnier, cartoonists, columnists (a psychoanalyst and economist), other staff, and the building caretaker, and eleven more in the building were downed by bullets. The massacre was over in minutes. From the Citroen C3 getaway car, the brothers shot a French National Police officer, reportedly jumping out to shoot the officer at close-range, bringing the kill rate to twelve. The cry of “allahu akbar” rang out in the 11th, this ethnically diverse enclave of Paris.

The brothers were described as members in good standing of Al-Qaeda, an Islamist terrorist group. Al-Qaeda has adapted—indeed mastered—corporate America’s franchising model, opening branches in Yemen, Tunisia, Syria, Iraq, with a branch coming soon to your neighborhood, if the Al-Qaeda strategic plan is successful.

And if anyone doesn’t know what the writers at Charlie Hebdo did that wrote their own death warrant, it was a decision to republish on the weekly’s cover a Danish cartoon sending-up Mohammed. The murderous mayhem was payback for the journalistic act of publishing a cartoon—yes, a cartoon! In the original, and the derivatives, Mohammed’s turban is portrayed by two white ovals and a vaguely Mediterranean-looking beard is shown by a scruff of lines around his chin. The cartoon figure is seen in various postures and with different texts. To the western viewer, the image may seem trite, silly, or humorous, affable, avuncular even, an absent-minded professor type. To Al-Qaeda, and certain others, depicting Mohammed at all, let alone satirically or cartoonishly—amiable or otherwise—is sacrilege, heresy, an insult that threatens to undermine Islam. Indeed, the insult is so great (and is perceived as so threatening) that in some minds it justifies murdering innocent people, as well as the content providers who created, published, and distributed the cartoon. The parity of cartoon on the one hand, however offensive, and twelve murders and twelve attempted murders on the other, is a life-and-death equation left to the reader. Indeed, a great many readers ran to the internet and legitimate media outlets to share their views that the Charlie

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Author Guidelines
staff had invited death in the door and brought murder unto themselves by publishing such a cartoon.

On the morning of November 2, 2004, Theodoor Van Gogh, a filmmaker and the great grandnephew of Vincent Van Gogh, was shot eight times by a Moroccan Dutch citizen peddling his bike to work in Amsterdam. The killer reportedly shot him again when Theo fell bleeding into the bike lane, cut his throat, decapitated him (unsuccessfully), and pinned a letter to his chest as he bled out. The letter was addressed to Theo’s film collaborator, Ayaan Hirsi Ali, a Somali refugee and politico in Holland, who wrote the screenplay of the short fictive film Submission, directed by Theo, which had aired on Dutch public television three months earlier. Submission criticized the treatment of women in Islamic countries. Satirizing or criticizing Islam and militant Islam do not mix, and the contraindication has a high mortality rate for those who dare.

Like the responsive option in an Outlook email to request a “read receipt,” content creators could reasonably think to themselves: “Message received.” Mortal danger is not what most creators bargain for if a misstep is made with respect to comment and criticism, and engaging on Islam poses a veritable and perhaps an actual threat.

But this article is not about the Kouachi brothers, Van Gogh, Al-Qaeda, Charlie Hebdo, or Islam. Plenty has been written in the trades and on social media about these events, the aftermath, the soul-searching rallies and demonstrations, and readers can select their favorite news sources.

This article is about us, the men and women in the industry, film, TV, theatre, media, music and arts—the creators of entertainment content, and the distributors, exhibitors, media reps, agents, and lawyers who represent the industry. Eighty percent of worldwide entertainment content sources to America, and the U.S. is the largest global entertainment exporter of the 21st century world. American entertainment content is so powerful that even when it fails domestically, it is regaled in Europe and overseas, where box office flops turn into hits. Josephine Baker, Jerry Lewis, and Pharrel Williams are but few of many exemplars.

Murdering creators—whether our clients or not—while they are sitting at their desks or peddling to work is something that should interest us. Surprisingly—or perhaps not—the murders have had little traction in the American entertainment community, notwithstanding the millions of words that have seemingly covered every angle. A few voices have been heard, some surprising (Mia Farrow), some expected (the Huffington Report). But overall, the moral outrage and moral soul-searching from the American entertainment community has been, at best, muted.

This article is about not what we say, or what we do, but about what might not be said and might not be done if we don’t do
something. This article is about the “C”-word—Chill—big or little. And “chill” is not the only “c”-word American society has to ponder. Because the big “C”-word is Censorship. And in many ways worse for creative content, the real “c” word is self-censorship.

Ordinarily this concern would seem overblown, especially in the internet age where bullying, defamation, rumours, falsities, and stupidity stream along with trillions of gigabytes and pixels. For those who believe in the First Amendment as a societal safety valve for pent up ills—and hope that speech will beget more rectifying speech—the internet is the veritable tsunami of words, imagery, grievances, and misinformation.

What cost is fear to the dialogue of protected speech upon which America has staked the First Amendment? What happens when content creators consciously, or unconsciously, dilute or drain the content of their speech? What result when we as creators and distributors avoid words or images that could trigger an edgy dialogue—or even a banal one—about religion? Art? Antiquities? Islam? Do we opt for silence if murderous sensitivities might be provoked? Has the sacred bond between speaker and listener, sender and recipient, creator and responder, been severed, even just a little? Have the contours of speech been winnowed just a little more, by our own self-conscious decisions to avoid and deter a fracas, a confrontation, threats, hate mail, bombings, murder?

Within weeks of writing this, the issues and fears lapped unto America’s shores. Two gunmen dressed in body armor opened assault weapons at a cartoon competition in Texas to draw Muhammad, one of whom reportedly declared loyalty to ISIS on a tweet before the contest.

A few weeks later, on May 6, 2015, PEN awarded the Freedom of Expression Courage Award to Charlie Hedbo’s remaining editors amid a standing ovation, but not universal support. More than 200 PEN members signed a letter stating, in part, that a line differentiated “staunchly supporting expression that violates the acceptable, and enthusiastically rewarding such expression.” The Editor in Chief, accepting the award, responded, “Being shocked...is the democratic debate. Being shot is not.”

The production and commercial distribution of pornography and profanity seem to have developed a protective moat so vast that even militant Islam seems staggered to take on. Four letter words are the patois of many of today’s hit songs, so accepted that lyrics loaded with c-words and f-words are piped into gyms, hair salons, and played on the radios of carpooling parents driving their kids to school. A new film noir series on prime time network television depicts Charles Manson sodomizing his former lawyer. But if profanity and pornography is prodigious and ubiquitous in entertainment, the industry still shies away from political creases or religious rifts.
Seth Rogen is the filmmaker behind *The Interview*, a Sony-Columbia production-distribution of a comic send-up of North Korean leader Kim Jong-Un. The film was scheduled for release in theatres nationwide on December 25, 2014, but threats from North Korea, actual or potential, caused Sony to pull it. Major American cinema chains cancelled screenings and exhibitors refused to run it. Netflix picked it up for release January 24, 2015, and some independent theatres showed it but the theatrical release was reportedly $6 million, compared to the $40 million of online sales by streaming and on demand. If the Sony leaks are accurate, Seth Rogen pocketed more than $8 million for the film and went to the internet; Salmon Rushdie, under fatwah, on the other hand, went into hiding with round-the-clock police security. While North Korea did not threaten to blow up America because of *The Interview* (it has other reasons), it seems accepted by U.S. intelligence according to media reports to date that the Crypto-gate at Sony probably sourced to North Korea.

The debate in the “free” world among intelligentsia, the media, the pols, academia and the press, newsies, talking heads, and some news organizations, has taken positions after the *Charlie Hebdo* massacre that sound like, “sure, publish what we want, but why should we, if it offends someone?” In short, the politically correct argument, or reasonably safeguarded one, has been that sensibilities need to be part of the journalistic calculus. Are the issues so simplistic that the question is principle vs. practicality? It is precisely where freedom of expression is threatened that the voices must be loudest, not muted, or silenced. It is precisely where satire sends up weakness that it deserves more protection, not less.

The abolitionists gave offense, and plenty of it. But they refused to be silenced, notwithstanding threats, pressure, and death. The civil rights movement as a group refused to be silenced, notwithstanding threats, pressure, and death. The civil rights workers of the 1960s who supported the movement individually, refused to be silenced, notwithstanding threats, pressure, and death. And the “offensive” voices that could still be heard were championed in a free press by those who courageously were not chilled.

Words are deemed dangerous to those who fear. Words have been feared for centuries, indeed, millennia. Christ and his disciples in the first century would not have been “liked” by many on Facebook. Since the mass distribution of words via the invention of the printing press, kings, governments, and interest groups have fought to control content and the creators who produce it. Copyright law sources to that very urge to control and to the economic monopoly principles underlying it. In the modern era of mass-distributed images, Instagram, SnapFish, and Shutterfly, visual imagery is as feared and fearful as textual content.
The likelihood of a fundamentalist of any sort or any religion mowing us down at work may be statistically unlikely, but the very fact that creators are attacked in the banality of their daily routine, the quotidian acts like coffee, meetings, commutes, that measure all our work days, impose on all content creators an obligation to guard our neighbors’ backs. Within hours of writing this, a young Pakistani was murdered on his way to work at a travel agency for posting a blog satirizing Islam. He was 27 years old.

It may be that we are immune from such horror⁷, but immunity should only make us more vocal, not more silent. The forefathers of this country were onto something when the First Amendment was added to the Constitution. The interchange of expression and content creation needs to be kept alive, raucous, loud, rowdy, boisterous, even boorish. As this author blogged, “CREATIVE EXPRESSION IS THE CRUCIBLE FOR A PLURALIST SOCIETY.”

Editor’s Note: The views and opinions expressed in this Article are solely those of the Author. These views and opinions do not necessarily represent those of the Editor in Chief, the American Bar Association, the ABA Forum on the Entertainment and Sports Industries, or any other staff, and/or any/all contributors to this journal.

Endnotes
1. *Me and Bobby McGee* Lyrics by Kris Kristofferson (1969); recorded originally by Roger Miller and others, including Kristofferson and Janis Joplin, whose version went to #1 after it was released posthumously in 1971.

2. Saïd and Chérif Kouachi, French citizens born in Paris to Algerian immigrants, according to police reports published in the media, hijacked a Renault Clio as their getaway ride, en route to a hostage-taking on January 9, 2015 at a signage company some 35 miles northeast of Paris. A nine hour siege ended when they ran from the building shooting at police, in a blaze of live action impressive enough for a *Dirty Harry* movie, the embodiment of the very Western entertainment jihadists decry.

3. On January 11, 2015, two million people rallied in Paris and millions reportedly demonstrated in Europe. “*Je suis Charlie*” overnight became the moniker of the movement.


5. *Id.*

6. NetFlix teamed with Sony to distribute *The Interview* according to reports quoting Ted Sarandos, its chief content officer.

7. Although daily reports by the media and law enforcement about events in Texas, and links between the gunmen and terrorist organizations, may indicate immunity is elusive.