

We've heard them all...

Q: What's the difference between a dead rat on the road and a dead lawyer on the road?

A: There's skid marks in front of the rat.

Q: You're trapped in a room with a tiger, a rattlesnake and a lawyer, but you only have two bullets. What do you do?

A: Shoot the lawyer—twice.

Q: What do you call 20 skydiving lawyers?

A: Skeet.

Q: What is the ideal weight of a lawyer?

A: About three pounds, including the urn.

Q: What do you have when you bury six lawyers up to their necks in sand?

A: Not enough sand.

"The first thing we do, let's kill all the lawyers." That's a quote in Shakespeare's *Henry VI, Part II*, as Dick and Cade daydream of making a perfect kingdom. Obviously,

lawyer bashing was a favorite past time as early as 1590.

So why do we bad mouth lawyers? Maybe it's because we've been interrogated by one during some horrific time in our life, like a divorce, bankruptcy, lawsuit or even criminal proceeding. Perhaps it's because the courts of our nation are so complex that it's virtually impossible to navigate through our legal system without hiring one of these blood-sucking leeches to stand by our side.

Let's face it—even with an understanding judge—trying to represent

yourself in a court of law is like trying to perform surgery on your brain with a butter knife and mirror. Your lack of training and insufficient understanding of the law will most certainly cause you aggravation and delays in the resolution of your case. Even if you're confident in the merits of your claim, the smallest procedural error can damage the outcome of a lawsuit. Like it or not, the best way to protect your rights is to hire an attorney.

But given the time and related costs to take somebody to court, litigation should never be looked upon as the best way to settle claims. It is far better to spend money on expert legal advice "upfront" at the inception of any business transaction. This allows you and your lawyer to properly address all pertinent issues between parties, eliminate misunderstandings and actually prevent, or at least minimize, the cost of litigation if things go awry.

Accordingly, I've devoted this article to the topic of how to find a good lawyer in the music products industry, highlighting some of the instances where a lawyer should be engaged as well as having a good laugh at their expense along the way. By the way, not all lawyers are blood-sucking leeches... some are flesh-eating vultures.

Where Can You Find a Good Lawyer?

The cemetery. The process of finding a good lawyer is much the same as locating a doctor, accountant or other professional advisor. While it may take some time, it's best to proceed carefully to make sure the lawyer you select is right for you. Otherwise, you may lose valuable time and money if forced to find a new lawyer and then educate him or her about your business and legal needs. Switching lawyers in the middle of a case is like switching rooms on the Titanic. So let's take a look at the logical steps for finding a good lawyer:

Step #1 - Put together a list of prospects. There are many resources for developing that list: talk to friends, business acquaintances and

other professional advisors like your accountant, insurance agent and banker; check with trade associations; check industry publications for articles of interest written by lawyers; check with your public library, local law school and the internet for references to articles authored by lawyers; contact your local and state bar associations; lastly, check out an official law directory, like *The Martindale-Hubbell Law Directory* (www.martindale.com). Available online and in most libraries, *The Martindale-Hubbell Law Directory* contains an extensive record of lawyers' educational backgrounds, length of practice and areas of specialization.

Step #2 - Interview the candidates. Take your short list of prospects and interview as many as possible. Treat the interview process much like you would if you were interviewing a prospective employee. Make certain that the lawyer is knowledgeable about your business, has time to work with you and has a style as well as personality that is compatible with yours.

Another important thing to confirm is that he or she has no conflicts. A conflict may arise when a lawyer represents another client whose interests are contrary to your own (like a competitor, or someone who has been involved in a lawsuit with you). Conflicts should be identified immediately, as the lawyer may be legally required to withdraw from representing you once the conflict is discovered.

Step #3 - Discuss how your lawyer will charge for services. There are at least four different methods that lawyers use to bill clients. Negotiate with your lawyer to select the best method or combination of methods for you. These include:

A. Hourly Rate. This is the most common way lawyers charge small businesses for their services. It's important to know that almost every activity a lawyer performs on your behalf (like phone calls, writing letters, research, drafting documents) will result in a fee. Depending on the

location, firm size and experience of the lawyer you're considering, billing rates can range from \$100 to \$300 an hour—with even higher rates for top firms in large cities. So when you interview candidates, ask for their billing rate and minimum billing time. Some lawyers have a billing system with a 15-minute minimum billing time. Accordingly, a five-minute telephone call to your \$250-an-hour lawyer will cost you \$62.50.

B. Fixed Fee. Some lawyers will undertake specific projects or tasks on a fixed-fee basis. While this is uncommon for courtroom litigation, it has become increasingly common for small-business matters. For example, a lawyer might quote a fixed fee to review a lease or generate an employment contract.

C. Contingent Fee. Under this arrangement, your lawyer receives a portion of the settlement or judgment if you win the case. If you lose, the lawyer only receives reimbursement for out-of-pocket expenses. Contingent fees are not normally permitted for routine business matters. They are most common for lawyers representing a plaintiff in a personal injury lawsuit, or in other cases that involve damages.

D. Retainer. In a retainer arrangement, the client pays a set amount (either monthly or annually) for a predefined list of services. This can be advantageous if you know that you'll need a lawyer frequently over an extended period. In most retainer arrangements, certain kinds of services, such as litigation, are excluded.

How to Become a Lawyer

In the days of Abraham Lincoln, an individual could become a lawyer by studying books containing laws and written rulings made by judges or working for a lawyer as a clerk. Those days are gone. Now, to become a lawyer, an individual must (1) graduate from a four-year college; (2) achieve a sufficient score on the standardized Law Scholastic Aptitude Test (LSAT); (3) complete at least three years of full-time law studies at an accredited law school; and (4)

pass a two-day-long bar exam.

All this education is really only the beginning. Some lawyers take one or more additional years of graduate law school to obtain a Masters degree, in addition to periodically attending professional seminars conducted by bar associations. But most important, of course, is the actual experience and ethics a lawyer obtains practic-

ing his profession over many years. That reminds me of the story of a lawyer who was paid a \$500 fee with five crisp new \$100 bills. It appears the lawyer later discovered, after his client left, that two bills had stuck together; he'd actually been paid \$600. This posed an ethical dilemma for the lawyer—was he obligated to share the extra \$100 with his partner?

What to Expect from Your Lawyer (Besides a Bill)

Just like the music retailing business, the legal profession operates in an extremely competitive buyers' market. As a result, you should expect the same high-quality and customer-oriented service from your lawyer as you give to your own customers. Here are four buzz words that describe what you should expect from your lawyer:

1. Quality. It may be difficult for clients to know whether their lawyer is providing quality work—after all, we're not attorneys ourselves. One way to measure quality is to set a goal with your lawyer at the beginning of an engagement. Tell your lawyer what you expect and find out whether he or she will be able to meet those expectations. For example, if you want your lawyer to draft an instrument rental agreement, explain what you're trying to accomplish (like "I need a legal agreement that binds my customer to a contracted monthly rental price, cancelable at the customer's option, with my store retaining title and... blah-blah-blah"). Your lawyer should then tell you whether your expectations can be met and at what cost. If he or she tells you that your expectations might not be achievable, the lawyer should explain the reasons why.

2. Experience. Frankly, it may just be easier to engage a lawyer experienced with drafting rental agreements... don't ya think? I'm a firm believer that when it comes to professional advice, you generally get what you pay for. Doesn't it make most sense to engage an attorney with extensive experience in the area of law you need? Even at higher billing rates, there's no learning curve for the experienced lawyer. This often results in "lower" overall fees than hiring the less expensive attorney with little or no related experience, who has to research and learn the area of law you need assistance with.

3. Communication. After you and your lawyer reach an understanding of your goals, the lawyer should confirm this in writing—



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usually in a document called an "engagement letter." This letter should also state the cost for the project and the time by which payment is due. During the engagement, your lawyer should furnish you with document copies as they're drafted. When the engagement is complete, your lawyer should give you copies of the final documents in a well-organized package, as well as keep copies in his or her files for future reference. Prompt return of phone calls, timely meetings, explanation of legal documents in language that you can understand and courteous behavior are a given. A good lawyer should be able to clearly communicate your options and recommend a reasonable course of action for any given situation.

4. Trust. Remember, lawyers are human and may make an honest mistake. If your lawyer makes a mistake, he or she should admit it and do whatever is necessary to correct that mistake, at no additional cost. But bare in mind that lawyers are not mind readers. Accordingly, it's your responsibility to fully and honestly answer your lawyer's questions. You can't blame your lawyer for an unexpected outcome if you failed to provide him or her with pertinent and correct information when asked.

Why We Need Lawyers

Did you hear about the bank full of lawyers held hostage by robbers? The bad guys threatened to release one lawyer every hour until their demands were met.

There are a number of business and personal issues (like bankruptcy, real estate acquisition, criminal defense, personal injury, worker's compensation, wills and estates, family law) where lawyers are obviously necessary. In addition to those, following is my short list of other areas a lawyer should help you with, some which pertain specifically to the music product industry. I've organized these projects by the "type" of music business you run.

Music retailers should engage lawyers to:

1. Review and negotiate the terms of any borrowing agreements;
2. Draft instrument rental agreements;
3. Draft employee policy manuals;
4. Draft shareholder buy-sell documents;
5. Advise in the sale/transition of a music store.

Music product manufacturers should engage lawyers to:

1. File trademarks, patents and copyrights as well as oversee their usage;
2. License intellectual property;
3. Negotiate landlord leases;
4. Draft employment agreements;
5. Resolve disputes with officers, employees and vendors.

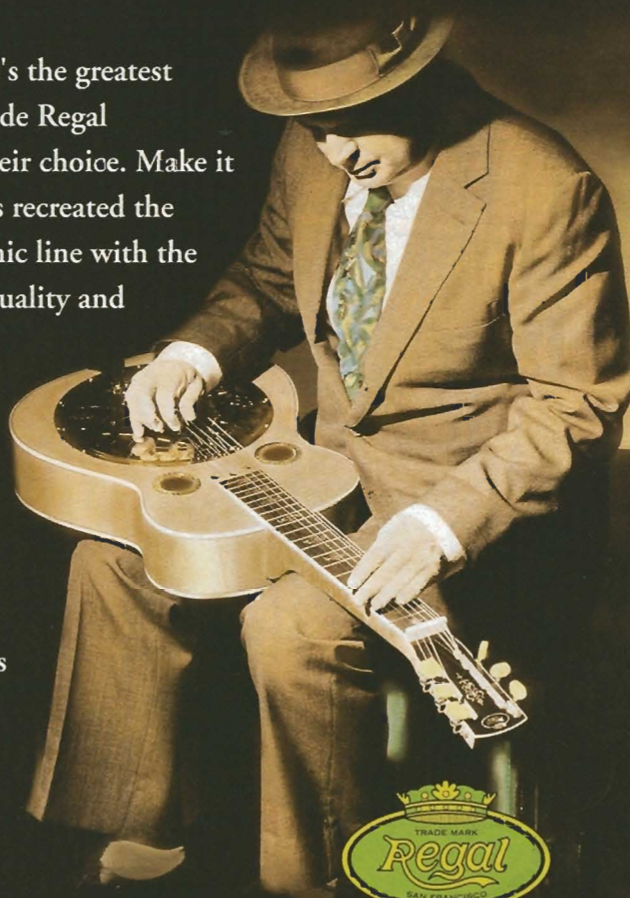
Musicians should engage lawyers to:

1. Help them understand the

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fundamentals and mechanics of the music business;

2. Negotiate all recording, publishing and management contracts;

3. Draft mechanical and master-use licenses as well as other related agreements;

4. Negotiate and review all endorsement agreements;

5. Assist in networking their musician clients for ongoing engagement opportunities.

Some Final Thoughts (And a Few Shameless Plugs)

All kidding aside, I've been fortunate to work with and learn from some very knowledgeable attorneys during my career. I happen to have two favorites, though, who specialize in the music and music products industries—Jim Goldberg and Ron Bienstock (see contact info below).

Jim Goldberg has assisted many music retailers with establishing

proper instrument rental programs by making certain that their rental contracts comply with both federal and state laws (which, ironically, often conflict with one another). Jim has also assisted NAMM with both lobbying efforts and governmental affairs over the past several years.

Ron Bienstock has assisted many music instrument and product suppliers with intellectual property issues and licensing as well as protecting those rights in dispute resolution. Ron has also helped professional musicians and bands advance their career by negotiating record and publishing deals, as well as educating them on how to create a profitable livelihood as a musician. Lastly, Ron is a killer bass player... and isn't that what really matters anyways?

So if you ever find yourself in a legal pickle, make sure you call a lawyer. Just like Warren Zevon sang in his song "Lawyer's, Guns & Money": "I was gambling in Havana, I took a little risk, send lawyers, guns and money. Dad, get me out of this."



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