Twists and turns in the 360 deal: Spinning the risks and rewards of artist–label relations in the streaming era

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Abstract
This article studies the contracts of labels and artists in the 2000s and 2010s in order to understand the conditions for creative work in a predominantly digital environment. It argues that contract negotiation is a key site for the exchange of creative and economic resources which is likely to reflect developments in the technological but also legal frameworks of the music industry. It presents analyses of contract documents from before and after the rise of streaming services, capturing the turn away from the album and towards the smaller project of the single, which, among other things, entails higher royalty rates for the artists but also increases their responsibilities for financing production. The article goes on to discuss the extent to which such shifts in the investments and returns of both creator and company should be accompanied by changes in the legal protections of creative work.

Keywords
Creative work, copyright, document analysis, music industry, music streaming, popular music, record contracts

Introduction
The relationship between individual creators and commercial companies is important in any creative industry, and particularly so in the music business. For over a century, artist and label have entered into agreements to produce and distribute the recordings which have long saturated music culture. It seems obvious that this interplay allows both parties
to carry out musical projects which would otherwise be impossible. It seems equally obvious, however, that encounters between individual artists and commercial (and sometimes huge) corporations are asymmetrical, such that the ambitions of the latter can come to overwhelm those of the former. The trappings of both scenarios warrant a closer look than that which is provided by the popular media, for instance on the 360 deals of superstars, as the opportunities and limitations of these negotiations continue to develop today.

Over the past two decades, the music-cultural context has changed substantially for both artists and labels with the arrival of new tools for both production and distribution, including online streaming platforms. As the range of available resources and competencies changes, what different parties want from one another is also likely to evolve. Traditionally, the exchange between artist and label has entailed the former’s artistic capacity and the latter’s investment in production, distribution and marketing. Nowadays, artists have alternatives to the contributions of the labels, such as using home studios and various online music platforms. While many artists still sign with record labels, the agreements they make have changed in terms of the investments and returns expected on both sides. This article therefore asks: What developments have arisen in the record contracts negotiated between artists and labels in a digital context? In particular, it addresses the allocation of risks and rewards, and rights and obligations, aiming to assess the overall balancing of benefits and burdens.

Posing this question raises other issues, including the methodological question of how to access and analyse the relevant contracts themselves. This article presents a novel approach to contract analysis, as it has benefitted from firsthand access to 22 contracts from Norwegian music industry stakeholders. These documents were drawn from two different periods, the late 2000s and the late 2010s, and they reveal the ways in which key industry shifts have rearranged the terms and conditions of artist–label relations associated with the 360 deal.

Contracts and contexts

The terms and conditions of record contracts are largely attributed to copyright law, which gives artists ownership of their performance while also enabling them to sell it to a record label. However, record deals also cover other aspects of artists’ work – for example, that they can only make recordings for the one label, as Stahl (2013) underscores. Agreement on such rights and obligations relies on the legal principle that ‘[p]arties are free to enter into a contract and determine its content, subject to the requirements of good faith and fair dealing’ (Micklitz, 2004: 343), according to European contract law. With its recent copyright directive, the European Union (EU) has engaged further in the fairness of contracts dealing with copyright, formulating rights to ‘appropriate and proportionate renumeration’ (European Union [EU], 2019) as well as to the revocation of contracts. These issues have moved to the forefront thanks to the challenges faced by creators trying to negotiate beneficial terms with large online services such as YouTube, Spotify and Apple Music (Aguilar, 2018). The renewed regulations also apply to other contracts in the value chain of music, such as those of artists and labels. However, it remains hard to assess fairness in record contracts, to say nothing of
what their potential disproportionalities might actually mean, due in part to a lack of insight into the specific practices of the trade.

Traditionally, the core of the agreement between artist and label has been that the former trades the copyright to their performance in exchange for the latter’s investment in production, distribution and marketing (as well as advances and royalties paid; see Caves, 2000). This basic exchange has been understood in popular music research for a long time but primarily addressed on a rather general level (e.g. Negus, 1999). Knowledge about trade practices is available, however, in industry handbooks presenting the various terms that come into play, such as advances and recoupment, and guiding newcomers, up-and-comers and stars regarding what to expect from the process. In the 10th edition of his book, while addressing the trend towards 360 deals, Passman (2019) concedes that ‘there’s no “industry custom”; instead we have a patchwork of practices’ (p. 103). This neatly encapsulates both the challenge and the attraction of studying contemporary record contracts.

In the early 2000s, income from record sales was falling as the industry saw a dramatic rise in online distribution (including ‘piracy’) – a situation which inspired numerous studies (Spilker, 2018). Record companies began to look for new business opportunities which were reflected in the contracts they offered to artists, and two developments garnered much professional and academic attention. First, stars like Robbie Williams, Madonna and Jay Z were offered lucrative multimillion dollar deals which sought to encompass income from not only recordings but also ‘additional aspects of an artist’s career, like her merchandising, publishing, endorsements and touring’ (Karubian, 2009: 399). Second, major labels entered into collaborations with televised talent contests, such as Idols, offering a record contract to the winner, the proven popularity of whom was exploited not only by speedy record releases but also through various brand tie-ins, including online and mobile-phone products (Jenkins, 2006). By developing such approaches to as yet unproven talents with markedly different bargaining power than the stars, labels sought to regain some measure of control over otherwise uncontrollable circumstances. In their research framing developments in record contracts as inroads to scrutinising overarching power structures, Stahl and Meier (2012) warned, however, that ‘some artists are better positioned to resist or reject expanding contractual demands, some much less so’ (p. 453). Stahl (2013) then pursued this analytical strategy to compare the working conditions of artists to the social organisation of 21st-century work in general, including but not limited to the vulnerability of hired labour at a time when the primary (neoliberal) obligation of politics and laws is to protect market forces. Such research has inspired this article’s further scrutiny of the rationales and practices involved in contemporary contracts likewise outside the limelight of the stars and televised talent contestants.

Contracts which go beyond recordings to cover elements such as publishing and merchandise have been referred to as 360 deals, or multiple-rights deals, in the industry, the press and the scholarly literature. This is a challenging term to define, however. These deals have been associated with labels seeking copyright not only to performances but also to songs and compositions – rights, that is, otherwise signed to publishers (Okorocha, 2010: 19). But they are also associated with other elements, such as claims to profits from touring, merchandise and endorsements, which are not covered by copyright law.
In fact, the term has even been used for contracts which include only such formerly peripheral elements (e.g. Marshall, 2013: 80). The term’s flexibility perhaps explains its broad use (and extension to notions of ‘270’ and ‘180’ deals as well) but also hints at its limitations. In terms of labelling a concrete shift in industry practice, one obvious limitation of the ‘360 deal’ is that fact that labels have long drafted contracts that go beyond recordings to obligations with regard to touring, music videos, merchandise and so forth (Albini, 1993). Equally importantly, as Stahl (2013) notes, record contracts have always made extensive claims upon artists’ working opportunities, present and future, such as denying any engagement with other recording projects (‘exclusivity’ clauses) and insisting upon the option to continue or terminate the contract following each respective record released (‘option periods’). For the record companies, as the economist Caves (2000: 63) explains, these demands increase their control over their risk and gain in an industry in which no one really knows what will succeed in the consumer market. Artists have not been afforded the same sorts of demands in the process, however. It is unclear whether the trend towards 360 deals entails a change in these aspects of the relation, although they clearly regulate artists’ creative work (and their ‘360’ horizon of opportunity).

In industry debates, imbalances in artist–label relations have been on the agenda for a long time. The esteemed record producer Steve Albini (1993) even referred to record contracts as ‘the problem with music’ in an article of the same name, while emphasising their tendency to inhibit artistic initiative. He underscored the way in which bands are ‘held hostage’, as they ‘cannot sign to another label or even put out their own material unless they are released from their agreement, which never happens’ (Albini, 1993: 32). He also lamented the fact that labels demand the ability to recoup their expenses from various aspects of the recording project, often leaving little to the artist in the end. Last but not least, he presents the budget of a ‘representative’ record deal to draw attention to the various details that underpin its balance (or lack thereof) of benefits and burdens. Albini’s (1993) intervention remains relevant today; while the notion of the 360 deal draws renewed attention to what it encompasses, it remains very important to examine how its various elements are covered and apportioned between artists and labels.

A crucial contribution of the notion of the 360 deal, however, is that it has sensitised music professionals and scholars alike to the relationship between contracts and their industrial, technological and legal contexts. Contracts presented themselves as a useful point of access to the ways in which the industry responded to sprawling digitisation in the first decade of the 2000s, including piracy and associated economic downturns. In the analysis that follows, therefore, the ‘360 deal’ is considered less a precisely defined type of contract as such, than an invitation to examine how artist–label agreements reflect their surroundings (and a set of parameters for doing so in a 360 manner). In the 2010s, these surroundings became less tumultuous and were marked most significantly by revenue growth which was largely due to the rise of the streaming services (Hesmondhalgh, 2020). It is likely that this relative calm drew some scholarly attention away from record labels and record deals, but the conditions for creating and investing in music have continued to change quickly, and it remains a challenge to trace their manifestation. For example, industry organisations have in recent years reported an increase in the use of
licencing contracts whereby artists retain ownership of their recorded performances (Creo et al., 2019).

After a century of being based on physical record sales, record contracts are now based on streaming services such as Spotify and Apple Music, which offer immediate access to vast catalogues of music in return for a subscription fee or advertising exposure (Maasø and Hagen, 2019). Streaming is likewise associated with a turn from album-based to playlist-based listening, which has consequences for the music which is made as well as the returns it generates. And, indeed, the means of production have also changed, as is reflected in the exponential rise in the use of laptop-based project studios among professionals and amateurs alike (Kjus, 2019; Watson, 2015). This article is sensitive to developments in the broad range of resources available to artists and labels, and therefore also to changes in the kinds of working relationships in which these parties might engage.

This article also aims to contribute to the critical evaluation of the fairness of contracts, taking into account contemporary discussions concerning the control and authority which creators should retain over their own work. Assessments of fairness and relative proportions of burdens and gains in contracts should be substantiated by the careful analysis of those documents, a challenge to which I will now turn.

How to study contracts?

One reason why there are few studies of contracts is the challenge of getting access to the documents in question, thanks mainly to the confidentiality clause signed by the parties—‘therefore, getting the actual details of actual contracts is difficult’, Marshall (2013: 84) notes. The studies mentioned earlier primarily used secondary sources, including people with knowledge of the contracts of others or journalists who have interviewed such people. Journalists, in fact, represent a particularly welcome source of information for studies of the 360 deals of high-profile artists such as Robbie Williams, Madonna and Lady Gaga, whose careers are so closely tracked by the media. Another potential source of information for contract studies is the trial judgement (see Stahl, 2013; Van Beveren, 1996), but most conflicts are settled out of court and therefore not made public.

In other words, the study of record contracts faces the almost existential challenge that its object of study, the contract document, is generally unavailable for analysis. It is the label which drafts the contract and its related nondisclosure agreement, and which is most likely its primary beneficiary. The business rationale for confidentiality is usually to protect trade secrets with economic value for their holder, such as what it invests in production and how it approaches the market. In agreements between corporations, confidentiality can be of mutual benefit, but, in agreements between companies and individuals, this is less likely to be true. It is clearly valuable to a label that a new artist does not know what other artists have received from it, but the artist loses the benefit of this perspective. Confidentiality clauses therefore anticipate imbalances in the relationship defined by a contract. Furthermore, while labels are likely to have expertise in contracts, individual artists are not, leaving them reliant on the consultancy of lawyers, managers or interest organisations.
The challenge of gaining access to actual contracts has inspired ingenuity in the field; however, in 2018, for example, BI Center for Creative Industries (2019) surveyed artists regarding what kinds of contracts they had and what royalties they were receiving. Artists could respond anonymously, and 598 did. It turned out that in the year preceding the survey, only 17 percent of respondents had a traditional record contract through which ownership of the recorded performance is transferred to the label, whereas 16 percent of respondents had licence deals through which the artist owns the recording but allows the label to exploit it for a certain period of time. On average, the former group received a 25 percent royalty from downloads, a 27 percent royalty from streaming and a 30 percent royalty from physical record sales, while the latter group received a 43 percent royalty across all formats. Furthermore, 33 percent worked through their own record label, and 15 percent had a deal with a distribution partner (such as the Orchard). The survey also asked what kind of label relations the artists had 10 years previous. Out of 372 respondents to this question, 28 percent had a traditional record deal in 2007, while 23 percent had their own record label, the subsequent growth of which indicates a substantial shift towards self-reliant entrepreneurship. Only 1 percent reported having a 360 deal in either 2017 or 2007. This somewhat anomalous response probably has to do with the challenge of actually defining a 360 deal; the survey described it as one actor owning ‘all’ rights to an artist/songwriter (BI Center for Creative Industries, 2019: 72), which leaves out the diverse ‘patchwork of practices’ referred to by Passman (2019: 103). In addition, 19 percent of respondents answered ‘don’t know’ to the question concerning what kind of contract they had in 2017 – and even more of them said this about their 2007 contract – indicating the vulnerability of such surveys to individual hindsight and memory of contract details. These percentages also hint at how complex contract matters can be for many artists.

It should also be noted that the context of this study is Norway, which is a small country of about 5.4 million people and therefore represents a limited market of both artists and audiences. Local artists represent less than 20 percent of the streamed music in Norway, the lowest share among the Nordic countries (BI Center for Creative Industries, 2019: 47). Although the three major labels, Sony, Warner and Universal, have a strong presence in Norway alongside numerous independent labels, the size of the market might have hampered investment in extensive 360 deals with its artists. Furthermore, the Norwegian state has a strong tradition of public support for culture, due to the limitations of its markets. For instance, Arts Council Norway grants about €150 million annually to cultural projects, with the music sector as the major beneficiary (see www.kulturradet.no). This commitment means that Norwegian artists have funding sources other than labels. Last but not least, Norway, like the other Nordic countries, has been in the forefront of using new production and distribution technology for music (Maasø and Hagen, 2019). The availability of these resources may have itself fuelled the trend towards entrepreneurialism indicated earlier, a point which has been made concerning other countries as well, such as the United Kingdom (Haynes and Marshall, 2017). If contracts reflect their contexts, then, the findings of this article will hold the most for other regions with similar markets, cultural policies and technology use.

In its study of contracts, this article has sought direct access to the primary source itself. Instead of contacting artists in this regard, the author approached one of their
interest organisations, GramArt, which offers support and counsel on matters including contract drafts and negotiations with labels. GramArt was established in 1989 and currently has about 3000 recording artists as members (see www.gramart.no). Its legal consultants are regularly presented with contracts that artist and label have not yet signed, meaning that the parties are not yet bound by them or their confidentiality clauses. Given that the content might still be considered sensitive, the author asked GramArt to provide access only to anonymised contract documents, which GramArt did, with the condition that the texts were only available during visits to the organisation’s offices. Due to a heavy workload, administrators were only able to locate and anonymise a limited number of contracts from their archives, which stretched back to 2007. Because these contracts were initial propositions from labels which might have been adjusted before being signed (if they were signed at all), they represent particularly pointed expressions of the label’s interest in the respective arrangement.

Contracts are texts which are produced and utilised within certain social and institutional contexts, and the study of one can support the study of the other. Document analysis therefore often informs studies of such larger structures (Altheide, 1996); as Karppinen and Moe (2012) underscore, ‘the researcher must interact with documents to place them in a proper context’ (p. 189). Such an interaction provides the basis for what the contract texts say about their environment – that is, both the relationship between artist and label and the broader industrial and societal circumstances surrounding that relationship. For example, one must clarify whether the contracts are between major or indie labels, on the one hand, and established or new artists, on the other hand.

Because this study sought to unpack developments in contracts over time, the author requested samples from both 2007–2009 and 2016–2018. These two periods frame a decade of substantial technological development, as addressed earlier, and most markedly the proliferation of the streaming services, in which Norway and the Nordic region of the music industry have led the way. In order to be feasible as well as substantial, the study focuses on developments in recording contracts, leaving licencing contracts for later research. During three visits to GramArt in 2018 and 2019, the author was given access to 22 contracts. The consultant at the organisation considered none of them to be 360 deals. While he did recall more attempts at negotiating 360 deals 10 years ago, through which the labels sought full control over publishing, touring and more, he had the impression that they entailed too much investment and involvement (a point potentially relatable to the size of the Norwegian market). The first visit was devoted to gathering as much information as possible about the exchange of investments and returns outlined in the contracts. This information was then entered into an Excel document according to relevant categories which were defined in a codebook, and both of these sources informed the subsequent visits. Excerpts from the contracts have been translated to English by the author.

The contract analysis primarily aimed to shed light on qualitative properties, as is often the case for document analysis (Bowen, 2009), but it also outlined quantitative dimensions of the sample material. There are clearly limitations to what 22 documents can say about contemporary contract practice, but where there were marked differences between the early and late contracts, it is reasonable to assume that similar patterns might be found in similar document selections (in similar contexts). There were nine contracts...
from 2007 to 2010 and 13 from 2016 to 2019. The author requested diversity in terms of the signing parties, including major labels, indie labels, experienced artists, new artists, male artists, and female artists; otherwise, the organisation was asked to select contracts at random. The selection resulted in the spread outlined in the Table 1 below (four contracts were lacking some information; the relevant slots are marked with *).

While the study covers a range of signatories, the sample still leans towards contracts with major labels, experienced artists and males rather than independent labels, new artists and females. In the search for how things changed, the study first sought information about what artists were offered, including advance payments, royalties, production budgets and promotion plans. It then sought information about what the labels demanded, including ownership of the music, rights to the exploitation of it and exclusivity in terms of the artist’s labour, including option periods. Following a presentation of the findings from this search is an interpretation of the ways in which developments in the contracts relate to developments in their digital media context.

Findings

One of the first developments in the contracts between the early and late periods concerns the types of recording project the labels propose to the artists. In all nine early contracts, the main project involves recording an album, and four of them include releasing singles as well. Among the 13 later contracts, seven specified albums, two of which included singles, while six specified singles only. These single contracts, already a new development, also included a commitment to making a remix. An album or a single was always presented as the main project, but all the contracts also encompassed a series of related projects, such as concert tours and music videos.

The proposition to the artist

In all of the contracts, the label’s offer to the artist was presented in the opening pages, and advance payments for album projects ranged from €5000 to €15,000 in both periods (using this currency conversion: 10 NOK = €1). Advance payments for single contracts were usually €1500 per single, which, on a song-to-song basis, was equal to or higher than the album rate. The modesty of these advances, of course, might reflect the size of the Norwegian market. For both albums and singles, the advance was an expense which the label deemed recoupable from the royalties of the artist. The majority of the contracts, particularly the recent ones, also claimed cross-recoupe...
sources. One contract even considered contributions from third parties to be cross-recoupable, such as support from cultural policy bodies, reflecting a ‘360 approach’ to possible income sources.

In the early contracts, the royalty percentage which the artist was to receive from record sales was generally between 10 percent and 14 percent; in the later contracts, it was between 14 percent and 18 percent for albums and singles alike. Both periods included one or two so-called break-even deals which offered the artist 50 percent royalty but only after the expenses of the label (usually an independent one) were covered. Some of the early contracts specified an increase in royalty percentage in keeping with increasing sales, such as an increase from 10 percent to 13 percent when 10,000 copies had been sold, and to 16 percent when 20,000 copies had been sold. Such scaling was absent from the later contracts, which also did not distinguish between royalty percentages for physical and digital formats but instead kept a flat rate across them. These rates all applied to sales in Norway, and most of the contracts across both periods specified a higher rate for international sales – most often 30 percent in the early contracts and 50 percent in the later ones. In both periods, income from licencing to films and commercials, or so-called sync, was to be split between signatories.

Some of these findings differed from those of the BI survey (BI Center for Creative Industries, 2019), which found artists’ royalties to be between 25 percent and 30 percent on average, as well as higher percentages for physical than for digital sales. This may be because some of the artists in that survey reported their national royalties while others reported their international royalties, and some may have signed their contracts at a time when it was more common to distinguish between sales sources.

Another key aspect of what a label brings to the contract arrangement is its investment in the studio production budget. In the early contracts, production budgets range from €5000 to €20,000, when they are specified; such budgets are seldom specified in the later contracts. This might reflect an increasing reluctance regarding investment commitments, a point relatable to a novel element which emerges in four of the later contracts; the costs of the studio producer and any potential featured artist are to be covered out of the artist’s royalties. These three single and one album contracts encompass both major and indie labels, and the two indie contracts likewise specify that both the mixing and the mastering of the music will not be covered by the label. Such production expenses can be substantial, complicating what the labels demand in return for this investment (when they are willing to make it), as is discussed below.

**Label demands**

In return for the advance payments, royalties and production investment, the labels all claim ownership of the recorded work, along the lines of this early example: ‘All the recordings that have been carried out by or at the expense of the company belong to the company with no limitations in ownership’. Several later contracts also claim ownership of all video recordings and audio-visual material produced as part of the contracted arrangement as well. While the early contracts also address plans for music videos, the later ones are more assertive regarding their ownership and potential monetization (likely
because popular videos have demonstrated a capacity to generate advertisement-based revenues on media platforms such as YouTube).

After claiming ownership of the produced material, all of the contracts proceed to the forms of exploitation over which they take control. In the early contracts, these claims extended to digital media and were characterised by the trends of 2000s, as in this example: ‘The company has exclusive rights to exploit the performances commercially, including digital exploitation (internet, SMS, MMS) and Digital Electronic Music Distribution (DEMD), defined as downloading (including ring tones for cell phones)’. These early contracts often mention downloading explicitly, as it was the principal mode of digital distribution at the time. A decade later, streaming was the new industry standard for digital distribution, though it is not specified in the later contracts as such. Instead, the exploitation claims have become at once more platform neutral and more abstract, as in this example:

The company can exploit the recordings in any form, including in combination with image/video/text, for analogue and digital transmission and on demand provision through any wireless or wired transmission media, from one to one or one to many, including, but not limited to, interactive services like the internet.

The contracts contain numerous variations upon these formulations which attempt to address any conceivable form of music distribution as it continued to evolve in new ways. These claims, which are necessarily more elaborate and explicit than in the era of physical formats, emphasise the labels’ interest in complete control over the products and proceeds of the contracted arrangement.

In the contracts, the labels also seek control over prospective collaborations by claiming so-called options on future recording projects. In this eventuality, as addressed earlier, the artist would be subject to the discretion of the label, which could discontinue the contract after a given project and/or restart it for future ones. Both the early and later album contracts typically claim two or three option periods for majors and Indies alike. The later single contracts, however, include, respectively, 10, 15 and 19 option periods which they might choose to use. These contracts therefore only commit the label to smaller and more flexible recording projects, such as the making of a remix or an acoustic version of the single, for example. Although the production of a single is likely to be shorter in duration than the recording of an album, the single contracts can commit the artist to the label for a longer time due to the number of option periods claimed (though the speed of individual recording projects is likely to vary).

Most of the contracts go on to state that the artist is not allowed to make recordings with another label for the duration of the deal, which, again, might extend through several option periods. Furthermore, the labels claim the right to sell the contract to another label; some even specify that there is no need to notify the artist of this in advance, underlining the imbalance in such arrangements between the signatories. If a successful release increases the market value of an artist, the label can profit by off selling the deal to the highest bidder, the terms of which remain the same for the artist. This eventuality appears most regularly in the later contracts, but all of them start by demanding exclusive access to the recording and end by demanding exclusivity in their relationship to the artist, including a ‘duty of confidentiality regarding the content of the contract’.
Additional projects

Making a recording is the main project driving the contracts in this study. Only one later contract demands that the artist also sign a publishing agreement, claiming the copyright to songs and compositions for the label, while another later contract indicates that such an agreement will be discussed at a later stage. It is possible that some of the companies also propose independent publishing deals (which is known to occur; see Passman, 2019: 89) without mentioning them in the contracts examined for this study. In any case, such ‘360’ ambitions here do not take the form of deals which integrate publishing and its associated rights and opportunities. Instead, they address certain smaller projects which are related to the main project in different ways.

In all the contracts, the labels take it upon themselves to carry out marketing activities. In the early contracts, these obligations tend to be described in more detail than in the later ones, as in this example: ‘The company will produce marketing and advertising materials, such as posters, flyers, and information to pre-sales vendors’. The later contracts tend to simply state, ‘the company will market and sell the recording’ – some adding the qualifier ‘in keeping with good industry practice’ – while moderating their concrete commitments. The contracts go on to outline activities which are traditionally associated with marketing, including release tour and music video production.

Organising a tour can be costly, however, and five of the early contracts demand that the label’s tour investment must be cross-recouped from record sales. Four of these contracts, furthermore, claimed 10 percent of the overall concert-based income of the artist, even including concerts which the label does not organise. In the later contracts, such claims have caught on, as 10 of them claimed the ability to recoup release tour costs and seven demanded very specific percentages from concert earnings, varying from 5 percent to 15 percent, while stipulating the kinds of concert honoraria to which they apply (such as amounts of €2500 and above). Some of the later contracts also add a rationale for the claim – for example, ‘as a compensation for the general increase in the artist’s commercial market value based on the investments of the project, the company is to receive 10 percent of the artist’s net honorarium per concert’. More than mere marketing initiatives, then, concerts are, to the labels, opportunities for harvesting profits from their investment in the contracted recording.

Four of the early and six of the later contracts cover the making of a music video, either 50 percent or 100 percent of the costs of which are also to be cross-recouped. This particular additional project also appears to transcend marketing purposes, as some of the later contracts explicitly claim ownership of the video and, thus, its potential return. The provision of merchandise is also addressed in four early and six later contracts, which is again subject to cross-recoupment.

Emerging patterns

The additional projects demonstrate the ways in which these contracts cover numerous aspects of the working relationship between label and artist. Based on the overview earlier, it is possible to discern certain developments in the contents of the contracts and the ways in which they are to be carried out. Some of these key elements surface through a
comparison of the contracts from 2008 with the contracts from exactly a decade later. The 2008 contracts concern the making of an album, offer the artist a royalty rate between 10 percent and 14 percent and do not require the artist to cover certain production costs. The 2018 contracts concern the making of a single, offer the artist a royalty rate of 18 percent or 20 percent and require the artist to pay for the producer. There are obvious shifts in the investments and returns on the part of both parties which impact the balance in their working relationship.

Each contract asserts a specific allocation of rights and obligations which is likely to vary depending on what each party can offer – for example, based on the popularity of the artist in question. Although this study sample covers both major and indie labels, established and new artists and female and male artists, it is too limited to say anything certain about the relationship between kinds of labels and kinds of artists. Still, the sample is robust enough to allow identification of emerging elements within the contract texts, and to relate those elements to their context.

Conclusion: developments within and beyond contracts

One of the most striking findings in the material for this study involves the rise of the single contract at the expense of the traditional album project. This is presumably an acknowledgement of the contemporaneous rise of streaming services, which encourage the consumption of individual tracks through flexible playlists rather than entire fixed albums. It is a well-documented observation that popular singles can skyrocket in profitability (Aguiar and Waldfogel, 2018). The analysis of developments in contracts should, however, go beyond studying what kind of projects they comprise to how they address them. In that regard, it is striking that the contract option periods have expanded from two to three albums to up to 19 singles. So, while the contracts involve smaller projects, the labels want to commit artists to participating in many more of them. Streaming allows labels to assess the success of each single release before deciding to invest in the next, thereby refining the economic logic of option contracts, which, according to Caves (2000: 63), resides in the ability to test ‘expected payout against the project’s current prospects’. Labels aim to do this recurrently and flexibly and are supported, in fact, by the head of the largest streaming service, Spotify’s Daniel Ek, who warns artists, ‘you can’t record music once every three or four years and think that’s going to be enough’ (Musically, 2020). From the artist perspective, the turn towards single contracts and their option periods is likely to reduce the scope and predictability of their work, lessening the time and resources they have to develop their musical projects and artistic profiles.

A balancing finding involves the marked increase in artists’ royalty rates, which are approaching 20 percent, a number previously only offered to superstars (Caves, 2000: 62). The impact of this number is moderated, however, when the contracts go on to specify the various costs which are to be recouped through this royalty, including music video production and even studio producer honorarium. Some labels even go on to demand that artists cover mixing and mastering, indicating another set of adaptations to technological shifts. In recent decades, hardware and software tools related to music production have proliferated – note, for example, the growing number of home studio setups and the emergence of music production specialists who offer their services for
hire (Watson and Beaverstock, 2016). These tools and services have become more affordable and therefore more thoroughly integrated into the practices and networks of artists. When labels expect artists to be able to find and pay for certain aspects of production, responsibilities and economic risks are twisted and pushed onto the artists.

The studied contracts also indicate a marked shift in labels’ expectations for artists’ participation in projects outside of sound recordings. Traditionally, concert tours and music videos were considered part of the marketing of records, and therefore an investment risk which labels were willing to take (Albini, 1993; Wikstrøm, 2020). Although tours and videos, arguably, still stimulate record consumption, labels have increasingly considered them to be independent sources of income, ever since revenues from recordings were undercut in the early 2000s. This new association of tours and videos with income is strikingly expressed in half of the recent contracts, which demanded up to 15 percent of the artist’s concert revenues for the labels. These gains are also drawn from concerts in which the label is not even involved – events initiated and economically covered by the artist.

The analysis earlier indicates substantial twists and turns in the constantly developing exchange between artist and label. Traditionally, the labels’ investment in production, distribution and marketing has legitimised their acquisition of the copyright to the artist’s recorded performance. But while the contracts reflect reductions in the economic risks which the labels are willing to take, they also express more exhaustive claims to the exploitation of the copyright-protected work in the digital context, ‘through any wireless or wired transmission media, from one to one or one to many’. Advances such as these demonstrate an expansive approach to the artist and the potential profitability of the relationship. Only one of the 22 contracts here, however, seeks the copyright of songs and compositions, and most of the other implicated projects, such as tours, videos and merchandise, were likewise covered in contracts preceding the 2000s. If 360 deals represent an expansion of the rights and projects covered by the label–artist relationship, this article finds few signs of it. There is, however, a discernible form of ‘360’ expansion in the ways in which labels have come to seek control over artists’ contributions and labour – for example, the demands made concerning the funding of recordings and the profits from concerts. This development appears to be interlinked with an increased sensitivity to the technological resources in their ‘360’ surroundings, in terms of both production and distribution. This mode of expansion is reflected in the turn towards singles in the context of streaming services, and the related increase in option periods.

The contemporary changes in contracts highlight deep-seated imbalances in artist–label relations – for example, labels can sell the contract to another label. This means that if the market value of the artist increases after the release of two or three singles through streaming, the contract can be sold at a profit, while the artist remains bound to numerous single productions on the original terms. Although artists and labels are ‘free to enter into a contract and determine its content’ (Micklitz, 2004: 343), according to European contract law, such imbalances might be at odds with the ‘principle of appropriate and proportionate remuneration’ established in article 18 of the EU’s recent copyright law regulation (EU, 2019). Article 20 goes on to provide a ‘contract adjustment mechanism’ which can be applied when ‘the remuneration originally agreed turns out to be disproportionately low’. Recent claims to option periods and payouts are, arguably, not
appropriate and proportionate and are examples of how an awareness of developments in contract practice should inform the implementation of the EU’s copyright regulations in different countries and their music industries.

Several aspects of the contracts, and the ways they commit one party to the other, do appear to be disproportionate. The word *contract* means ‘drawn together, tightened’ in its Latin origins, but the ability to draw and tighten is not necessarily evenly spread here. The labels involved in this study, which are predominantly major, appear to flex their muscles in a form of ‘concentric contraction’, pulling in the labour and resources of the artists. However, the contracts also reflect the reality that artists now have access to new resources, not least in terms of production, which might enable them to flex their own muscles in ‘eccentric contractions’ – that is, away from label dominance. In fact, a recent survey in Norway revealed a decline in the number of record contracts signed with established labels, and a corresponding increase in the number of artists working though their own personal labels (BI Center for Creative Industries, 2019). Artists also reported a growth in their involvement in licencing and distribution deals, through which they retain ownership of their work and instead pay for certain services. Although the traditional record contract may therefore be in decline, it persists as a reminder of the importance of examining licencing deals and the kinds of agreements into which makers and conveyors of music enter amid a growing number of production services, distribution partners, promoters, publishers and, not least, social media platforms and streaming services, which are now the crucial gateways to listeners.

This article upholds the argument of previous research that contracts can offer key insights into the way artist–label relations evolve within shifting contexts, including the contemporary turn to online streaming. Access challenges should not stymie this contract-focused effort but instead inspire innovative approaches to document analysis, as well as survey inquiries. Ideally, such studies should involve signed contracts, revealing the terms which were actually decided upon. The material for this study was limited to contract proposition drafts made by the labels – drafts which the artists may have been able to renegotiate in their favour through higher advances, less responsibility for production costs, fewer options or a smaller cut from their concerts. Insight into all of the related negotiations would also shed light on the priorities and bargaining power of each party. One of the methodological contributions of this article is its focus on two specific periods, which allowed for a chronological assessment of contract developments both across and within the selection. While the selection also covered both majors and indies on the label side, and experienced and new male and female artists on the creative side, this study was not able to identify meaningful patterns across these demographics. This would require more contracts and, most likely, more comprehensive data management, and it would introduce ethical considerations. It would also represent a big step towards relating these texts to their contexts – socially, culturally and economically.

This study was carried out in the context of Norway and the Nordic region, which has been at the forefront of the global turn to streaming, and which in that regard might be indicative of similar developments elsewhere. Norway has a small music market, however, which might provide labels with an extra incentive to exploit their existing rights and activities rather than invest in new ones. Furthermore, Norway’s cultural policies and generous support measures (relatively speaking) might offer artists alternatives to
signing full-fledged record deals, as indicated earlier. This situation makes it clear that any understanding of the balance between the signing parties, and in turn, the relevance of various regulatory initiatives, will benefit from further studies of artist–label relations in other countries and across other time periods.

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