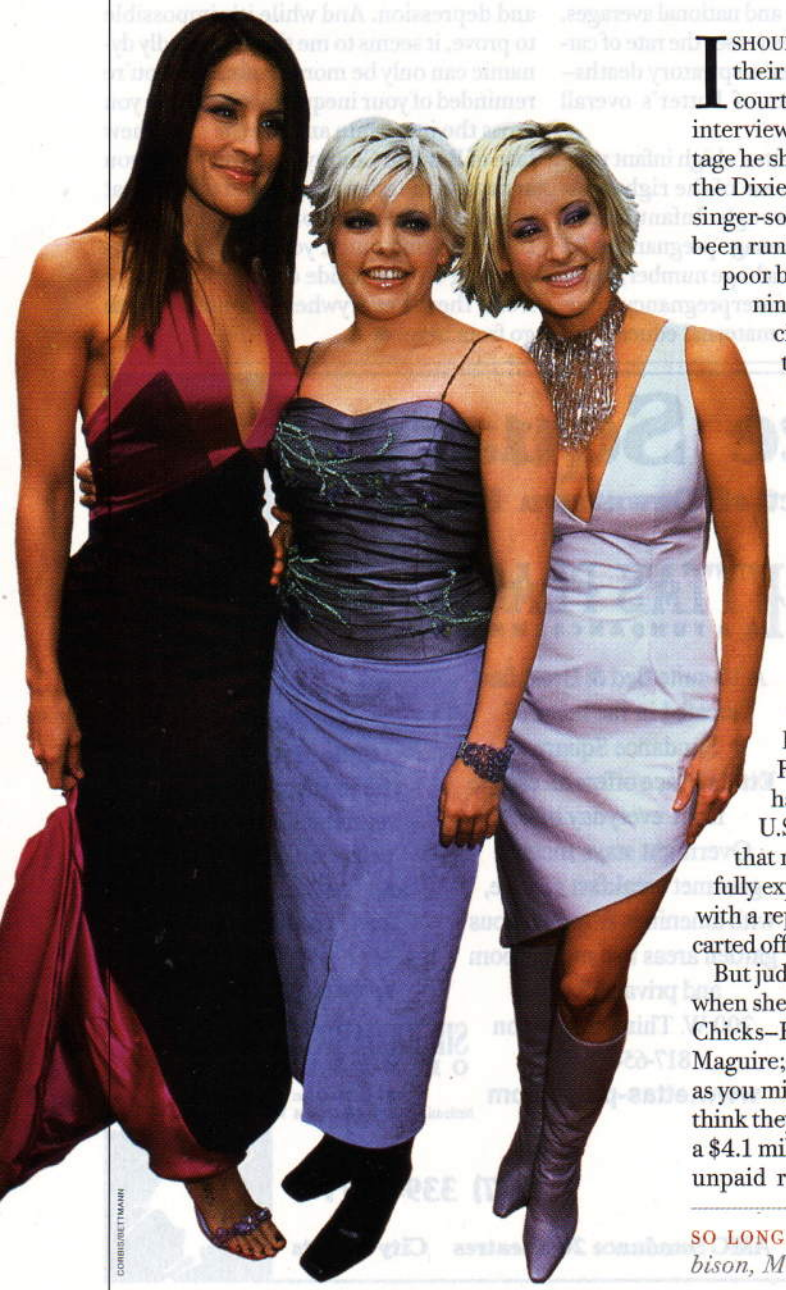
"Cheap! Cheap!"

THE DIXIE CHICKS SAY THAT SONY MUSIC OWES THEM MILLIONS. IF THEY CAN BREAK THEIR CONTRACT, THE RECORD BUSINESS WILL NEVER BE THE SAME.



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I SHOULD HAVE KNOWN THAT THE DIXIE CHICKS AND their record label, Sony Music, would end up in court. One night about a year and a half ago, I was interviewing Charlie Robison in the Olmos Park cottage he shares with his wife, Emily, the banjo player for the Dixie Chicks, for an article about Charlie and his singer-songwriter brother, Bruce. Charlie and I had been running buddies back when we were both dirt-poor broke and sleeping till noon in Austin's mid-nineties slacker heyday, and that night we decided to celebrate the distance we'd put between our current and former selves with a bottle of wine. We chose a stately merlot-cab blend, one sufficiently bold that it would not be overwhelmed by the Cornnuts I'd picked up on the ride into San Antonio–and, unfortunately, sufficiently red to ruin one of Emily's new overstuffed, *white* easy chairs when I dumped a full glass of wine in my lap.

Now, there's a wonderfully honest look of distinct displeasure that even the best hostess cannot hide when an old friend of her new husband's does something stupid in their first home. Make no mistake; it's a look I know but not one I expected to see from Mrs. Robison. Her band's two major-label albums have sold more than 20 million copies in the U.S. alone. At an average list price of $14 apiece, that might as well be all the money in the world. I fully expected thick-necked manservants to hustle in with a replacement chair, while the one I'd soiled was carted off to the Country Music Hall of Fame.

But judging from the clenched look on Emily's face when she found the mess the next morning, the Dixie Chicks–Emily; her sister, fiddle player Martie Seidel Maguire; and vocalist Natalie Maines–are not as rich as you might expect, and certainly not as rich as they think they ought to be. To rectify this, the Chicks filed a $4.1 million claim against Sony in August to recover unpaid royalties and to free [CONTINUED ON PAGE 59]

SO LONG, SONY: *The Dixie Chicks (from left, Robison, Maines, and Maguire) want to fly the coop.*

[CONTINUED FROM PAGE 46] them from their recording contract with the record label. If they are successful, the case could change the way all recording contracts are written, finally making such deals as friendly to the artists as they are to the label.

None of the parties to the lawsuit–not the Chicks, not Sony, not even their lawyers–would comment about the litigation, but there has been no shortage of public grumblings. The Chicks fired first, even before filing suit, with comments to Dan Rather in a *60 Minutes II* segment in July. "I don't even have a million dollars in the bank," complained Maines. When Rather noted that they had moved $250 million in records, Robison said, "You're depressing me because we see so little of that. I haven't done that math because even before we got our deal, everyone always said, 'Don't ever expect to make money with records.'"

Two days after the segment ran, an attorney for the Chicks sent Sony a letter informing the label that the girls considered their record contract terminated. Bean counters hired by the band had conducted partial audits of the royalty accounts and determined that Sony had underpaid them; consequently, the Chicks argued, they were free to rip up the agreement. Sony denied that the errors canceled the contract; such mistakes almost always occur when an act sells that many records, and Sony had paid some of the disputed money to the Chicks. The label filed suit, asking a New York court to declare the contract that tied it to the number one act in country music valid and binding. The Chicks counterclaimed that Sony had defrauded them by underreporting and wrongfully withholding royalties and asserted further that many of the terms of their contract–the same industry-standard clauses that prompted music biz insiders to tell Robison never to expect to make any money–were unconscionable and unenforceable.

Problems between recording artists and recording labels are nothing new; they may be as old as Dick Clark. When the disputes have concerned creative differences, they have become rock and roll legend, as in the early seventies, when Lou Reed's label pushed him for a new record before he felt adequately inspired. He delivered *Metal Machine Music,* four sides of nothing but grinding feedback and white noise. Prince had the opposite problem in the early nineties, when Warner Bros. asked him to release fewer albums to avoid spreading his sales too thin. He fixed the problem in 1993 by declaring there would be no more Prince albums at all: He changed his name to the now-familiar, unpronounceable symbol and started performing with "slave" written across his face.

When the artist attempts to end the relationship altogether, however, the conflict becomes the stuff of litigation. Witness the recent rampage of Courtney Love. Unhappy that a big label swallowed the independent she had originally signed with, she posted on the Internet "An open letter to Recording Artists" decrying the unfairness of the standard record contract. Love has taken her fight to the California courts and to state lawmakers, and when she testified before legislators in September, the Chicks lent their support by sitting behind her in the hearing room.

The chicks (note the lowercase *c* to indicate the inclusion of Love) have a point. A boilerplate new-artist recording contract is generally regarded as the most one-sided standard agreement in any industry. The simplest description of the contract and the relationship that breeds it appears in Moses Avalon's *Confessions of a Record Producer,* published in 1998. "Avalon" is the nom de plume of a multiplatinum record producer whose guilty conscience inspired him to write his tell-all tome and start a consulting business instructing young artists in the pitfalls of initial deals. According to Avalon,

and as borne out by the Chicks' original deal, a new artist will typically receive a 13 percent royalty of records sold–but that doesn't equate to the expected $1.82 per record. First the label gets to subtract 15 percent of the CDs shipped from the amount considered sold. This is supposed to offset "returns" (a throwback to the old hard-platter days before even vinyl records, when a certain number of albums could be expected to break on their way to the store) and freebies (an anticipated number of records given free of charge to retailers, disc jockeys, and record reviewers). Then there is a further discount off the list price for the cost of packaging–25 percent for CDs, or roughly $3.50, more than four times the label's actual cost of 80 cents.

In practice, however, the contract terms often turn out not to be the real deal. The artist gets a buck and a quarter a record, more or less, and what gets negotiated is the "more or less": Will it be $1.10, $1.25, or $1.50? But here too the label has the edge: Before the artist can start to receive that royalty, the act has to pay back all the money advanced by the label. This includes not only any signing bonus but also the cost to produce the record, any money spent on a tour to support the record, and half (or all) of the money spent to promote the record. The great travesty is that the artist pays to create and sell the record, but the label gets to own it. The label justifies this by pointing out that until a given record sells–and 90 percent don't–the risk is solely the label's.

When a record is a hit, however, power shifts to the artist, who typically renegotiates the deal. That's exactly what the Chicks did in February 1999, after their first album, *Wide Open Spaces,* had sold 3 million copies. Their royalty rate increased from 13 to 16 percent, their additional royalty for songs they wrote for their albums increased, and they were given control over the artwork on their records.

According to the lawsuit, though, none of the royalty rates were ever accurately administered by Sony, with every miscalculation meaning more money for the label. The Chicks claim to have been shorted $4.1 million, and although the label did pay some of that money back after the Chicks' audit, it did so without interest. The Chicks want the $1.4 million they claim that Sony still owes them–and they want out of the contract.

But not so fast: Yet another standard clause in their contract states that a dispute over royalties shall not be considered a material breach of the contract and cannot be grounds for terminating the deal.

Generally, "material" describes a term at the heart of an agreement–and most people would agree that at the heart of a recording agreement, there's an artist making music and a label paying for it. How can a breach of that relationship not be material? Even an industry lawyer I talked to admitted this clause is probably not enforceable. If the Chicks can bust this clause in court, they could turn the entire music business upside down.

The reason the clause has never gotten into court before the Dixie Chicks' lawsuit is that royalty disputes are part of the game. Everybody in Nashville realizes that royalties can fall between the cracks when acts sell millions of records. The typical way to deal with this is to conduct an audit, make a demand, and settle up. One of the problems with going to court, as Moses Avalon points out, is that if the Dixie Chicks win their lawsuit, it would change the law of only one state, New York. The labels could counter by opening satellite offices in states whose contract law is friendlier to their policies. But Sony and the Chicks would be foolish to let their dispute go that far. The label has no other artist selling anywhere near as many records as the Chicks, and the Chicks need to take advantage of their popularity–a fleeting commodity in the music business–and sell records while they're hot.

For the Chicks' purposes, then, the right role model is not Courtney Love but Garth Brooks. In 1992 he wanted to restructure his deal with his label, Liberty Records, a division of EMI Music Group. Sales of his records made up 68 percent of the label's total sales, and Brooks wanted a commensurate piece of the pie. He started talking in the press about having satisfied all of his career goals and wanting to retire to spend more time with his family–meaning, no more records. Liberty listened. He renegotiated his deal so that he'd ultimately own all of his records and receive so much from their sales that in effect he would be paying Liberty a royalty. Enough money came in that everyone was happy.

Presumably such a deal would bring the Chicks back into the Sony fold. Maybe a compromise can be worked out. "It's too bad for the girls and for Sony," says Ray Benson of Austin, the patriarch of seven-time Grammy winner Asleep at the Wheel and a friend of the band's. "The Dixie Chicks have a lot of music in them, and Sony needs to treat them fairly. They're at their creative peak, and they need to be making records." And, the Chicks would add, money. ✦