11:02:28 >> VANESSA: Hi everybody. I think we're still
11:02:31 getting some people in. But I'll get started.
11:02:34 Welcome. This is the contract negotiation
11:02:38 workshop go hosted by the American composers
11:02:44 foreign Springboard for the arts. I Vanessa, and
11:02:47 this the series we've been doing with our
11:02:51 partners way started in response to COVID-19, and
11:02:54 it's our joint effort to give information,
11:02:58 resources tool boxes for artists at this time.
11:03:02 There are a number of series of webinars that
11:03:04 have already happened in this series you're
11:03:06 welcome to visit. We are recording this, so
11:03:11 these have now been archived on the ACF website,
11:03:15 under the resources tab. If you click on the
11:03:19 creative development webinars, you will see some
11:03:23 past webinars, otherwise this will be recorded.
11:03:28 And audio transcribed. We will make the lings
11:03:30 available. You can turn on the closed caption
11:03:34 feature in Zoom to add the audio transcriptions
11:03:37 to your screen in real time. Please keep your
11:03:41 own computer and phone muted during this session.
11:03:43 Some of the questions you sent ahead of time will
11:03:45 be covered with the presentation, we'll also
11:03:48 monitor the chat and collecting questions that
11:03:51 come in. If at the end there are questions that
11:03:53 haven't been answered, we can connect with you
11:03:55 off line to work to get answers for you. At this
11:03:59 time, it's my pleasure to reduce Andy who is the
11:04:01 artist resources director for Springboard for the
11:04:04 arts. And he will introduce our special guest
11:04:07 >> TERRY:
11:04:11 >> Thank you very much, I'm Andy, artist
11:04:14 resources director and the coordinate four the
11:04:16 Minnesota lawyers for the arts program. The two
11:04:19 attorneys joining us have been involved with the
11:04:21 Minnesota lawyers for the arts program for long
11:04:25 time, they are both very knowledgeable and very
injoyable people to talk to, I will be happy to introduce them. Since 1988 Terry has been navigating high business situation, the author of the book big force negotiation, lawyer of the year in Minnesota, a super lawyer and received the president's award from the Minnesota state bar association, he practices in Minneapolis and he can hear his show on Sunday morning on KQRS radio. And Alex Mueller an award winning composer, and entertainment attorney. Minnesota state board association. Alex's practice is concentrated to entertainment law, works with businesses of all sizes, so with that, I'm going to turn it over now to Al Alex and Terry. Thanks.

>> ALEX: Thanks, Andy.

>> TERRY: Thanks, Andy. Hi everybody.

>> ALEX: So just to get started, I wanted to cover a little bit about contract basics. There were a few questions that came in from people who registered. So this will be kind of a theme as we go through some of the problem-solving around COVID-19 issues, but just remember that a contract is essentially a bargain for exchange. You and the other party agree to what you have to do, and what you want them to do, they are very flexible, and they are determined by what you put in the written agreement is ultimately what is binding, typically external evidence is not part of the agreement, won't be considered. So you want to have something in writing. Whenever possible.

Not having it in writing creates an evidence question of who said what, and whether an agreement actually ever existed.

>> TERRY: I can say it more simply. You can agree to anything want to agree to, and whatever you agree to is what's in the writing when there is a writing. Unless it's ambiguous. Which it always is.

So one of the big lessons I've learned over the
11:07:00 years is get it in writing, understand what it
11:07:05 says, but trust your business partner or don't go
11:07:08 into a contract with someone you don't trust,
11:07:11 because the contract can't keep them from
11:07:12 cheating.
11:07:17 >> ALEX: Right. A couple of questions about
11:07:21 what terms are included in a typical composer
11:07:26 contract. In short, who, what, when/where, how
11:07:27 much and rights.
11:07:30 So the who, makes sure that person signing the
11:07:32 contract has the organizational authority to do
11:07:37 so. If you're contracting with a school or
11:07:40 another nonprofit type of organization, make sure
11:07:42 that your contact at the organization might not
11:07:44 be the person that needs to be the one signing
11:07:47 that contract. And similarly, if you own your
11:07:51 own publishing entity as a composer, you might
11:07:54 consider having the entity be the signatory
11:07:56 rather than you as a person, even though you are
11:07:58 the one that's going to be performing all the
11:08:01 work, just to keep your business structure
11:08:02 separate from your personal business.
11:08:07 The what? In a composer commission agreement,
11:08:10 whether that's for an opera, for a concert band
11:08:12 piece, for a film score, any of those things,
11:08:16 usually there are some parameters for what the
11:08:18 instrumentation is going to be, the length of the
11:08:21 piece, there might be theme, subject matter, or
11:08:24 on a particular occasion that the work is
11:08:28 intended for, like an anniversary or celebration,
11:08:31 might be expectations for the skill level, if
11:08:33 you're writing for a high school band, for
11:08:36 example.
11:08:40 When? Make sure that you know of any firm
11:08:43 deadlines, if it's being written for an event,
11:08:45 you need to have enough time to do it, depending
11:08:49 on how fast you work, an event happening next
11:08:52 month might not give you enough time. You want
11:08:54 to have some percussion usually to finish up a
11:08:56 work.
11:08:58 Discussion discuss with the client whether
11:09:01 there's any milestones or check-ins along the
11:09:04 way. Do they want to hear a theme as you're
11:09:07 working? Usually on film scores the directors
want to hear something in progress. Concert organ commissions, that’s usually not as typical, but it could happen. Is a premiere date set? Is the location set? Are you second as the composer to attend resources, are you expected to attend the performance? You have your composing fee, obviously, but you want to account for costs, those could be expenses like printing, shipping scores, if you’re second to attend the premiere? Are you getting a travel stipend? Are they expecting that you attend a resource and performance and you’re staying over night? All those types of things should be something your contract contemplates, and it’s fine to roll all much into your cost, the next section is rights. This is the most important one. In copyright, there’s actually a plural, there’s six rights in the copyright act. You have the right to copy, distribute the copies, make derivative works, perform your work, perform audio recordings on the Internet. In the music instrument, there’s a bunch of other names, grand rights, performance rights, mechanical rights, master use, synchronization rights, print right referring to sheet music. Show don’t line up one to one, but you want to make sure that your contract consider all of these rights. Also keep in mind there’s two copyright works involved, the underlying composition, and then there’s any sound recording and sometimes those are not owned by the same person. So, for instance, if I wrote the music but someone else records it, they have rights in that recording, and I have rights in the underlying composition, so if somebody for a film wants to use that other artist’s recording, they have to get permission from them and from me, because I own the sheet music. You know, the underlying composition. And I can’t give the rights to the recording, because I don’t own that one. >> TERRY: Does anybody still write on sheet music any more? >> ALEX: Yes, it’s 12 cents every time you sell one. A lot of composers have moved to
self-publishing, there's still a lot of sheet music published for high school bands, grade school orchestra, that type of thing. Also Alfred music. For records, loft times there's not sheet music at all, they record in the session, and nothing something written down, except maybe a few scratches for chords, but you still have rights in the composition, whether you wrote it down or not.

What we see in composer agreements, oftentimes people giving up too much rights, too many of the rights. For instance, I've seen commissions for high school band piece giving the right to make the first commercial recording, which doesn't make sense, because they are never going to do that. So as the composer, when you create the work, you have the right to make the first commercial recording before what we have statutory rights, mechanical recording comes into place after that first recording exists. So if you give away the right to make the first commercial recording to a high school, who is never going to do it, no one else can ever make a recording unless you make one. So that can be a problem.

Not having the right type of rights is another issue.

So this has happened where a composer's commissioned by -- this is a true store', more than once this has happened. Composer is commissioned by a community orchestra to write a piece, and then later, the community orchestra had the idea that wouldn't this be nice, it sort of sounds like ballet music. Wouldn't it be nice if we ask the local dance group to perform it to your piece. The problem with that is ballet is grand rights as opposed to performing rights, this composer hadn't contemplated that in their contract, and because the PROs don't license grand rights, this composer couldn't get any royalties on any of these concerts performed by this orchestra, because now they fell under grand rights and not performing rights, don't make that mistake.
Another really important thing regarding rights is a concept called work for hire or work made for hire. They are the same thing. This is a device in the copyright act, it's literally printed in the statute. It transfers the ownership away from the creator of the work to the commissioning party so long as there's a signed writing that says the work is a work for hire. Don't use this term at all in your contract if that's not what you intend. I have seen people think this is the title of a type contract. They'll call it instead of composer agreement, they'll call it composer work for hire, and it tries to say later composer retains all the rights. Don't do that. Don't use these words at all unless you intend to give the commissioning party all of the copyrights. I tend to recommend if for some reason you want to split the copyrights with the commissioning party, it's better to use an assignment, which will give them some portion of it, you can give them half or just the rights to collect the royalties, like, for instance, sometimes parties only care about the sink rights. You can make recordings and release it on spot afire or whatever, but we want the right to the premier and license any sync agreements, you can give them just that portion and not all the copyrights.

>> TERRY: Just to underline what Alex just said with regard to work for hire, from other side, from the side of the person who is hiring you to compose something, if I get a work-for-hire agreement, my advice to the client is I own everything. Composer owns nothing. You're paying -- they are paying you 100 bucks to paint your fence, that's what they are doing, and if that's the deal you want, that's great.

But any time you see could, you should think this is a one-time job and a one-time check.

>> ALEX: Yep. And there are some situations where it's common to use the work-for-hire. Like if you write for Disney, you get the opportunity to score a film for Disney, you're going to sign
11:15:51 a work-for-hire.  
11:15:55 That's just how those work. And the main risk 
11:15:57 for work-for-hire is because you're parting with 
11:15:59 all the copyrights, and copyright in the United 
11:16:02 States is life of the author plus 70 years, 
11:16:05 you're missing out on potential additional 
11:16:08 revenue, other than what you got paid the one 
11:16:09 time to make the work. That's why you don't want 
11:16:14 to part with your copyrights without a number 
11:16:19 with a lot of zeros, that's when work-for-hire is 
11:16:20 appropriate. 
11:16:23 If you're dealing with an unsophisticated 
11:16:26 party, somebody who is maybe an arts organization 
11:16:29 that hasn't commissioned music before, be 
11:16:31 prepared to teach them what's involved, 
11:16:32 especially when it comes to the rights, and when 
11:16:36 it comes to the time line. Often, they really 
11:16:38 don't know what's involved. They don't realize 
11:16:41 it takes a hundred hours or whatever it takes you 
11:16:44 to complete a band score that's continue minutes 
11:16:46 long and do all the parts. 
11:16:49 So make sure that you're the one who knows how 
11:16:51 this works, you're the one that should being 
11:16:54 communicating that to your -- should be 
11:16:57 communicating that to your client. It's a good 
11:17:02 to have your contract template. Even if they are 
11:17:04 a sophisticated party. You don't want to wait 
11:17:07 for them to come up with terms that are agreeable 
11:17:10 for you. Put in front of them what you want and 
11:17:12 expect, and see if you have a meeting of the 
11:17:13 minds. 
11:17:14 Don't use a template that you don't understand. 
11:17:17 I see this all the time. People go on a 
11:17:21 Facebook group, does anybody have a template for 
11:17:24 blah blah blah, do you ask your friends for 
11:17:26 prescription drugs? That's about what that 
11:17:26 means. 
11:17:29 There's a lot of flexibility. 
11:17:32 >> TERRY: Alex, these are artists, sometimes 
11:17:33 they actually do. 
11:17:33 (laughter). 
11:17:35 >> ALEX: Don't do that. 
11:17:39 There's a lot of flexibility in contracts. 
11:17:41 Even when people throw around words like, oh,
this is standard, this is just what's in it's standard.
So you don't want to be in a situation where your best interests are not served because the template you found doesn't fit what you're trying to do.
Other risks with parties who don't know what they are doing, if you have a lawyer, because you're being a serious business person and you have an attorney helping you, if you're using a lawyer, and they don't, you want to be careful that your legal fees aren't accumulating because they don't know what they are doing and they won't get a lawyer, because your lawyer has to fix things multiple times or explain it to them.
I've had this happen with a couple clients, I've told the client I'm not billing you for this, they don't know what they are doing and they are taking up lots of our time.
There are a few guides to commissioning music floating around. I know American composers firm has a page on this, and meet the composer had put one together a number of years ago, I think it's still around, and that's a really good document to look at. You can give that to your client, or adapt something like that for your own needs that explains here is what I charge, here is how long it takes me, here's how the contract looks, and lay it all out.
Now, a lot of things are changing because of COVID-19. We have a lot of uncertainty.
So Terry you want to talk about that.
>> TERRY: What's COVID-19?
>> ALEX: It's a very serious disease.
>> TERRY: Yeah.
It killed 100,000 people in the US.
Yes, and so it is really, really created somewhat I used to call law school exercises in the contract world, especially around events, performing artists, weddings.
There's a plethora of people out there right now who are trying to keep the money that's been deposited, for example, if you were scheduled to play at a wedding, to keep the money for the
venue, to -- or for event hosts, weddings, other
sponsors, promotors, to try to get deposits back,
because now that the event is not happening, the
contract can't be performed.
So I'm going to talk about a couple of
different things. One, who is going to be liable
under a contract? But also, the concepts of
illegality, impossibility, and force majeur,
these are all legal terms of art, but they are
very important in this time.
If you're a performing artist or otherwise want
to get paid because an event is booked and going
to take place, there are ways to get paid and
there are ways to keep the money that's been
deposited. And that's what we're going to talk
about today.
So first of all, fundamental contract law.
Contracts are generally enforceable against the
party that signs it. So Alex mentioned in
passing that you might want to have your contract
signed, if you have an LLC, or if you don't have
one, get one. If you're in business, get one.
Because it protects you personally from any
liability for disasters that happen. But also,
in a contract situation, it can protect your
personal assets if things really go south.
So that -- the party that signs the contract,
Joanne Smith compositions, LLC signs the
contract, and then if you're supposed to be paid
for something, you get a deposit. And now that
event is cancelled.
What do you do?
Well, what you ought to look at in the contract
is first of all, there's a concept, and this
sounds very legalese, called force majeur.
A long time ago, they called it act of God.
And then they called it act of nature. And now
they use Latin force majeur because what it is is
a list of things that could completely undermine
the purpose of the contract, and if that happens,
we agree at the beginning that we're just going
to void the contract and we'll give you your
money back, and we won't expect to play that
night.
alex: Terry is force majeur one list that exists somewhere that includes all those things or is it one list specific to an individual contract.
terry: Every contract is going to have an individual list. Now, at the end of that list, it's going to say, or other similar events, which is where lawyers come in to litigate whether that's what you were thinking of or not.
alex: But a force majeur event, a hundred years ago never included a strike. But a hundred years ago, there was -- in the 1920s, actually, there were a series of strikes that disrupted manufacturing contracts. These were violent strikes. If you go back, if you've seen gangs of New York, that wasn't it, but it was like that. Street fighting. It was awful. Anyway, so a strike became something that lawyers will talk about on a significant contract is that going to be a force majeur or not?
alex: Imagine if you're a national hockey league sponsor. You're going to put out $5 million, and if there's a player strike, you need that in the contract.
alex: Typical force majeur are what you really think of as the acts of avengeful God. Hurricanes, fires, earthquakes, unbelievably bad weather that prevents delivery trucks from even crossing the country so they can't... so in 2001, what happened? A terrorist attack on the United States.
alex: Since then, force majeur clauses almost always include terrorist attacks. Now, going forward, you're going to see the word pandemic, which had appeared a little bit over the last 10 years, but now that's going to be a force majeur clause.
alex: Which leads me to the next piece, because if you have an existing contract now, you are supposed to play somewhere on June 1st, and they can't open the bar where you're supposed to play or the concert hall.
alex: You don't have pandemic in your force majeur
11:25:49 clause.
11:25:52 You may not even have a force majeur clause.
11:25:55 Unless you got a really good lawyer, but we'll
11:25:57 talk about that later.
11:26:05 So how is it that we deal with something that
11:26:08 clearly undermines the purpose of the contract?
11:26:13 Right? They are hiring you, and they are paying
11:26:20 you $25,000 to play in front of 25,000 people.
11:26:22 Or better yet, they are paying you $5,000 to play
11:26:26 in front of 350 people where they sell alcohol.
11:26:28 They can't open the place.
11:26:33 They can't open it because the governor has
11:26:36 said you're not permitted to have a gathering of
11:26:37 more than 10 people.
11:26:42 So does that mean that they have to pay you
11:26:43 $2,500 to play for 10 people?
11:26:46 Probably not.
11:26:53 And that's the concept of impossibility. A
11:26:59 contract is void if it's impossible. So my own
11:27:02 daughter scheduled to get married in April of
11:27:06 this year in palm springs. And in southern
11:27:11 California. They turned -- they shut down all
11:27:16 gatherings of over 10 people, shut down the hotel
11:27:18 where the wedding was supposed to be. It was
11:27:21 absolutely impossible to perform the contract.
11:27:24 But it was also illegal.
11:27:30 Second part of void contracts is a contract is
11:27:31 void if it's illegal.
11:27:38 So, in other words, I can't pay you to drive
11:27:45 boot leg whiskey across from Canada, an illegal
11:27:47 act we'll call it. If you deliver the whiskey
11:27:51 and I refuse to pay you, you don't get to go to
11:27:53 court and enforce that contract, because it's an
11:27:54 illegal act.
11:28:00 So apply that to your bar gig. Let's say the
11:28:03 bar was not allowed to be open at all.
11:28:05 Therefore, it is an illegal act.
11:28:09 To have that gathering, to have that concert.
11:28:12 Now, they can put you on stage by yourself, and
11:28:15 that dove tails with the impossibility I talked
11:28:17 about before, because that's not what the
11:28:19 contract was for.
11:28:25 So an illegal contract is void. An impossible
11:28:28 contract is void. If you've got a force majeur
11:28:32 list, that will also void the contract.
11:28:38 But you really have to talk about when you're
11:28:41 thinking of -- what you're going to do is get a
11:28:43 call, they are going to say, hey, we sent you
11:28:47 that thousand dollar deposit, and now our
11:28:50 contract is void because it's illegal to perform
11:28:53 in the bar on the night that you were supposed to
11:28:56 perform. Or the wedding has been cancelled,
11:28:58 because the venue can't host it. Therefore our
11:29:00 contract is void, send plea back the thousand
11:29:00 dollars.
11:29:07 As the person -- when I'm representing people
11:29:13 who are in those shoes, I'm telling them to chase
11:29:16 down the money, and legally, there's a very
11:29:21 strong argument. But from the composer side, you
11:29:25 also have -- or the performing artist's side, you
11:29:28 also have an argument, which is presumably you
11:29:30 have a no refunds under any circumstances clause
11:29:32 in your contract.
11:29:35 And now you decide whether you want to fight
11:29:38 over that thousand dollar deposit or that
11:29:43 500-dollar deposit. I think this is a key point.
11:29:48 You have a relationship with this venue. And
11:29:51 you have a representation. People want
11:29:54 performing artists who are, of course, super
11:29:58 talented, and entertaining and draw a crowd, but
11:30:00 also that are easy to work with.
11:30:08 If you fight over the $200, then what very well
11:30:12 might happen is they'll say, yeah, go ahead, keep
11:30:19 your $200, and then delete your phone number from
11:30:22 their contacts. That's the last thing you want
11:30:25 to have happen. By the way, venue people know
11:30:27 each other and they talk to each other R. other.
11:30:30 They said, yeah, so and so insisted on keeping
11:30:33 the $200, we'll see how she feels about that next
11:30:38 year when we don't book her. So then the
11:30:39 question is, does that mean you have to give back
11:30:40 the $200?
11:30:44 No. There's a win-win way to handle it.
11:30:52 If somebody's asking you for your deposit back,
11:30:54 you don't want to fight it without -- unless you
11:30:57 really want to fight it, but you're risking your
11:30:59 reputation.
11:31:02 But you don't want to give it back, because
which of us has too much money in the bank at this point, especially at this point.

And what do you really want to have happen? You want to get as many bookings as possible for as long as possible out as you can prebook yourself. If you're the rolling stones, you're booked for the next 17 years, even though they'll be how old? I don't know. But so here's what you do. Someone calls you and asks for a deposit, say, yeah, that's a bummer, I really love playing your event, and I had a great time at it last year, I'll tell you what let's do. Let's transfer the deposit from this year to next year. I'll commit to next year's event right now. And we'll consider that the deposit. I'll even do it at the same price.

And that will allow you to, A, be polite and nice and kind and have a good relationship with the booker; B, keep the 200 buck forces now: and C, get a gig for next year already. At this stage, if you're fully booked for the next six months, if could you transfer that all into the summer and fall of 2021, that's a pretty good place to be. Under the uncertain times we're in now. Wouldn't you agree, Alex.

>> ALEX: Yes. I have a string quartet that plays weddings, that's what we've been doing. We're just moving with couples to their new date that are next year.

I just want to highlight too, you can make changes to a contract after you've signed it. You just sign a new piece of paper that says, we're making this change, and then you both sign it, and now that's part of the contract.

>> TERRY: Yeah. So that's called an amendment. And it could be actually as simple as an e-mail saying, hey, this will confirm our agreement that we're changing, we're amending, use whatever word you want, but we're changing the contract for June 6, 2020, until now apply to your event on June I thinkth, 2021. And that's enough.
That with a lot of follow-up as months go back, because you always want to do that anyway. But you'll have a contract that's -- you have a booking for next year. It really is a win-win for everybody. Even for the booker who says, yeah, this is great, I've got one more act booked for next year. Right?

>> ALEX: Yep.

So the last thing I want to talk about, and then we'll open this up for questions, is what do we want to put into new contracts? What should contracts look like now? Raise your hand if you have ever thought of a -- if you ever had an event cancelled by a pandemic before 2020, raise your hand. Now, I can't see anybody out there, but I'm assuming nobody is raising their hand. So... but now, everybody has had events cancelled with pandemics. And I think that event venues are going to write a -- I think it might even be outside of the force majeur clause. I've seen drafts of clauses that say, if there's a pandemic, here's what will happen. And this is why you want to have your own contract to send out. Because if the booker sends you their contract and it says, in case of pandemic, you will return the money within 30 days of written request. And then you're bound to that. Right?

On the other hand, if your contract says, in the event of pandemic, you will return the money within 30 days of written request. And then you're bound to that. Right?

On the other hand, if your contract says, in the event of pandemic, then the deposit shall be -- this contract shall not be void, but the deposit will be transferred to a later booking. See the difference there? How different is the phone call from the booker who says, I'm canceling, send the money back, or our canceling, our contract says you have to apply the deposit to a booking for a later booking?

And again, everybody is happy to have another booking, and to keep the $200. There's still a lot of uncertainty about contracts that are happening or supposed to
11:36:12 have happened in the next six months here, and
11:36:15 some presenters I know are looking at alternative
11:36:18 formats, like having drive-in consuperintendents,
11:36:20 or doing stealing.
11:36:23 We had one question from a registrant that was
11:36:26 asking about opera specifically, and this would
11:36:30 be grand rights again. Streaming is a problem
11:36:33 for grand rights, because those things are
11:36:36 negotiated directly with the publisher, the
11:36:38 rights holder, even if you're doing it live in a
11:36:40 theater. Remember the example with the composer
11:36:45 who couldn't get performance royalties from
11:36:47 ASCAT, because they don't cover grand rights,
11:36:51 have you to go right to the publisher. Typically
11:36:54 in those agreements, you're not allowed to
11:36:57 stream, record video or give out DVDs or anything
11:37:00 like that. So if you're going to shift your
11:37:06 concert or your opera to online, will stick with
11:37:10 opera for now. If you're going to shift to an
11:37:12 online format, you're going to have to
11:37:15 renegotiate portions of the contract, because you
11:37:16 don't have the rights to do that. If you're
11:37:20 licensing the work yourself, you're
11:37:22 self-published, can you do this if your work is
11:37:26 published through someone else and your publisher
11:37:29 is not on top of this, get on the phone and tell
11:37:32 them to. I would say avoid platforms like
11:37:35 Facebook and YouTube that automatically make an
11:37:36 archived video of the stream, because you're not
11:37:39 going to have the rights to make that even if you
11:37:43 get the rights to stream live. I know a lot of
11:37:46 organizations are trying to use platforms that
11:37:51 allow a pay wall, so they'll sell a ticket
11:37:54 through Eventbrite or ticket master and it sends
11:37:57 them a Zoom link and password, so you are
11:38:00 limiting the size of an audience just like you
11:38:02 would in an actual theater.
11:38:05 Another idea I've seen is selling
11:38:07 subscriptions, season subscription tickets this
11:38:10 way, but I would say the caveat there is you're
11:38:13 not going to be able to get the same high prices
11:38:21 that you could for a theater pass, because your
11:38:24 experience is different, people buying season
11:38:27 sports passes and season opera tickets are
expecting to go to the theater, have that experience, have that social interaction. When you switch it to an online medium, you're competing with services like Netflix, and Netflix offers 12 buck as month, and they have thousands of hours of content in there. So I would say be mindful of your price point when you're offering the work in a different format.

>> There were a couple questions that just came in that we can do right now. There was a question about language here, and in terms of including language like quote in case of shut down by civic authorities. Is it useful to get that granular with the situations Utah scribing?

>> ALEX: I think you can. Terry can weigh in on this. You might save a litigation question if you make it that specific. Like if there's a stay-at-home order, this is what we're doing. But if you say if there's a pandemic, and then you disagree whether there's a pandemic going on now, there's a question which leaves potential for litigation. Terry, what are your thoughts?

>> TERRY: My thought is this comes to what I call the green M and M standard. I wish I could remember the name right now, but there was a major artist, rock and roll star who insisted in his rider that he have a bowl of M and Ms all green in his dressing room. If you can request that kind of thing in your rider, then can you request just about anything. But the reality is most of us don't meet that standard.

So what you want to have in your standard contract is something -- you want to have it short, sweet, and powerful. So when we talk about granular level, like if case of shutdown by civic authorities, I think that's better to be just maybe a level above that. In case of shutdown caused by law, or you can use governmental authority, which are not exactly the same thing.

This is what shall happen. What's most important in that clause is the
second half. What happens if it's shut down.
Now, contrary to what I just said, I think pandemic/COVID-19, you have a contract that's going to be enforced in the next 12 months, you're going to perform in the next 12 months, right now, that I would have an agreement as to what are we going to do if COVID-19 has a second wave or a third wave? If we're shutdown by COVID-19, here's our plan.
Now, it should income your standard contract, because you want to be able to just send the contract and have them sign it. You don't want to hire a lawyer to negotiate a 3,500-dollar gig deal on the fine points of what's going to happen on COVID-19.
You want to have that in your standard contract. And I think you do want to have a provision that says -- and my recommendation, general recommendation, everything is specific, but my general recommendation is say if COVID-19 shuts this gig down, we're going to transfer the deposit to the next gig, and we book it.
>> ALEX: Mm-hmm.
There is a -- another question here, do you have any comments on what artist managers should include in contracts regarding COVID-19 protocols at venues, for example, can we require in contracts that audience members must wear masks.
>> ALEX: You can make, just in general, you can make requirements for patrons part of their ticket purchase. So like when you go a baseball game, you may or may not be aware that you sign a waiver about if you get hit by a baseball. Can you definitely require certain behaviors of patrons as part of your contract with them to give them a ticket. As far as what those parameters should be, I would prefer to the state guidelines. There's whole bunch of information that just came out that talks about COVID-19 preparedness plans and what the expectations are.
>> TERRY: I can add to that.
Very specifically, about wearing masks, I think
you can have a requirement easier to accept. I'm pragmatic. Easier to accept for the venue is that they have to follow state or CDC or whatever guidelines are out there with respect to public safety issues.

ALEX: Yeah. There was a question about how -- this could be a whole other discussion. How is is COVID-19 specifically affecting composers, the main issues are events are not happening that would generate royalties for us. For instance, I work in film media. A plot of productions were were able to shoot. Some got close and couldn't finish, and that eventually trickled down to the composers who are in post production, so this movie is not getting made. We don't need a score in the foreseeable future, you're not getting paid. Okay, every time I opened my e-mail for a while, it was like, this one is not happening, this one is not happening, you're not getting paid for this. If you agree to let -- say you got commissioned for a piece I was supposed to premier this year and they decide they are going to stream it instead of having it at their hall, you have all of those concerns about what platform they are using. Are they using a pay wall? You basically have to think like you're licensing grand rights now, because these platforms don't pay performance royalties the same way that a concert hall would. So if you have someone that's doing a show on Facebook, you're not, as the composer you're not going to get get paid for that. That's how it works right now. They don't have a music licensing structure sorted out that allows you to get paid or allows you to track it. You won't get paid royalties. Normally a concert royalty is really good. Even if you have a venue, have you like maybe 50 people there, it seats 100, 250 people. You are easily going to get 50 bucks for that performance. If you have something played at a college, it's easily 50 bucks for that performance. If they do it on Facebook, you're going to get nothing. Go back and do those contracts in a way that makes sense for everybody
11:45:56 involved.
11:45:59 Andy, other questions?
11:46:04 >> Okay. Yeah. There is. So let's see.
11:46:06 Regarding the contract amendment to apply to a
11:46:10 future date, if it is not possible for the vendor
11:46:13 to identify a date yet, how can an adjust ensure
11:46:16 that a general future date is followed through on
11:46:18 in a reasonable time period?
11:46:21 >> ALEX: That's kind of up to everyone involved.
11:46:24 A lot of times when you're putting a music
11:46:26 festival together, they don't spoot specific
11:46:28 dates in it quite yet. They will be looking a
11:46:31 year or two out with what's called a letter of
11:46:35 intent. They are like, hey, we want you to play
11:46:38 this festival, are you interested? And you're
11:46:40 basically saying yes, I'm interested, and this is
11:46:42 kind of bare bones what we talked about, but they
11:46:46 are not making you commit to specific days yet.
11:46:52 If you have a contract in that event, like state
11:46:55 fair got cancelled, they may be looking at neck
11:46:57 year, they don't know that you're going to be on
11:47:00 Thursday next year quite yet, but you know it's
11:47:03 happening in that two weeks, you can be granular
11:47:06 again or broadly. But if they try and reschedule
11:47:09 you and commit to a date five years out, maybe
11:47:12 you don't want to do that. It's totally up to
11:47:13 you.
11:47:16 >> TERRY: And you can put an expiration on it.
11:47:22 Let's say it's a bar gig. So it's not an event
11:47:28 like the state fair. You can say an event
11:47:30 sometime before year end 2021.
11:47:36 So hopefully you follow up, you'll get the
11:47:40 booking, but if nothing else, you get to keep the
11:47:43 deposit a year and a half from now when everybody
11:47:46 has forgotten about it.
11:47:48 >> VANESSA: I'm going to take over from Andy
11:47:51 now, a few more questions here. One is back to
11:47:54 negotiating contracts for the cue her.
11:47:56 >> Would you recommend having a pandemic clause
11:47:58 that might cover possible scenarios from pandemic
11:48:02 related travel disruptions, local outbreaks or
11:48:06 infected ensemble members, would there be a
11:48:08 difference between domestic and international
11:48:13 events? And would be there sort of a generally a
agreed COVID-19 clause in the future.

>> ALEX: I don't know about a general clause, I have been seeing happening with international issues so the contract is subject to where the work takes place. So if it requires you to travel somewhere to perform it, you could absolutely run into international issues. Like we had a film crew that was supposed to travel out of the country that could not because of a travel ban preventing them from landing where they were supposed to get to.

>> TERRY: Yeah. With regard to standard clauses, actually, first I'll visit what Alex said. What what I've seen happening now is, for example, we've been able to void contracts is impossible, because -- wedding contract where people were travel for example India and from Europe where those borders are closed right now, the travel is illegal. It's a applicants sticky, because -- it's a little sticky because how important is it to have your cousin Fred at your wedding. On the other hand, if its your mother, maybe that's a little different thing.

With regard to standard clauses, there are two general clauses. First of all, I think you ought to have, any gig you're doing in the next 12 months, and make through the end of 2021, there ought to be a COVID-19/pandemic specific clause. If this happens, here's what we're going to do, because nobody knows what's going to happen.

So but there's two standard clauses that will emerge.

One that the venue, the paying party will have one in the contract is if we have to cancel, you have to give us our money back, short time frame. And that's it. Done.

Okay? That's not what the artist wants.

What the artist wants is what I talked about before, which is, I'll go through it again, it should say, if it's shut down by COVID-19 or a pandemic, then we're keeping the deposit for now.

We're going to allow you to transfer it to a
future booking to take place, if it's an event, then it's at the 2021 state fair. If it's just a regular gig or tour or something, then you have on a date within the next 12 months, or by year end 2021.

And those clauses clash, and kind of gets us back to the green M and Ms, right in how big a deal are you? What can you insist on? But if, as most of us fall within the standard contract, which is I put in air quarts because it's not really standard, if you have a standard contract, and it's got your language in it and you present it to them, they will often not want to fight about it, they'll sign it. You're one of many people they are booking. Boom, done, and now if things go south, you've got your language in it. >> VANESSA: I have a tandem to that too, which the legal protection for health considerations, both protecting the performers from any legal action from concert attendees or organizers or similarly if the performers end up having health issues as a result. Event, are there considerations in the contract for those?

>> ALEX: You could. Personally, if I was hiring performers, I would rather that they were honest and told me they were sick. And then I would literally pay them any way to not come than to make all my other players sick.

>> TERRY: Yeah. And there's the consuperintendent of assumption of risk, which is another legal concept where if you jump off a building on a bungee cord, you've assumed the risk, it's in their waiver, it's in their standard contract.

But with COVID-19, I think a player who comes when they are well probably assumes the risk. But maybe it ought to be dealt with in the contract. But what I think is unless I'm a big deal, or very likely to get sick, I don't think I want to ask for that. If I get sick at your venue, I'm going to sue you. I think they'll just sign somebody else.

On the other hand, I don't think it's unreasonable to ask for the protocols we talked
11:53:29 about.
11:53:33 >> ALEX: You can require those down stream too.
11:53:36 If I say I'm recording a film score so I'm hiring
11:53:39 the players for the session, I can make that part
11:53:42 of the contract I have with the players that
11:53:45 everyone has to have PPE, they have to provide it
11:53:47 themselves, and this is just one of the
11:53:53 expectations for coming to this space and how to
11:53:54 act on it.
11:54:00 >> VANESSA: Thank you. So we just have -- it's
11:54:02 11:53 just putting that out there. We have a few
11:54:04 more questions, and if you have questions you
11:54:07 want to ask, please put it in the chat box.
11:54:09 >> I have some more general questions here, for
11:54:12 contracts directly with performers that don't
11:54:16 involve transactions, I provide music, they
11:54:20 provide recordings is it still better to sign
11:54:22 with my LLC rather than myself as a person?
11:54:27 >> TERRY: Alex, I'll take it.
11:54:29 Generally speaking, I think it's bet tower sign
11:54:36 with your LLC. -- better to sign with your LLC
11:54:41 from a lawyer's perspective, the beatles had
11:54:45 apple music. A whole different apple company.
11:54:49 Everybody represented the Beatles and maw cart
11:54:54 knee and linen, nobody said, oh, apple wrote
11:54:59 those sangs. I don't think it affects the
11:55:03 recognize ability of your -- of who wrote the
11:55:06 work. It's just a legal term that nobody ever
11:55:06 sees.
11:55:13 >> VANESSA: Thank you. Another question is DCI
11:55:18 streaming flow marching grand rights, and would
11:55:24 DCIDVDI sales would be considered grand rights?
11:55:27 >> ALEX: Grand rights has to do with whether
11:55:30 there's a theatrical over arching thing to the
11:55:34 performance. DVD is districting on a physical
11:55:38 medium. If it involves video, you need a sink
11:55:41 license for that. That's not grand rights, grand
11:55:43 rights is another species of performing rights
11:55:45 essentially, but they wanted to separate them a
11:55:47 long time ago, because grand rights are perceived
11:55:50 to be much more lucrative, whereas performance
11:55:55 rights in like you're playing at a recital, a
11:55:59 concert, that type of thing, those are any song
11:56:01 is just as good as any other song, it's the size
11:56:04 of the hall that determines it.
11:56:06 I don't actually know the answer to that off
11:56:11 the top of my head. I think that -- we're
11:56:16 talking about drum Corps. That may apply to all
11:56:20 marching band stuff that has choreography. I
11:56:22 don't know off the top of my head if that
11:56:25 implications grand rights or not. If you're
11:56:28 streaming it you run into the issues you're not
11:56:31 going to generate royalties for the composers.
11:56:37 And if you're doing VDVD's same issue, you need
11:56:41 sync rights to do those, those aren't covered by
11:56:43 performing rights at all.
11:56:44 >> VANESSA: I don't have any other questions in
11:56:48 the chat box. Do you want to offer any kind of
11:56:51 last thoughts or resources for folks to look at?
11:56:59 know he had to take off. So there's in Minnesota
11:57:01 we have the Minnesota volunteer lawyer for the
11:57:05 arts. You can get a free 30-minute consult with
11:57:07 folks like Terry or I. There's a link on
11:57:09 Springboard for the arts page to the national
11:57:11 version much if you're not located in Minnesota.
11:57:21 >> TERRY: I would add to that, don't hesitate a
11:57:24 state to call. Some people think that getting a
11:57:26 free half hour with a lawyer is imposing on us,
11:57:29 we wouldn't do it if we didn't enjoy doing it.
11:57:32 And if you got a real problem, you can hire us,
11:57:36 but most of the questions that we handle are
11:57:39 things we've seen before, and we can help you,
11:57:42 and we're happy to do it. I'd rather talk to you
11:57:44 guys than normal people.
11:57:49 >> VANESSA: Thank you. I'm also also going to
11:57:51 put in the chat box here what I referred to at
11:57:54 the very top, which is our page on the ACF
11:57:58 website where this will be archived, and put for
11:58:01 folks to watch again, or to share others as well
11:58:04 as some other sessions we've offered. I want to
11:58:08 thank you both so much for your time today. So
11:58:12 incredibly helpful. Such a broad subject, and so
11:58:14 many intricate details to be mindful of. I'm
11:58:17 getting a lot of thanks in the chat box, just so
11:58:20 you know. Really appreciate it. For those of
11:58:22 you that maybe have questions later, please feel
11:58:24 free to reach out to us or Springboard for the
11:58:28 Arts, we're happy to continue the conversation.
11:58:30 >> TERRY: Thanks for having us.
11:58:32 >> ALEX: Thank you so much.
11:58:32 >> Thank you.