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The Law, The Musician, His Band and Their Partnership Agreement: Comprehensibility, Comprehension and Compliance in a Legal Text

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ABSTRACT

The language of the law has long been considered problematic in terms of its ambiguous and archaic nature, and efforts have been made in recent decades to encourage the increased use of ‘plain’ words in the legal domain. Whilst existing research has explored many issues relating to the comprehensibility of legal texts, however, few of these studies have examined the legal documents used within the music industry from a micro-linguistic perspective.

This article performs a detailed forensic linguistic analysis of the specimen Partnership Agreement provided by the UK Musicians Union. Selected sections of the Agreement are assessed in terms of their comprehensibility (the degree to which properties of the document are understandable), comprehension (to what extent the reader understands the text) and compliance (how readily the reader acts in accordance with the text’s instructions), and are subsequently re-drafted in ‘plainer’ language. The study finds that the processes of comprehensibility, comprehension and compliance are themselves highly complex and that the communication between legal and lay parties is typically hindered not only by the language of the law itself, but also by the conflicting ideological systems associated with each sphere.

It is concluded that whilst the effectiveness of modern contractual documents is indeed likely to be improved through linguistic simplification, the well established conventions of our legal language remain resistant to radical change. Nevertheless, the suggestions raised here can be understood as a small but significant move towards effecting a gradual change in attitudes towards the language of the law in the 21st Century.

KEYWORDS

legal language - forensic linguistics – comprehensibility – comprehension – compliance - Musicians Union

INTRODUCTION

‘If language is not correct, then what is said is not what is meant; if what is said is not what is meant, then what ought to be done remains undone’ (Confucius)

It is argued that the law is ‘inconceivable without language’ (Gibbons 1994) - and yet legal language has long been criticised for its idiosyncratic ambiguity. In the contemporary era, however, lawyers are no longer seen as the ‘learned custodians of unknowable secrets’ (Asprey 2003) - modern clients are increasingly mindful of the need to fully understand their legal rights and, further, they are prepared to demand a communicative service to this effect. 1

Persistent scepticism towards legal discourse is seemingly rooted in a number of important linguistic, historical and technical factors - including a gradual translation from Latin and French into English and the shift from oral to literary traditions, in line with the development of printing technology. Some suggest that legal discourse ‘builds its authority on resistance to change rather than innovation’ (Giannoni 2005) - a consequence, perhaps, of its unique, and often paradoxical, functions and demands. Accuracy, reliability, coherence, clarity and precision are crucial within the legal realm, where the need to maintain existing social structures and regulate human behaviour must be carefully offset against a desire to uphold 2

centuries of tradition and retain a sense of elitist solidarity. The purpose-designed language of the law, then, must always necessarily 'anticipate a world that does not exist at the time of expression, and...be prepared for an infinity of possibilities' (Bowers 1989). It is of course the case that all academic disciplines and professions typically possess their own 'specialised' forms of institutional discourse (involving specifically and contextually relevant terminology and/or vocabulary), and yet the question of effective communication is particularly salient within the legal profession, since lawyers must be able to communicate not only with *each other*, but also with their (lay) clients and other non-legal professionals – i.e. those outside the legal sphere, who have not been trained to comprehend the language of the law. Whilst a fully comprehensive discussion of the issues outlined in this introduction cannot justifiably be accommodated within the confines of this essay, matters relating to the function of *written* legal texts are particularly salient here. It is thus useful to explore the connections between orality and literacy in a little more detail.

ORALITY AND LITERACY

Oral language has an 'evanescent' quality - words are 'invisible' and disappear the moment after their utterance (Ong 1982), whilst writing is both visible and permanent: it allows us to 'fix things in space and time' (Barton 1994). As a form of subjective, interpersonal communication, meaning is very much 'in the context' of spoken discourse, whereas for written language 'the meaning is in the text' (Olson 1977). The primary distinction between spoken and written language, argues Chafe, is that of 'involvement' versus 'detachment' - in the oral tradition, the speaker interacts with - and is thus closely connected to - his audience. Written texts, meanwhile, are more abstract and detached - aimed at a reader who is temporally and spatially 'displaced' (Chafe 1982). 3

'PLAIN LANGUAGE' AND TEXTUAL COMPREHENSIBILITY

Language (whether spoken or written) is a 'social as well as purposeful activity' (Eagleson 1988) - its main objective is communication - and yet, all too often, the communicative function of *legal* discourse is somewhat neglected. This oversight has been widely acknowledged, and efforts have been made to improve matters. Incensed by the 'flatulent writing' (Gowers 1962) of the law, Sir Ernest Gowers and his contemporaries called for radical changes throughout the 1930s and 1940s and, in their wake, the Plain Language Movement began to take hold - albeit slowly. Interestingly, the criteria by which language can be defined as 'plain' are themselves ambiguous. Scientific 'readability formulas' (such as the Flesch Reading Ease Test developed in 1949) evaluate texts in terms of their plain language 'threshold' - based upon a mathematical calculation involving sentence length and syllables. Such techniques have been disparaged for their over-simplistic approach, however, because they typically disregard the 'information overload' (Hochhauser 2003) brought about by additional factors, such as technical vocabulary and other syntactic complexities. 4

Further, the 'readability' of a text is not (in itself) a guarantee of comprehensibility. Indeed, according to much psycholinguistic research, the comprehension process is an active and constructive one, involving various characteristics of the *text*, the *reader* and the *situation* (Gunnarsson 1984; Lieberman and Sales 1999; Bothwell 1999), and encompassing three further processes - comprehensibility, comprehension and compliance - which are defined in Table 1. 5

PROCESS TYPE	PROCESS DEFINITION	FACTORS AFFECTING PROCESS
	Degree to which properties of the text itself are easily understandable and communicate important	Linguistic complexity and clarity, i.e.: syntax; grammar; choice of

Comprehensibility	information successfully	lexical items; design; layout; organisation; sentence length
Comprehension	The processes of readership - degree to which the reader (or listener) understands the information conveyed by the text	Comprehensibility of text Intellectual capacity and educational level of reader Reader's concentration span Reader's level of interest Reader's background knowledge Reader's motivation to read
Compliance	Degree to which the reader (or listener) acts in accordance with the text's instructions	Comprehensibility of text Reader's moral conscience Reader's motivation to comply Reader's ability to comply Reader's 'reading purpose'

TABLE 1: Three levels of textual comprehensibility

READABILITY AND TEXTUAL SIMPLIFICATION

The objective of this essay is to perform a textual analysis of the Musicians Union's specimen Partnership Agreement (Musicians Union 2008b). Selected sections of the Agreement will be analysed in terms of their comprehension, comprehensibility and compliance, seeking to identify and evaluate some of the features which are known to cause difficulty in these areas. At Appendix 1, the sections used in this analysis are re-drafted into plainer English 'equivalents' - and this process is discussed more fully at subheading 6.

6

According to Charrow and Charrow (1979), there is no 'real data' to support the assumption that legal language is incomprehensible to the lay person - and it is certainly true that there

7

is 'no magic in...words themselves' (Asprey 2003). Nevertheless, Charrow et al's groundbreaking empirical study of the comprehensibility of existing standard civil jury instructions identified a number of problematic linguistic features, which are listed below (fuller definitions are provided in Appendix 2):

Nominalisations

Syntactic embeddings

'Whiz' deletions

Word lists

Multiple negatives

Passive constructions (particularly in subordinate clauses)

Technical vocabulary

Even after modifying the jury instructions to minimise these features, the study concluded that 'many lay persons who are affected by legal language cannot effectively understand it?' (Charrow et al 1979). It would indeed seem that comprehensibility is a somewhat elusive phenomenon. Whilst drafting procedures have undoubtedly improved in recent decades, the relationship between legal texts and the average lay citizen remains uneasy, 'tinged with feelings of apprehension' (Bowers 1989) and many of us continue to sign legal documents, regardless of whether we have fully read *or* understood them (Black 1981). 8

Although legal contracts increasingly pervade our everyday lives, their communicative function is rather extraordinary. Contracts must convey a clear, informative and persuasive message to two very different readers - lawyer and lay client - and (in the event of a dispute) they will be interpreted by a third - the court - 'in the light of what is reasonable' (McKendrick 2007). As such, whilst contracts are enforceable on the premise that they satisfy the comprehensibility, comprehension and compliance requirements of all parties involved, this is often not the case (Osborn and Greenfield 2007). 9

INTO THE MUSICAL REALM

For the music industry, issues such as these are particularly salient - indeed, the acrimonious contractual battles endured by unfortunate artists are frequently lauded by the media (Zucconi 1996). Today's musical artists are strongly encouraged to secure membership with the Musicians Union (Musicians Union 2008), and band members are prompted to enter into a Partnership Agreement, whose function is to 'cover all foreseeable enterprises with which (the group) intends to become involved' (Bageshot 1998). In this context, then, the contractual Agreement functions to confirm the business relationship between the members of a group - verifying their rights, responsibilities and obligations. 10

DATA-BASED TEXTUAL ANALYSIS

This essay seeks to undertake a textual analysis of the MU's specimen Partnership Agreement (MU 2008). The document is freely available to all MU Members from the MU online document library, to be modified by a legal professional according to the unique requirements of each individual partnership (it is reproduced in full at Appendix 3). The objective here is, firstly, to evaluate whether the Agreement can be readily understood in its normal context of use. The overall structure of the document will be discussed, followed by a closer analysis of several individual sections. Having identified and analysed any problematic linguistic features, these same sections will be 'redrafted' to make them more comprehensible. The original sections and their modified versions are reproduced at Appendix 1, and are line-numbered for reference. 11

In terms of general structure, the absence of overwhelming 'legalese' is notable - this is clearly a modern-day legal text, favouring simple format and plain language. Technical terms are kept to a minimum, the organisation is coherent and cohesive, and the information contained in the document is strictly relevant to its legal purpose. The general layout, design 12

and presentation of the document substantiate this - typography is consistent, using an easily readable font size and style, and sections and sub-sections are clearly numbered and labelled. Even the title of the Agreement is 'explicitly deictic' (Kurzon 1984) - i.e. it says exactly what it is, setting out important details of the parties involved and the date from which the Agreement applies. Similarly, whilst Section 11 of the document (Appendix 3, Page 5) features the phrase 'mutatis mutandis' ('things being changed that have to be changed') this is, in fact, the only Latin term to appear in the Agreement and, as such, its sudden presence here only serves to confuse the reader - whilst adding nothing of importance to the meaning of the clause. On the whole, there are few archaic terms in the Agreement, and little reliance on technical vocabulary. As such, its comprehensibility is not greatly affected by either.

Sentence length is a more serious concern. Most of the individual 'sections' are presented as one long sentence (many containing more than 60 words) and seem to say far more than is absolutely necessary to convey their message (Charrow et al 1979). The modified versions at Appendix 1 are generally much shorter, which would seem to corroborate this. 13

Before examining the finer syntactic complexities of each section, attention can usefully be drawn to the *modality* of the whole document. Modality is defined as 'a semantic category which covers such notions as possibility, probability...obligation and permission' (Downing and Locke 2002) and, since a written text is both a product and a process (Halliday and Hasan 1985) - the grammar of a text can thus be expected to reflect what it *is* - and why it means what it does. Where Partnership Agreements and contracts are concerned, issues of agency, responsibility and obligation are enormously significant, in order that all implicated parties are able to understand who must (or must not) do what, when, where and how. Paradoxically, these matters are poorly communicated - even obscured - by this Agreement, which makes extensive use of the modal auxiliary 'shall'. The use of this particular term in the legal context has long been considered potentially misleading. In everyday discourse, 'shall' is understood to denote future tense - and its obligatory nature as a feature of legal writing may therefore be overlooked (Williams 2005). Plain language advocates recommend the use of 'must' as a suitable alternative, because it is 'a clear and definite word that imposes an obligation with certainty' (Asprey 2003) and this suggestion has been incorporated into the modifications at Appendix 1. 14

In terms of comprehensibility, then, the individual *words* of this document are not in themselves highly problematic. Ambiguities here arise from the grammatical constructions of the sentences, which typically display many of the key features known to cause comprehension difficulties, such as nominalisations, passive constructions, multiple negatives, and embedded clauses. More detailed definitions of these features are provided at Appendix 2. 15

With few exceptions, most sections of this Partnership Agreement do contain several of the troublesome characteristics identified here. For the purposes of this essay, five sections have been chosen for closer analysis, on the premise that they can be considered representative of the document as a whole. A discussion of the sections follows, evaluating the problematic features of each, and providing a full rationale for the modifications made in the redrafted versions. 16

SECTION 1.1 (LINES 1 TO 11)

This is the first section of the agreement proper, and its grammatical features are typical of those used widely throughout the document. Most notably, perhaps, the archaic term 'good faith' (line 5) means little to the lay reader, whilst the use of the modal auxiliary 'shall' (line 2) dilutes the immediacy of the clause, reading as if in reference to a future event. Although this section is presented to the reader as one long sentence, there are multiple clausal embeddings here. The sentence contains two main (co-ordinate) clauses, the second of which, 'each Member agrees' (lines 2-5), has three subordinate clauses embedded within it. To exacerbate matters, one of the subordinate clauses contains a passive construction 'required by the Members' (line 4). There is also a misplaced conditional phrase within the second main clause - 'subject to the provisions of this Agreement' (line 3). These features combine to produce an awkward sentence, which is difficult for the reader to process. 17

The modified version is divided into three sentences, which usefully reduces the level of complex embedding in the original. It uses active constructions, endeavouring - as far as 18

possible - to keep the Subject and Main Verb of each sentence close together. Replacing 'shall be' with 'is' (line 8) emphasises the current and immediately binding nature of the Agreement, and also appeals to the lay reader on a far less formal level. The removal of the conditional and prepositional phrases 'subject to' (line 3); 'in connection with' (line 5) and 'relating to' (line 5) creates a less impersonal tone, engaging the reader more thoroughly. The concept of 'good faith' (line 5), however, defies straightforward objective definition and its meaning depends ultimately upon the interpretation given by a legal professional. The notion of 'acting appropriately' (line 11) used in the modified version is perhaps similarly subjective - but is nevertheless more familiar to the lay reader.

SECTION 3.1 (LINES 12 TO 28)

Sentence length (96 words) and embedding are notable features here. The main verb of the sentence is 'do so' (line 15), and there are multiple embedded clauses, identified by the following verbs - 'wishes to...' (line 13); 'participate in...' (line 14); 'remaining...' (line 14); 'seek...' (line 15); 'conflict with...' (line 16); 'compete with' (line 17); and 'place...' (line 18). The *level* of embedding is also significant in this example. The clause 'remaining a Member...?' (line 14) is itself embedded within the clause 'If a Member...of the Group' (lines 13 to 15). Interestingly, all of these embeddings use *active* constructions. They are nevertheless difficult to understand owing to the sheer volume of 'conditional' information they contain. The use of commas does little to rectify this problem. 19

In terms of comprehensibility, however, the primary issue here is perhaps the series of negative constructions - 'without having to...' (line 15); 'does not conflict...' (line 16); 'does not compete' (line 17); and 'does not place' (line 18). The reader, it seems, must work out what he need *not* do - as long as his actions do *not* cause a number of specified consequences - and this can certainly be considered detrimental to the processes of comprehension and compliance. The modified version of this section lists each 'condition' separately (lines 25 to 28), thus liberating them from the deeply embedded structure of the original, and making them more accessible to the reader. The negative constructions outlined above are replaced with positive ones, so that all parties can clearly understand exactly what they are required to do, and under which circumstances. The original version begins by making a (presumably) meaningful distinction between Group and 'solo' careers/projects (lines 13 to 14) - but this is quickly nullified by the phrase 'or other work' (line 14). It is not the type of work that is salient here, but whether the work conflicts/competes with or causes a breach of any Group obligations. In the interests of simplification and improved comprehensibility, the modified version refers inclusively to 'any work' (line 22), emphasising the primary message of the section. 20

SECTION 4.1 (LINES 29 TO 42)

A 'whiz' deletion appears in this Section - 'items (which are) purchased' (line 30) - although this is perhaps the least of its comprehensibility problems - and, whilst other sections use commas freely, punctuation is notable by its absence here. This is inconsistent, and is also potentially misleading for the lay reader - it is not difficult to interpret the clause as referring to 'professional equipment transport' (line 30) - transportation devices used for moving professional equipment, perhaps. 21

The main speech event of the first sentence in the original version (lines 30 to 34) concerns the definition of Group assets. The two main co-ordinate clauses used to communicate this, however - 'shall remain' (line 32/33); 'shall not be' (line 33) - both create sense of future significance, detracting from the all-important immediacy of the message. There are two embedded clauses in the first sentence - the first of which not only contains a passive construction, but has a misplaced adverbial phrase inserted within it - 'items **purchased before and after... by**' (line 30/31). A similar problem occurs in the second sentence, in which a conditional phrase appears within a passive subordinate clause - '**purchased or acquired (subject to...) by**' (lines 34/35). 22

The function of a Partnership Agreement is such that Members might consult it before they act in a particular way - in order to fully understand any potential repercussions of their actions. Accordingly, the modified version is re-written in the active voice, and sets out Members' obligations in a more chronological order, so that it becomes clear what action must be done (by whom) *before* subsequent actions may take place. Some embedding is unavoidable even after re-drafting, but by avoiding passive constructions (keeping Subject 23

and Verb together) and using personal pronouns - 'him' (line 39); 'their' (line 40), this becomes far more tolerable for the reader. Substituting 'treated as' (line 42) for 'deemed to be' (line 36) eliminates archaic syntax without causing a shift in semantic purpose - and is infinitely preferable from a Plain Language perspective.

It might also be argued that the conjunction 'and' (line 31) is somewhat ambiguous here, because it seems merely to over-emphasise a moot point. If the clause affects all items purchased before AND after the Agreement, then it would seemingly include *all* items - regardless of when they were purchased. The modified version omits the distinction and refers, accordingly, to the more appropriately inclusive 'any professional items' (line 38). 24

SECTION 4.4 (LINES 43 TO 56)

Both the length of this sentence and its grammatical organisation pose comprehensibility problems. Crucial information - i.e. that a Member must obtain the written permission of the others *before* acting in a particular way - is obscured until the end of the section - 'shall first obtain...' (lines 47/48). This section is also hugely ambiguous in terms of the parties' personal 'agency', because it relies heavily upon passive constructions - 'incurred by' (line 45); 'paid by' (line 46), the first of which also occurs within one of four embedded subordinate clauses. Additionally, the nominalisation 'production of' (lines 46/47) eliminates the 'doer' of the action altogether - it is not entirely clear *who* must produce the invoices in question. The excess information at the beginning of the section - 'In the absence of...contrary' (line 44) also interferes with its comprehensibility - especially because it uses a negative concept. It is undoubtedly easier for the reader to envisage something that is *present* than it is for him to conceive of something which is *absent*. This in itself creates a peculiar - and unnecessary - ambiguity: i.e. is the agreement 'absent' because it was never made, or because it has gone missing, or both? 25

By dividing this section into four (short) sentences (lines 51 to 56) each individual 'idea' - in this case, each *obligation* - is conveyed far more clearly. By using the modals 'must' (line 52; line 54) and 'may' (line 55) instead of 'shall' (line 46; line 47), levels of obligation (and permission) are also more explicitly distinguished. The modified version uses the active voice throughout, avoiding the nominalisations and passives in the original - and emphasising their expendability in that particular context. Through careful re-organisation, the modified version also shifts the key information of the section right to the beginning - so that it tells the reader what must be done *first* in a given sequence of actions. The removal of the nominalisation (lines 46/47) noted above helps to clarify the parties' individual and collective responsibilities - the modified version thus leaves Members in no doubt as to who must produce invoices, and who must refund expenses to whom. 26

SECTION 10.2 (LINES 57 TO 67)

For the lay reader, the most conspicuous comprehensibility problems in this section are the archaic terms 'goodwill' (line 59) and 'thereto' (line 59) - which disrupt the plainer language style generally favoured throughout the document. The use of the synonyms 'continuing' (line 60) and 'remaining' (line 61) also creates inconsistency here: it is not clear whether they refer to the same group of Members, or different ones. 27

This section deals with the ownership of intellectual property - the Group name - and yet, interestingly, the verb 'to own' is conspicuously absent. The modal construction 'shall remain with' (line 59) and the nominalised 'the use of' (line 62) are vague and ambiguous - making it difficult for the reader to establish what belongs to whom, and under which circumstances. The inclusion of the adverbial 'any reason whatsoever' (line 58), meanwhile, is simply unnecessary: for the purposes of this particular clause, it does not matter *why* a Member leaves - only that he does so. 28

Once again, the modified version benefits from strategic re-organisation: splitting the original sentence into three separate ones. In doing so, it replaces the verbose 'in the event that' (line 58) with a simple - and equally effective - 'if' (line 64). All of the original passives and nominalisations are removed, and the modified Section emphasises the key issue of ownership - using the relevant verb in the active voice - 'will **own**' (line 65) and linking this closely with the relevant Subject - 'continuing Members/any new Members' (lines 64/65) of the sentence. 29

'Goodwill' (line 59) here (like 'good faith' in Section 1.1) defies simple definition - especially where it refers to an immaterial concept attached to an immaterial thing (the Group name). One cannot 'own' goodwill - and neither of these immaterial abstractions can truly 'remain' anywhere. The modified version attempts to resolve this by explaining the underlying concept in more accessible terms although, of course, legal interpretation might still be required in order to define 'deliberate damage' (line 67). It seems that there is no easy solution to this particular problem. 30

CONCLUSION

This essay has explored many of the problems associated with the language of legal documents, and has shown that comprehensibility, comprehension and compliance are themselves elaborate concepts - all inextricably linked to the mercurial systems of human understanding. We use language to 'make sense of the world and of each other' (Eggins 1994), and yet there are no straightforward means of 'measuring' the sense-making strategies that we utilise in our everyday lives. Whilst certain linguistic features are understood to cause cognitive difficulties, some argue that the comprehensibility of legal texts is not merely a grammatical problem. The functional properties of the legal contract, for instance, are rooted in well-established historical tradition, and their formal language is intended to convey the 'dignity, solemnity and gravity' (Crump 2001) of the agreements they set out. To make linguistic simplifications to such documents may therefore be to 'destroy the protections that experience has built into (them)' (Crump 2001). 31

Legal concepts consist of far more than the sum of their grammatical parts - and can prove philosophically challenging for the lay person, to the extent that they 'sometimes conflict with prior knowledge and beliefs' (Masson and Waldron 1994). No matter how plain the *language* of a legal document, then, its comprehensibility - and the reader's comprehension and compliance - cannot be guaranteed. Texts are not autonomous, and language does not itself contain any empirical, objective truth. Meaning exists in *people*: the reader brings his own knowledge and experience to bear upon a text, interacting with it and interpreting with it to suit his own reading purposes. At best, it seems, communication involves compromise (Burgoon, Hunsaker and Dawson 1994) - and this is perhaps especially true within the legal domain. 32

In the final analysis, the language of the law is as unique as it is inescapable, designed for and regulated by 'the body of rules...of which it is the vehicle' (Crystal and Davy 1969). Whilst major efforts have been made to traverse the communicative abyss that exists between the legal and lay spheres, the journey is perhaps only just beginning - with the forensic linguist at the helm. 33

APPENDIX 1: DATA FOR ANALYSIS

1 SECTION 1.1

2 The Group shall be constituted as a partnership and each Member agrees
3 subject to the provisions of this Agreement to devote his time and attention
4 to the business of the Group as reasonably required by the Members and to
5 act in good faith in connection with any matter relating to the activities and
6 any obligations of the Group.

7 1.1 MODIFIED

8 The Group is a partnership. Each Member is a partner and agrees to the
9 terms of this Agreement. Each Member agrees to devote as much time and
10 attention to all Group business as the other Members think reasonable, and
11 to act appropriately in such matters.

12 *SECTION 3.1*

13 If a Member wishes to carry on a solo career as a musical performer or
14 participate in any solo projects or other work whilst remaining a Member of
15 the Group they may do so without having to seek the written approval of all
16 the other Members provided always that such activity does not conflict with
17 that Member's obligations to perform Group activities, does not compete with
18 Group activities and does not place that Member or any other Member(s) in
19 breach of any agreement with or obligation to any third party with whom the
20 Group is contracted

21 *3.1 MODIFIED*

22 If a current Member wishes to do any work outside of the Group, he must
23 obtain written permission from all of the other Members if any or all of the
24 following conditions apply:

- 25 (i) the work conflicts with his obligations to perform Group activities
- 26 (ii) the work competes with Group activities
- 27 (iii) the work causes the Member (or any Member) to breach any existing
28 Group-related contractual agreements or obligations

29 *SECTION 4.1*

30 All professional equipment transport and all other items purchased before
31 and after the date of this agreement by an individual Member out of his
32 personal resources and used for the purposes of the Group's business shall
33 remain the property of such individual Member and shall not be an asset of
34 the Group. Any additional items purchased or acquired (subject to the
35 Members prior unanimous consent) by the Group with Group funds shall be
36 deemed to be Group as are the partnership assets as set out in Schedule 1.

37 *4.1 MODIFIED*

38 If a Member uses his own funds to buy any professional items that he will
39 use for Group business, then these items belong exclusively to him and are
40 not Group assets. All the Members must give their consent before any
41 Member uses Group funds to buy or acquire any professional items, and any

42 such items will be treated as Group assets

43 *SECTION 4.4*

44 In the absence of any agreement to the contrary all reasonable expenses

45 necessarily incurred by any Member directly in connection with Group

46 activities shall be paid by all of the Members in equal shares upon production

47 of properly receipted invoices provided however that each Member shall first

48 obtain the prior written unanimous consent of all other Members before

49 incurring any expense or series of expenses which exceed (£250)

50 *4.4 MODIFIED*

51 All Members must produce properly receipted invoices for all necessary

52 Group expenses. Any Member must obtain the written consent of all the other

53 Members before he incurs any expenses (or series of expenses) of more than

54 £250. On this basis, each Member must refund an equal share of any

55 expenses. The Members may vary these arrangements, as long as they all

56 agree to do so.

57 *SECTION 10.2*

58 In the event that any Member leaves the Group for any reason whatsoever

59 the name of the Group and the goodwill attached thereto shall remain with

60 the continuing Members together with any new Members (for so long as they 61 Members)
which remaining Members and new members shall have between

62 them the sole right to the use of the Group name.

63 *10.2 MODIFIED*

64 If any Member leaves the Group, the continuing Members (and any new

65 Members) will own the Group name between them. They will have the

66 exclusive right to use the Group name. The leaving Member must not

67 deliberately damage the good reputation of the Group name.

APPENDIX 2: TERMINOLOGY

Nominalisations

Nominalisations are nouns derived from verbs or adjectives. Described by Gunning as 'smothered-verb disease' (Gunning 1968), nominalisation is one of the most significant differences between spoken and written language. Nominalised constructions are difficult for readers to process, because they eliminate the subject - the 'doer' - of the action being described, and create a sense of vagueness and abstraction, obscuring the proper meaning of a sentence.

Negatives

Psycholinguistic research suggests that complex negative linguistic constructions are difficult for the human mind to process, because readers/listeners must first grasp the positive meaning of a sentence before they can work out its opposite (Lloyd-Bostock 1988). Multiple negatives in a sentence are considered particularly problematic in terms of comprehensibility and comprehension, because they function to cancel each other out - e.g. 'he was *not absent*' means 'he was present' (Felker et al 1981).

Passives

Passive constructions allow the writer to omit the 'agent' of a sentence altogether, thus obscuring responsibility for a given action. Passive sentences are a common feature of legal language and they tend to be longer and more syntactically complex than their 'active' equivalents, which are considered specific and direct - less complicated and more lively (Asprey 2003: 141). In their 1979 study, Charrow & Charrow found that the *location* rather than the *type* of passive used was significant, and that those occurring in subordinate clauses caused particular difficulties in terms of comprehensibility and comprehension.

Complex phrases and embedding

Legal documents often rely heavily on complex sentence structures as a means of ensuring precision and all-inclusiveness (Bhatia 1994), and yet features such as elaborate prepositional phrases, misplaced phrases and long, tortuous sentences containing 'deep' embeddings are known to cause comprehension difficulties. Subordinate clauses are *part* of another clause, and coordinate clauses are joined to another clause (or clauses) of the same status (Leech, Deuchar and Hoogenraad 2006). In multiple embeddings, either (or both) appear within another main clause, causing wide separation of the Subject and main verb, and resulting in a verbose, convoluted sentence, containing a myriad of different 'ideas'.

APPENDIX 3: SPECIMEN PARTNERSHIP AGREEMENT

1 SPECIMEN GROUP MEMBER / PARTNERSHIP AGREEMENT

THIS AGREEMENT is made the day of Two thousand and

BETWEEN

(1) (*MEMBER*) of (*ADDRESS*) and

(2) (*MEMBER*) of (*ADDRESS*) and

(3) (*MEMBER*) of (*ADDRESS*)

(individually and collectively called 'the Members')

WHEREAS:

(1) The members perform together as a musical group professionally known as (*NAME OF GROUP*) ('the Group') or such other name as the Members from time to time use for the purpose of carrying on together business as (musicians and songwriters, recording artists, giving live performances, producing, remixing, promoting) for their mutual benefit in partnership together upon the terms and conditions set out in this Agreement.

(2) Unless the context otherwise requires words defining one gender shall include both genders.

NOW IT IS HEREBY AGREED as follows:-

1. Constitution

1.1 The Group shall be constituted as a partnership and each Member agrees subject to the provisions of this Agreement to devote his time and attention to the business of the Group as reasonably required by the Members and to act in good faith in connection with any matter relating to the activities and any obligations of the Group.

1.2 This agreement shall remain in full force and effect in respect of all Members until such time as they shall cease to be Members except for those clauses which are stated to remain in force after cessation.

2. Group Activities

2.1 The following matters shall be decided and acted upon only with the unanimous consent of all the Members:-

2.1.1 The appointment of any manager, agent, accountant, lawyer or business advisor to represent the Group and the terms of such appointment;

2.1.2 The admission of a new permanent member ('New Member') to the Group;

2.1.3 Any change in the professional name of the Group;

2.1.4 The choice of record company and publishing company and the negotiation of the terms of all long term agreements relating to the professional services of the Group or any promotion or exploitation of any product of or rights in the goodwill and reputation of the Group;

2.1.5 The undertaking of any significant Group activity such as major domestic or international touring or the recording of a TV Special;

2.1.6 Where applicable the choice of compositions to be recorded and the choice of producer recording budget and recording studio

2.1.7 The decision to modify change or contest any contractual commitment between the Group and any third party;

2.1.8 The forming of any limited liability company or partnership for the purpose of transforming the present partnership into a corporate entity whether for tax or liability or any other financial or commercial reason;

2.1.9 The making of any request for or commitment to any significant loan or other Group financial liability to any party (including entering into any hire purchase agreement or any guarantee of third party obligations) and for any purpose and in this context 'significant' shall mean a transaction or series of related transactions or a facility exceeding (£500) whether or not the whole amount thereof is intended to be drawn down at any time;

2.1.10 Jointly investing or lending any excess Group income in or to any venture outside Group activities in the normal course of business;

2.1.11 The hiring of any 'non' member musician and the terms upon which such non-member is hired;

2.1.12 The decision to embark on or defend any litigation brought against or contemplated by the Group and the terms of any settlement (if any) of such litigation.

2.2 Any decision on any matter not set out in sub-clause 2.1 above shall be decided upon by a simple majority of votes of the Members with each Member having one vote. In the event that the votes for and against any proposal are equal then subject to sub-clause 2.3 below the proposal shall be deemed to have been rejected.

2.3 The Group may unanimously decide to appoint the manager of the Group or any other party to adjudicate on any matter which cannot be resolved by the Members voting in which case the decision of the adjudicator will be accepted by the Group.

3. Non Group Activities

3.1 If a Member wishes to carry on a solo career as a musical performer or participate as in any solo projects or other work whilst remaining a Member of the Group they may do so without having to seek the written approval of all of the other Members provided always that such activity does not conflict with that Member's obligations to perform Group activities, does not compete with Group activities and does not place that Member or any other Member(s) in breach of any agreement with or obligation to any third party with whom the Group is contracted.

3.2 Any income arising to a Member from any non-Group activity shall be entirely his own and no part of any expense incurred in so doing will be the liability of any other Member or the Group.

3.3 Each Member agrees not to indulge in dangerous sports or activities without notifying the other Members so that any Group insurance may be taken out reviewed or increased and so that the Members can ascertain which (if any) sports or activities nullify the insurance or cause the additional premiums to be payable.

4. Group Equipment

4.1 All professional equipment transport and all other items purchased before and after the date of this agreement by an individual Member out of his personal resources and used for the purposes of the Group's business shall remain the property of such individual Member and shall not be an asset of the Group. Any additional items purchased or acquired (subject to the Members' prior unanimous consent) by the Group with Group funds shall be deemed to be Group as are the partnership assets as set out in Schedule 1.

4.2 Save as otherwise agreed in writing between the Members from time to time all Group property shall be owned by the Members in equal shares and any New Member's entitlement to an equal share in the Group's property shall be decided by the majority of the continuing Members (excluding the New Member).

4.3 When a Member leaves the Group he shall be entitled to take with him any equipment owned or purchased by him out of his own personal resources and that Member's partnership account shall be credited with the value of his share of Group property retained by the Group.

4.4 In the absence of any agreement to the contrary all reasonable expenses necessarily incurred by any Member directly in connection with Group activities shall be paid by all of the Members in equal shares upon production of properly receipted invoices provided however that each Member shall first obtain the prior written unanimous consent of all of the other Members before incurring any expense or series of expenses which exceed (£250).

5. Financial Affairs

5.1 Unless the contrary is agreed in writing signed by all of the Members the Members shall during membership of the Group share equally expenses and all income from all sources received in connection with Group activities.

5.2 The Group will be responsible for paying any permanent employees or independent contractors used for and in the Group's business.

5.3 Each Member shall be personally responsible for all income tax and national insurance contributions due on his share of Group income

5.5 If for any reason and at any time any Member is required to pay towards the satisfaction of any liability of the Group more than his proper proportionate share thereof he will be entitled to claim as a debt from all of the other Members their pro-rata contribution to such excess payments.

5.6 All Group income shall be paid into the Group bank account with (name of bank) in the name of (name of a/c) or such other bank account as the Members from time to time decide. Withdrawals and deposits may be made by () acting always in good faith.

6. Confidentiality

Each Member hereby agrees to keep confidential and not to disclose to any confidential information relating to the Group's affairs and any other matters private to the Members as individuals without consent of all the other members. This obligation will remain in force after a Member has ceased to be a Member of the Group.

7. Unions

Each Member shall at all times maintain their membership of the Musicians Union and other trade union or organisation necessary or desirable to enable the Group to carry on its business effectively and such membership fees shall be borne by each individual Member respectively.

8. Voluntary Leaving / Expulsion

8.1 If any Member wants to leave the Group for whatever reason he may do so by giving not less than 3 months written notice to the other Members subject to Clause 9 below.

8.2 A Member may only be expelled from the Group by the unanimous decision of all the other Members giving written notice to the expelled Member provided however that the other Members shall continue accounting to such expelled Member in respect of his entitlement to royalties and other income arising from records made songs written or events undertaken while he was a Member.

9. Change of Membership

9.1 Any Member leaving the Group for whatever reason shall not terminate the partnership with regard to the remaining Members.

9.2 The departing Member's share of net Group assets (excluding any goodwill in the name) by way of equipment capital or otherwise shall be credited to his account and he will be paid such sums as are due when the next Group account is taken which shall in any event be no later than six (6) months after the date of departure of the leaving Member and upon his returning to the remaining Members all books records and items of property belonging to the Group. In the event of any dispute as to the value of any Group assets the Members agree to accept a valuation given by the Group's accountants or such independent third party as the Group may appoint.

9.3 The share of continuing royalties due to any outgoing Member from any recording publishing or other agreement shall be paid to him promptly upon receipt by or on behalf of the continuing members subject only to the recoupment of his share of outstanding advances as at the date of his departure and the continuing Members shall use their best commercial endeavours to procure

9.3.1 that no future advances made to them will be recouped from his future royalties,

and

9.3.2 that all relevant third parties will account directly to the outgoing Member for such royalties

9.4 The outgoing Member may only take any musical instrument or other equipment which is generally recognised as belonging to him (and in the event of a dispute as to ownership the decision of the Company's accountants or an Official of the Musicians' Union shall be final) and if it is being leased or bought on hire purchase by the Group or in the Group name then before he takes possession of such instrument or equipment the outgoing Member will take over (and fully document the substitution of) all such commitments to the Group's satisfaction and shall indemnify the Group in respect thereof.

9.5 No Member may leave voluntarily or may be expelled until the completion of any forthcoming commitment for personal appearances performances or recordings which cannot be safely cancelled or which could not proceed if the outgoing Member were not a Member for that appearance performance or recording and:-

9.5.1 if a Member leaves the Group in disregard of any such obligation he shall be wholly liable for the adverse financial consequences arising from any third party claim related to a breach of such commitment caused by his departure; and

9.5.2 if a Member is expelled in disregard of any such obligations the continuing Members shall be wholly liable for the adverse consequences arising from any third party claim relating to a breach of such commitment caused by their action.

9.6 The outgoing Member shall sign and execute all such documents and deeds and perform all such acts as the continuing Members may reasonably request for the purpose of enabling the continuing Members to recover the outstanding assets of the Group or for the purpose of conveying a name or transferring to the continuing Members any Group property which immediately prior to the date of departure of the outgoing Member is vested in him as one of the Members of the Group or in trust for the Group.

10. Disbandment / Group Name

10.1 If the Group disbands and terminates this Agreement then all the Members shall have an equal responsibility for resolving or terminating all outstanding third party Group contracts and liabilities and they will have an equal share of net Group assets or shall be equally responsible for net Group liability.

10.2 In the event that any Member leaves the Group for any reason whatsoever the name of the Group and the goodwill attached thereto shall remain with the continuing Members together with any New Members (for so long as they are Members) which remaining Members and New Members shall have between them the sole right to the use of the Group Name.

10.3 In the event that the Group disbands none of the Members shall be entitled to use the Group name without the written consent of all the then living current Members as at the date of cessation provided that if any such Member cannot be found after reasonably diligent research (which shall be documented for proof) the consent of such missing Member shall not be required.

11. New Members

In appointing any New Member the then current Members shall procure that any such New Member shall execute an agreement with all of the then current Members of the Group pursuant to which such New Member agrees to be bound by the terms identical (*mutatis mutandis*) to the terms of this Agreement.

12 Group Recordings and Songwriting

Notwithstanding anything to the contrary in this agreement all copyright and other rights in and to recordings made by the Group shall belong to the Group and any income derived from the exploitation of such recordings be apportioned in equal shares between the Members. The unanimous consent of the Members shall be required to exploit any Group recordings. All copyright in and to musical compositions and income derived therefrom shall be apportioned on a composition by composition basis provided that each Member shall be entitled to assign or license their share of the copyright and all other rights in and to any compositions to any bona fide music publisher on terms to be negotiated in the discretion of that Member PROVIDED THAT such assignment or license does not affect the other Members' ability to exploit their copyrights.

13. Notices

Any notice in writing referred to in this Agreement shall be deemed to have been duly and properly served if addressed to the parties at the above addresses or to any subsequent address duly notified by any of the Members and sent by Special Delivery prepaid post and the date of service shall be deemed to be the day of delivery in the normal course of posting.

14. Miscellaneous

14.1 No waiver by any Member of any breach by any other Member of any of the terms or conditions of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other terms or conditions.

14.2 No Member shall be liable to any other Member for any breach of the terms and conditions of this Agreement occasioned by any act of God war revolution riot civil disturbance strike lockout flood fire or other cause not reasonably within the control of such Member.

14.3 This Agreement constitutes the entire agreement between the Members to the exclusion of any prior representations conditions or warranties undertakings whatsoever and shall not be capable of variation except by instrument in writing signed by each Member.

14.4 The marginal headings hereto are for purposes of reference only and do not form part of and in no way govern or qualify the terms and conditions of this Agreement.

14.5 All sums herein mentioned are exclusive of any Value Added Tax that may be payable thereon.

14.6 This Agreement shall be governed by and construed in accordance with the Laws of England and the English Courts shall have sole jurisdiction.

15 Dispute Resolution

15.1 In the event of a dispute arising between the Members to this agreement concerning the subject matter hereof that cannot be resolved by the Members any Member of the Group concerned may refer such dispute to the General Secretary for the time being of the Musicians' Union.

15.2 Upon such referral the General Secretary (or his appointee) may in their sole discretion appoint an adjudicator to rule on the dispute or refer the dispute to the Musicians' Union's Dispute Resolution Scheme ('the Scheme') if the same is in operation at the time.

15.3 The parties agree to accept the decision of the adjudicator so appointed or, if appropriate, to abide by the rules of the Scheme.

15.4 For the avoidance of doubt this clause shall remain in effect and binding upon parties who have left the Group.

SIGNED by)

in the presence of:-)

SIGNED by)

in the presence of:-)

SIGNED by)

in the presence of:-)

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