

# BOOKING FOREIGN ARTISTS

## Contract Basics When Booking Foreign Performers

Welcome to my new column in "ie" Magazine. This column is designed to make the booking for foreign artists for your festival much more possible and much easier. As a former booking agent, NAPAMA (North American Performing Arts Manager and Agents) President and FEO (Festivals and Events Ontario) Vice-President I am very familiar with the festival world and my expertise and knowledge has assisted organizations and artists, both domestic and foreign, in crossing borders. Over the next few issues this column will present a wealth of information on contracting foreign artists, dealing with visas and withholding for foreign artists, avoiding border crossing woes, understanding taxation issues, resolving border crossing issues and more. I am available to anyone who has any questions or concerns and offer free advice on these and many other topics. Happy reading.

Contracts represent the summation of an agreement between two parties. This column will focus on the requirements for a contract between a festival and a foreign artist or foreign artistic company. When you are negotiating to contract foreign performers for your festival, there are many considerations that need to be taken into account.

## Cultural and Language Considerations

There may be language problems, or cultural differences. Be sure you are clear on what is being said or written and know that some cultures may not respond as quickly as necessary, especially when the time to obtain a work permit or entry visa has to be factored in to the preparations for the performance. It is a good idea to have contracts finalized in plenty of time to allow for the processing of paperwork required to enable the artists to enter the country and perform.

## Work Permits and Visas

No foreigner can work in the United States without a work permit, referred to as a "visa" but not to be confused with the visa required to enter the country. The former is obtainable only from United States Citizenship and Immigration and the latter only from the U.S. State Department through its Consulates abroad. Getting this paperwork in order requires a knowledge of the pertinent regulations and application standards and is often done by experts in the field but is a necessary prologue for foreign artists to perform in the United States. You need to determine who is going to apply for required visas, work permits, etc. and who is responsible for the costs. The process is fairly expensive and will be a factor in contract negotiations for either side: since

a work permit requires an American petitioner, artists may expect the employer, in this case, the festival, to arrange for and pay the application fees; festivals may feel that the obtaining of this requisite paperwork is the artists' sole responsibility. Be sure this matter is clarified to ensure that all required documents are obtained so that booked artists can cross the border and work in the United States legally.

## Currency and Payment Issues

In North America (and elsewhere), with the fluctuating American dollar, a decision has to be made as to which currency should be used for payment of the terms of a contract and even what rate of exchange will be used and when it will be applied to the payment. In addition, how the payment will be made is important: will it be by cash, wire transfer, money order, check or cheque? In the latter case it may be impossible or expensive to cash a check or cheque drawn on a bank in another country, and this needs to be clarified. If there are processing fees, who will pay them?

## Travel and Accommodation Costs

Who will be paying the artist's travel costs and accommodation? International flights can be expensive and there are always in-country expenses for ground transportation. These costs should be addressed in the contract negotiations.

## Transportation Costs

Who will pay for the transportation, especially for larger performing groups, of such items as sets, costumes, props, etc.? Often freight containers need to be scheduled well in advance of performance and the logistics need to be detailed in any contract.

## Additional Services

A festival may expect performers to do more than just perform. Perhaps they envision a reception for festival donors or the festival board at which the artists might perform. These expectations should be made part of the contract and absolutely specified. From Meet and Greet to promotional appearances, all additional services should form part of the contract.

## Liability Insurance

More and more often, festivals are requiring artists to provide their own liability insurance. It is possible that the festival can add the artist to an existing festival insurance policy through a TULIP (Tenant User Liability Insurance Program) and this should be discussed.

## Withholding

Anyone in the United States hiring a non-resident alien (a foreign artist, for example) is required by law to withhold 30% of any fees paid to that person. This comes as a shock to many performers and a revelation to many festivals. This withholding can be ameliorated in various ways and festivals need to know what is acceptable since failure to withhold can make them liable to the I.R.S. for any subsequent unpaid assessed tax liability.

## Jurisdiction and Dispute Resolution

Contracts are often negotiated, signed and then filed until there is an egregious breach of a contract clause and then the parties are forced to examine their agreement to see how to resolve these issues. How disputes are to be handled should be specified in the contract, along with a specified jurisdiction to avoid having to fight a legal battle in another country.

In general, clear and constant communication will make life a lot easier for anyone negotiating contract terms.

*Robert Baird is President of BAM! Baird Artists Management Consulting in Toronto, Canada and an acknowledged expert in international touring including visas, withholding and taxation. He offers free advice to artists, agents, managers and venues and has an international clientele. He served for many years on the Executive Board of Festivals and Events Ontario (FEO) and is a former Vice-President of that organization. He can be reached at: P: 1-800-867-3281 E: robert@bairdartists.com or for more information go to: www.bairdartists.com*