

The Music Managers Forum

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How to...

Send Your Acts Across
the Pond



America as a whole is still considered the most important territory in the world for music acts, with 'breaking the US' the Holy Grail in many artists' minds.

Although full of opportunity, the US is also notoriously difficult to tackle. Forget its massive population and fragmented media – just getting through its borders can be hard enough for outside performers.

That's why the MMF has put together this handy guide that addresses the three most fundamental areas of travelling to the US – visa application, taxation and shipping. Conquering the States once you're there will require hard work and a keen strategy, but hopefully the points below will save you from falling at the first hurdle.

Visas

Getting through US Immigration can be an intimidating prospect, with horror stories of bands getting turned around at the border after an eight hour flight being all too familiar in the music industry.

To demystify the US visa process and highlight potential tripping points, we spoke to Jeffrey Gabel, an immigration attorney in New York City who oversees activities at the Traffic Control Group, which services the music industry in their visa and work permit needs.

You may be able to enter the US on an ESTA

ESTA is part of the visa waiver program that the US has with certain countries, allowing people to enter for a 90 day period. Visitors are not able to undertake paid work in the US during this 90 day admission, but there are some activities that may be allowed under this status such as business meetings or certain promotional activities.

"SXSW has come to an understanding with the State Department that allows for artists to come over and to appear solely at SXSW specific showcases under a visitor's visa, an ESTA," says Gabel.

However, be warned! While ESTA can be convenient in the right circumstances, Gabel points out that it can cause significant problems if used inappropriately: "If you register and get the ESTA, it allows you to board a plane to the US. Part of the problem is that, if the Customs & Border Protection (CBP) officer at the port of entry has an issue

with you and the purpose of your entry when you land in the US, for whatever reason, they may refuse you entry and put you on the next plane home. You will have no right to appeal this decision. So, ESTA can be a double-edged sword in some respects."

"You need to be careful and clear as to the purpose of your entry to the US. If you're entering to perform at a show that's advertised to the public, tickets are being sold, or even if there's a cash bar then you need a visa," says Gabel. "Various promotional activities such as an appearance on television would also require a visa."

If you are playing a 'one-off' charity event and the artist is not getting paid, it may be permissible under ESTA. If it's an industry showcase not open to the public and you have a letter from the label that outlines the circumstances (such as that the event is only open to employees, marketing staff, distributors and so on), it might also be permissible. Generally speaking, "it's common sense to a great extent," says Gabel. But, remember, whether or not the artist is getting paid is NOT the deciding factor as to whether or not they will need a visa.

The MMF also believes that, while bands who are only traveling to the US to play SXSW should in theory be allowed to enter with an ESTA, the rule has been applied inconsistently to date. In short, if you are in any doubt as to whether your activity in the US will be permissible under ESTA, it is safest to apply for a visa or seek advice.

If you need a Visa

If you are embarking on a tour, playing a handful of gigs or even just one paid show in the US, then you will not qualify for the ESTA Program and you will need a proper visa. Individual performers need an O Visa while groups need to apply for a P Visa. Remember, one of the criteria for the P Visa is that 75% of the group has been together for at least a year.

Supporting Documents

Another criteria for gaining a US visa is that the act in question is at a certain point in their career. The official description is that the applicant has "extraordinary ability in the arts". The tough part can be proving that. US Immigration officials require extensive supporting documents to demonstrate qualification for the visa and it

will depend on what stage an artist is at in their career.

“You need to think about what you have,” says Gabel. “If you have records that are charting high, that’s going to work. If you’re someone who has been performing all over the world and is getting lots of reviews and acclaim, that’s going to work. If you’ve been playing festivals, you want to get flyers that have them on there. Sometimes you may need to rely on testimonial letters from industry big wigs if you’re a newer artist. “We’ve had situations where we’ve had to say, ‘We just don’t feel you have enough and we’d be filing this with cautious optimism’. Sometimes it’s better to wait a bit longer, put out some more recordings and so on.”

Whatever stage you’re at, it’s important that you leave nothing behind when it comes to submitting evidence that will support your application. “If we have everything that’s available at the start, the likelihood of getting a secondary request for evidence is less,” explains Gabel. “You want to avoid that because it means more work, more time, and it kills all travel plans because you don’t know how long it’s going to take for you to get a response. It’s hard work sitting and organising all of this stuff, but if it’s not done out of the gate then you run a strong risk of immigration questioning things.”

Allow as much time as possible

When applying for a US visa, a 30 day turnaround is considered the best case scenario. It will take at least two weeks for Immigration to review an initial application and hopefully approve it. The visa then needs to be stamped at the US Embassy. In London, that can take as long as seven days.

“Then you need to leave a bit of wiggle room for problems that do happen,” says Gabel. “There are always going to be speed bumps, nothing ever moves smoothly, that’s just the nature of the beast.”

Be aware that cases can drag on for months if Immigration officials are not immediately convinced by your case, and at the moment the process is generally taking at least two months as standard, so allowing as much time as possible is advised.

Extra can be paid for an expedited service, in which case US Immigration is required to either approve or return

feedback on your application within 15 days of filing. “If they miss the 15 day deadline, they have to refund the premium fee – and they don’t like to refund money!” says Gabel.

How much does it cost?

US visa pricing is based on ‘petitions’, with standard processing costing \$325 per petition and premium at \$1,550 petition. An act plus crew equals two petitions, totaling \$650 for a standard application and \$3,100 for an expedient application.

“If you’ve got a band and crew you’re looking at another \$2,450 for a fast-tracked application,” says Gabel. “It’s a lot of money, but sometimes you have to look at the bigger picture and spend it if you’re short on time.”

On top of the petition fee, there will also be a fee for the visa itself, which is currently \$190, and then you also need to take into account any agency or legal fees incurred if you take that route.

Tax

Making sure you pay the right amount of tax on money made during a tour or live show should be at the forefront of any manager’s mind. Pay too little and you’re likely to be stung later on, pay too much and you’ll leave yourself unnecessarily out of pocket.

It’s always good to have an understanding of a territory’s tax system and its various quirks well before your act sets foot on a foreign stage. Here, Prager Metis LLP’s director of taxation, Eric Longley, lends his advice to make sure you pay the correct amount of tax when working in the US.

Get a central withholding agreement

Did you know that there is a law in the USA that means you could lose 30% of your income on any tour, gig, event or indeed anything that you planned on getting paid for?

As standard, if you are traveling to the US to perform, the IRS will withhold 30% of gross income earned in the territory as tax. However, it is possible to get a reduced tax rate if you complete a Central Withholding Agreement prior to embarking on your trip. Not only does a CWA help ensure that US tax obligations are met by the artist, it



means that tax withholding is based on estimated net profits.

The Withholding Tax law in the States presents a big issue for any manager planning on taking their artist to the United States. Generally if you are a “non-resident entertainer performing independent personal services in the United States” you are subject to 30 percent withholding of gross income.

This counts on all FDAP (fixed, determinable, annual or periodical) payments.

The only way to prevent a huge chunk of your money disappearing is by entering into a “treaty” or Central Withholding Agreement (CWA) with the IRS under certain requirements.

The agreement should cover a specific tour or series of events and the withholding is then based on the budget provided and net profits

estimated. All of this only works if all parties have signed on the agreement and the NRA is in full compliance.

You are required to provide the IRS with a detailed budget in order to gain a CWA. “Smaller artists in particular are usually able to get the promoter to do it for them,” suggests Longley. “For bigger acts, it’s quite a bit of a palaver, what with the IRS wanting to inspect every last penny of the budget.”

The CWA involves three parties:

- The non-resident individual (artist/individual band member)
- The designated withholding agent
- An authorised representative from the IRS.

In terms of timings, the CWA covers the American tax year which is January to December, therefore if a tour stretches over from one tax year to the next, two agreements will be needed per person. The agreement must cover a specific tour with specific dates mentioned and all dates and venues must be accounted for. Remember that all venues are aware of the CWA (and more importantly the IRS!) regardless of their size, so leaving any income undeclared is simply not worth the risk. All venues will withhold 30% of your income without a valid CWA.

All contracts and paperwork must be submitted 45 days before any tour commences. Similarly, all expenses and post-tour documentation needs to be filed up to 45 days after the tour. There is absolutely no leniency on these points.

We all know that even the most organised tours do not always go to plan and amendments must be made. According to the CWA these are allowable if circumstances cannot be helped but notifying the IRS as soon as possible, i.e. while you are still on tour, is an absolute must.

Any previous visits made to the USA by any of the artists should be accounted for and all taxes must be up to date. The IRS will look into the past three years of any non-resident and if any paperwork has not been submitted or payments not made they can look a further three years back.

Basic information required by the CWA includes all contracts (including publishing and recording contracts), endorsements and sponsorships, tour support,

merchandising deals and licensing deals. All income streams must be accounted for and financial information such as expected expenditure is also required. If you feel that you are being asked for anything unreasonable by the IRS agent then it is always possible to request liaison with their superior and ask your withholding agent for advice as well.

The main advantage of the CWA is that by liaising with the IRS and submitting accurate costing and expected accounts you are only charged income tax rates whilst on tour. IRS agents will look your artist up online and will know how big they are, who they're signed to, where they are going on tour, etc. so there is very little point in withholding any truths for financial benefit.

In terms of crew members, the law has recently changed in the last few years so that now tax details will be required of all members on the tour, not just the artist. However, if you are a 'major company' bringing employees providing labour and equipment, they will not need a separate CWA.

As mentioned, CWA's are optional, however, without one, there is a good chance that the US government will look into your artist and audit all expenses which means hours of paperwork and filing. If you do not have one, you will need to file a tax return.

You may need to submit a US tax return

If, for example, you played in the US in 2015, then you must submit a US tax return – bearing in mind that America works on a calendar year basis. If you don't submit a US tax return, and want to go back to the territory within six years, then the IRS will not grant you a Central Withholding Agreement, meaning you'll pay 30% tax on gross income.

"It's a pain for smaller bands because they have to factor in the cost of anywhere between \$1,000 and \$3,000 to put in a tax return," says Longley. "It should be relatively straight forward – income minus deductions – but it's still an expense."

Remember, even if you are only in the US for a promotional tour, the IRS still considers that playing for money. So playing SXSW as a promotional gig still requires the band to file a US return for the year they performed at the festival. The same goes for any other US promotional tours.

"If you go over there and a record company pays for you to do a gig at SXSW, as far as the IRS is concerned, that's payment for a gig," explains Longley. "It may be that all that money nets off in expenses and you don't make any profit, but you still played there, so you've got to submit a return."

"And the IRS have got access to the internet," he warns, "so they can soon tell when you've played somewhere. They do check Facebook!"

Don't forget your social security number

Once you've entered the US, you'll need to get a social security number. With this, you'll be able to obtain a tax payer identification number online, which you can in turn use on your tax return. It can take up to 14 days after application for the social security number to be issued. Larger acts will be able to do this through their accountants and lawyers, while smaller bands and managers will have to visit a social security office while in the US.

Other things to remember

- The IRS may ask for details of the crew members even if they aren't taxable in the US.
- Don't try and load the budget expenses as the IRS have considerable experience of tours and if caught out they can refuse, unreasonably, to agree a CWA
- A CWA is voluntary on your behalf if you don't accept what the IRS are offering they will revert to 30% on gross
- On bigger tours, the IRS will ask for monthly updates about your income – Because the amount of tax is much greater, they will pay more attention.
- Remember to get insurance. You won't be automatically protected unless you're a UK Limited Liability Partnership and using a limited company may not be a good idea (check beforehand).
- And finally just add to the complications there may be State taxes as well as the Federal Tax due.

Shipping

Of course, when traveling to the US, it's not just your artists that need to make it safely across the pond but their instruments and equipment as well. While shipping to The States can be relatively straight forward, it can quickly end up needing a whole separate strategy in itself. We spoke to John Corr at specialist logistics provider Sound Moves to get his expert advice.

Equipment needs a passport just like people

Remember, when you're taking a lot of equipment abroad, there comes a point where it will need its own passport, of sorts, just like a person would.

A hand carried guitar won't pose too many problems (as long as it enters and leaves the country with the artist), since they're classed as tools of the trade and most customs authorities will accept an act arriving with them. As the amount of equipment starts to rise, however, whether in quantity or value, you'll need to be able to prove that you're only taking home what you came with.

"The temptation can be to go to America and come back with loads of great guitars ridiculously cheaply priced," explains Corr. "You need to pay duty and VAT when they return. If customs see someone coming back with three personal guitars, they'd probably want some evidence that they owned them before they left."

This is where a document called an ATA Carnet becomes essential. It enables you to register the arrival and departure of any goods in countries that recognise it, which is most of the major touring territories.

"There are some quirks in the Middle East, and South America isn't a great user of it, but the US, Japan, Australia, New Zealand, Canada, and Europe will accept it," says Corr.

Your equipment can't travel unaccompanied

At least, not on a passenger aircraft. For younger acts, in particular, it can be tempting to play a few showcases Stateside and then spend some time across the pond on holiday. Naturally, nobody wants to have their instruments in tow when they're taking some time off, but special provisions need to be made to send equipment back home

unaccompanied on a passenger plane.

"This is where people come unstuck because, since 9/11, America has very strict rules about what cargo passenger aircraft will accept," says Corr. "Nobody can ship their equipment on a passenger plane as cargo unless they're on a central database of approved shippers. To be an approved shipper you need to have a business ID and a full office address in the US. Obviously, for an English band going to America, that can back them into a corner because they may not have a record or publishing deal yet."

The other option is to use cargo planes, which don't have the same restrictions, but they do have very limited services. They're much more expensive and tend to be much less flexible.

Remember, the US is big

Once you've made it into the US, things don't necessarily get easier. It's a big place! Until they reach a certain level, most acts will travel on the road to get from one city to the next, which won't cause too many problems. Flying, however, again throws up hurdles, even internally.

If you do start flying internally you might find that some of the aircraft within the US are quite small and the large amount of equipment you're trying to move might be a problem," says Corr. "So, again, you need to check what sized aircraft is going to be flying you between the two cities, check they'll accept all your luggage and what kind of deal they'll offer.

"If the flight won't accept it and you can't put it on an alternative flight as cargo then you have to find a cargo service, and it's almost certainly going to take three or four times as long as you between the two cities," he adds.

Shop around for a solution that suits you

Just like going on a family holiday, when you take a band on tour around the US, you'll essentially be looking for a travel package. You'll need to weigh up the most economical and efficient way to get over there as well as getting from gig to gig. A company like Corr's Sound Moves will put together solutions for acts of all shapes and sizes - from one singer and their guitar to world tours for chart topping bands. But even Corr encourages managers to shop around to find the best deal for them.

Speak to your travel agent," he suggests. "If you're going to hand carry stuff, make sure that you understand the basis excess baggage is charged on and try and do a deal for the round trip, so that you've locked in the cost of checking in extra bags and weight.

"Then you can come to us and say, 'What's the cost if you pick it up from our rehearsals, deliver it to our first show, pick it up from our last show and bring it back?' You can do the comparison and at some point you'll find that the cost of us doing it becomes less than hand carrying it. Also, once you start to become a bit of a star, carrying your equipment through airports isn't something you want to be doing.

"It's worth doing those sums on a regular basis to make sure you're doing it in the most cost-effective way," he adds. "Sometimes taking your equipment by hand is the only way to make sure you have it where you need it on time. You can't move cargo as quickly as people. It goes through the same process as passengers but the export screening and delivery on to the plane takes four or five times longer than people, and the recovery process can typically take eight to ten hours before you see your cargo at the other end."

Making progress

As you can see, the process of successfully taking a band to the United States is complicated and, more often than not, expensive. Many MMF members are understandably frustrated and left feeling that one of the world's key music territories has been pushed out of reach by costly and time-consuming bureaucracy.

Red Light Management's Jess Lord took one of her acts to the States at the beginning of this year and so has experienced the trials of doing so first hand.

"It was a process that took us nearly six months, we ended up getting right down to the last few days because our first submission was challenged," she says. "At that point it meant when we were ready to book our flights they'd gone up considerably plus we had to get some of the band second passports because they'd been confirmed to play Eurosonic but their passports were with the US Embassy while their visas were being processed. The whole cost came to around £6,000, which is considerably more than what a US artist would face coming over here."

Nigel Glasgow, director of B Flat Productions, which provides touring and recording services to the music industry, also points out the comparative ease with which a US artist can come to the UK.

"If I had to travel to America next week, it could be done but it would cost a lot of money," he says. "But when you look at American's coming over here, I've been with people who've lost their passport on the plane coming into Heathrow and we managed to get another turned around for something like £30 in 40 hours. It feels like there's a different attitude."

Bernadette Barrett of Mondo Management says she feels the entire process is shutting doors for artists of a certain level. "It seems like a short term strategy to get the money from touring artists now, while creating difficulties for bands who do want to go to America and South America, sell some tickets and leave some money there," she adds. "It seems short-sighted and unsustainable. It'll drive people underground, but we as management can never suggest that artists go to America without a visa.

"We need change in the system or at least get more flexibility around the length of time you can get a visa for," she adds. "We do everything legitimately: everybody we work with gets their visa, applies for a social security number, goes on payroll, pays taxes... But all we're doing is spending a lot of money just to leave a significant amount of revenue in America. I don't have a problem with that legally, but a lot of people aren't in a position to be able to do it. It seems so much easier for US bands to come here and it would be amazing if we could implement something so that it's be as easy for UK or European acts to go to America.

The MMF is indeed working on behalf of its membership to tackle these issues and urges the US government to look at five initial areas in particular that would result in positive steps forward:

1. We would like to see US Immigration establish a dedicated team for the music industry made up of people who understand the issues artists and managers face and are able to give advice accordingly.
2. The US Government should provide timed appointments for visas to avoid expensive overnight stays.
3. US Government must clarify the position on ESTA waivers and communicate it clearly to all border forces across the country to avoid inconsistent application
4. We should have dedicated shared info available on a dedicated website for the music industry.
5. Finally, we would like to see a review of the current cost and waiting times attached to these processes so it is proportionate for each nation.

