



## **360 Degrees of Separation 'Biting the Hand That Bleeds You'**

**By Nathan Brenner**

'... When you lay down with dogs you get up with fleas ...'(Proverb)

In Noorderslag some nine months ago I attended the highly entertaining and informative 'Booking a Tour Live on Stage - On the Road' featuring entertainment industry experts Allan McGowan, Tobbe Lorentz, Dick Molenaar, Theo Roos, Claudio Trotta and our own Petri Lunden. This excellent and well attended event was largely devoted to a theoretical band ('The Hypotheticals') coping with in part a 360 degree deal. The panel acted out the roles of various 'Act' service providers such as Manager, Record Company, Agent, and Advisors etc. Generally a lighthearted discussion around negotiations, but with underlying 'heavy' implications, this 'performance' highlighted the advantages and disadvantages of such 360 degree arrangements.

I believe the 360 degree deal represents one of the greatest threats to independent management, and could endanger our profession and our relationship with our Artists. A 360 degree deal is where a Record Company wants all of the pie. Not content with the majority of music sales profits, the Record Company also wants a slice of the Artist's live performance, publishing and merchandising earnings etc. The justification for this in part is to facilitate publicity and promotion, but this is the traditional role of record companies. So why cut into an Artists main sources of income which are generally touring and merchandise? As Alan McGee, founder of Creation records said "The record industry's demand for bands to sign over a portion of their merchandise and tour revenue as part of a recording contract is an admission that selling music is not a sustainable business model".

At the core of 360 degree deals are two incompatible relationships, the Artist/ Manager relationship versus the Record Company/ Shareholder relationship. On the one hand an Artist/ Manager relationship, generally a personal services arrangement, where the Artist engages the Management Representative to act on their behalf in all areas of their career, and oversee all their rights and income streams that flow from them. The other relationship involved is that between the Record Company and its shareholders, by maximizing the income in the administration and exploitation of artist's copyrights it owns or controls. As such there is a conflict of interest, as it is in the shareholders interests to reduce costs, including the reduction of Artists payment and rights. This is self-evident and has been occurring for decades.

This is further exemplified by the Kazaa situation where the four major music companies received windfall income settlements in excess of \$100 million as compensation for illegal file sharing. However, in a 360 degree deal the Record Company gets to keep millions and refuses to share with the creator, The Artist; their proposed partners. It would appear Record Companies have perverted property law to their benefit, and not to that of the actual owner the artists by pretending owner rights and as long as we let them continue they will go on.

I am against certain types of 360 deals. For a start let us class them as 'passive' and 'active'. Passive being where the Record Company provides a minority stake in return for a cash infusion to the Management Company/Manager. Such a cash injection is intended to provide liquidity or expense related funding to 'grow the business' and provide financial stability so that long range sustainable opportunities can be provided for the manager and the act, or in acquiring new acts the label wants handled by mutual consent. The return on Record Company investment is in part to secure a financial interest in additional Artist/Manager income streams, such as publishing, touring, merchandising, sponsorship etc. In this scenario the label is like a 'backseat driver' - a little bit of equity and opinion without primary control.



Active 360 deals arise where the Record Company as an equal or majority partner provides funds to the manager (and not necessarily the act) in exchange for a share of the business involved in the acts' income streams. In such scenarios there is a tendency for 'puppet managers' to evolve who are willing to take a large amount of money for short-term gain. This can also include situations where Record Companies provide their own opportunities in related industries, or where they have lateral corporate relationships. For example "I just met the vice president of perfume in the polo lounge at the Beverly Hills Hotel who wants to market your act's smell. Oh by the way, we have secured a ten percent override for your management company, but your act need not know this".

Let's have a good look at the people we want to do business with. Record Companies have been involved in bribing radio to play records, which is illegal. Here in Australia they have been fined in the millions of dollars for breaking the law. In many respects they are against competition, which in itself will be an ongoing problem as consolidation expands. All this expansion into artists' income streams is occurring at a time when record companies are sacking people, winding down their operations, signing and releasing fewer acts, and generally losing market share to other entertainment forms. This equates to fewer people now working more acts, and more responsibility in other income streams.

Further, whoever would go into business with people who allowed their assets and their artists' mutual assets to be stolen by the general public, and who increased piracy through technological change from vinyl to digital? Who would trust a partner who, having obtained hundreds of millions of dollars in artists' third party earnings, refused to give their partner and their artists (that they are involved in management with) a share? Who would go into business with a company that does not believe in fiduciary duty, and whose accounting methodology is at best questionable, and at worst fraudulent? And this is the basis on which their partner is going to be paid? And how would the Record Company treat their partner should they request an audit?

Who would be willing to bite the hand that bleeds them? Who would force an artist back on the road or into an unwanted sponsorship deal in order to recover a Record Company's recoupable marketing and production expenses? What major executive at a Record Company would be willing to work 24/7 and answer a 3am call from an artist and deal with the issue accordingly? What type of partner is that? Who would want a partner to undermine touring plans, because it was inconvenient, as they are busy with other acts; perhaps the competition? Let's face it – it is probably better to deal with the Mafia than a Record Company. At least you get protection!

For many years, when it comes to tour support, Record Companies have shown their contempt for management by not factoring in the legitimate costs of management commission into tour support. Agent commission is no problem. Management commission - forget about it! Record Companies believe that they are responsible for the Sistine Chapel even though they only purchased Leonardo's paint. Would you go into business with a delusional partner who actually thought people walk into record stores, because they are interested in a label not an artist? A label is not a brand - the artist is the brand.

Now let's look at creative control. Would you actually want the Record Company involved in creative decisions based on their track record, as it would appear A&R and artist development are endangered species? Record companies are dying. They are turning over less and less revenue every year and they are the ones responsible. Now they want a slice of everyone's pie and the manager is the gatekeeper, and also the bands' business representative, and artistic representative. Are we as managers willing to sacrifice acts for our own good? Do we act for ourselves first and our artists second, or support artists' rights for the equity we have in their earnings? This is central to the 360 Deal and critical to our organisation, the IMMF. What are we - a management group, or an artist group, or a professional management group, or a professional entertainment group?



360 degree deals are not a new phenomenon. There have been various permutations since the 1930s. Examples include Record Companies and Cigarette Companies, Elvis Presley his Record Company, Management and Hollywood movies, and Bill Haley and the Comets in the 1950s. Then, in the early 1980s, Sony (then CBS) Records bought into legendary San Franciscan promoter Bill Graham's Winterland Merchandising Company, and subsequently merchandising rights became part of all Artists' recording contracts. For example, the act I managed, Men at Work, were told that this record / merchandising ownership right was a deal breaker. We did not accept it, as the royalty rate was fifteen percent of what an arm's length rate would have been. We put forward the argument that whereas the Record Company may sell records, they knew nothing of the merchandising business,. However, if they wanted to make an offer down the line, after they had gained such experience and proven sales, then we would entertain such an offer. Some time later, having invested a substantial amount of money, Sony withdrew from Winterland and the clause was removed from recording contracts.

The fact of the matter is, until such time as Record Companies can actually concentrate on the selling of records and be successful at it, their fervent interest and involvement in other income streams denotes a serious lack of focus on their core obligations to the artist and manager. It represents a huge distraction. Distractions may be interesting, but the end result is inevitably disaster, except that in a 360 degree deal the artist and manager wear the consequences. Rarely does a Record Company admit fault. Seldom are they around to clean up the results of a bungled marketing campaign or failed sales incentive. Besides which "Pink's on tour and I have to go to a party on a boat in the middle of Sydney Harbour and can't come to the management company meeting. After that I jet off to a global label meeting at the Royal Hotel San-Remo, but I will take your CDs with me". Interestingly, few if any major Australian labels have had lasting international success in the last ten years. Australian managers, on the other hand, have. As record companies have contracted, independent managers have been able to act more efficiently in securing overseas releases with focused marketing and sales plans.

In Australia we have had a history of such 360 degree arrangements since the 1970's. A small group of people controlled a Record Company, Publishing Company, an Artist Management Company, an Agency, a Merchandising Company, a Touring Company, and operated venues. The only global success this 'group' had was when an artist fled to an overseas country beyond their direct control and, relying on their manager and local contacts, made successful recordings and generated other income streams. The 'group's' most successful band was the one that left the Management Company, Agency, Touring and Merchandising Companies, and with their manager forged great success for themselves domestically and internationally. Then the 360 degree type of arrangement was touted as being advantageous; 'being under one roof', with the administrative and logistical coordination cost efficiencies, to benefit each act. In reality, it fostered an incestuous relationship where, if the 'group' did not have the majority of the income streams, less attention would be paid to the act.

At the very least the 360 degree deal is something of concern to be carefully considered in line with our own Code of Conduct (below)

Essentially ethically and morally, we either place our artist's careers and development ahead of our own or we don't, as in a 360 degree deal there are no sides, just the whole.

#### Postscript

This is also acknowledged culturally, the recent example being the film that my daughter enjoyed 'Alvin and the Chipmunks' (\$359 million world gross). The villain is a Record Company/Ian Hawke, the music producer and executive of JETT records, who schemes to push the Chipmunks to fame to earn money from them. He is the main antagonist of the film, who lies to the artists about their 'Manager' and tells the Artists they would be better off with the Record Company handling their affairs. The Record Company then sends them on a grueling tour. When the artists can't sing at a



concert the audience are refused refunds and the Artists are instructed to lip synch. The Record Company does not care when the audience becomes angry and ruins the concert because the artists mimed. The Manager is almost beaten up by the Record Company security men when trying to rescue the Artists. The Record Company reacts by imprisoning the artists so they can perform at an international concert in Paris, but stupidly mistakes the artists for their own Japanese talking merchandising 'doll'. At no point has anyone, to my knowledge, complained about the way in which the Record Company was portrayed in this film. It's more or less accepted as fact.

I would like to think that the IMMF and it's members are slightly smarter than Chipmunks!

IMMF Code of Conduct – Noorderslag 2004/01/08

The General Assembly of the IMMF,  
Recognising that the IMMF and its members have an important role to play in the promotion of the interests of Music Managers and their Clients throughout the world;  
Emphasising that the professionalism and competence of music managers has an impact upon the profession, and upon their clients, of a fundamental nature;  
Recalling that the Statutes of the IMMF require that Members are required to have a Code of Conduct for their member-managers congruent with that of the IMMF;  
Further Recalling the views expressed in the General Assembly of January 2003 by many Members that the Secretariat should bring forward a draft Code of Conduct for review;  
Decides That the following shall be the Code of Conduct of the IMMF;  
Calls Upon all Members to ensure that their Codes of Conduct are congruent with it as required by the IMMF Statutes in Article 5

#### Code of Conduct of the IMMF

Music Managers must aspire, at all times and to the best of their ability to:

1. Devote sufficient time so as to properly fulfill the requirements of good management in the interest of the artists as they understand them;
2. Not knowingly act in any fashion which is detrimental to their clients' interests;
3. Conduct themselves in a manner which is professional and ethical and which abides by best business practices and methods accepted in their country.
4. Conduct all of their affairs with their clients in a transparent manner;
5. Protect and promote the interest of their clients to the highest possible standard;
6. Exercise the rights and powers implied or granted to them by their clients in the written or oral agreement for the clients best interest as the manager understands them.
7. Ensure that no conflict of interest shall infect the discharge of their duties towards their clients.

Music Managers shall respect the integrity of other managers in their relationships with their artists and not actively interfere with same except directly with the manager. If approached by an artist who was previously the client of another manager, a manager shall endeavour to confirm that the artist has fulfilled his, her, or their legal obligations to the previous manager before entering into a management relationship with the artist.

Where a manager acts as publisher, agent, record producer or in any other capacity as well as a manager for his, her, or their clients, they shall declare such interests so that the artist has the ability to determine for themselves if they feel it constitutes a conflict of interest.

Where a manager acts in any other capacity as well as manager for his, her or their clients where such activity ordinarily involves the charging of fees or commissions, the manager shall not charge multiple fees or commissions, instead charging either the agreed management commission alone or the fee or commission usually charged for that other activity and forgoing their management commission. Where the manager elects to charge a fee or commission other than the management commission they shall first gain the consent of their artist.



Managers must ensure that all monetary transactions made on behalf of or in the interest of the client and all books of account and records must always be reasonably open for the inspection of the artist or their appointed representative.

Where a manager engages an artist under a written agreement, the manager shall endeavour to ensure that their client seeks and receives expert legal advice on the terms of such agreement before signing it.

Managers will endeavour to keep themselves well informed of current events and legislation, both national and international, as it pertains to the proper exploitation of their client's career and the proper administration of their clients' business.