

360 Deals In the Music Industry - Good vs. Bad (by Kyle Rambeau) 24 January 2011

The emerging norm in the record business is the 360 "all in" deal. There are costs and benefits to both the label and the artist.

What is a 360 deal? Due to the dramatic decline in physical music record sales over the past decade, we have seen an evolution from a pre-recorded audio music rights deal to what is now known in the entertainment industry as a '360 rights deal'. The term '360' is generally known to mean 'all in' or 'all encompassing' which entails the record companies taking a piece of the pie in all aspects of the artists life as a musical artist. These 360 deals are actually quite old, stemming from deals made with Motown artist where the record companies, short of touring, would control everything related to the artist. These 360 deals were more commonly being recognized in the boy band era but usually these deals were an exception to the rule. Nowadays, 360 deals are an automatic assumption for a label to use with an upcoming musical artist and companies are now known to walk away from deals unless the artist agrees to a 360 contract.

This doesn't seem very fair now does it? Why would a record label go from earning revenue off of record sales to attempting to earn revenue off of everything an artist does? Generally, most artists at the outset have negative feelings about this, but if you look deeper into the workings of a 360 deal and how profit is generated for the artist and the record company, it could definitely turn into a win-win situation for upcoming and veteran mainstream artists, especially artists who have been very successful as far as touring is concerned. In addition, if the artist agrees to sign with a record label in a 360 contract and has one or two successful albums, they have a definite chance of renegotiating the deal to earn certain rights back to 100 percent due to the bargaining power the artist has obtained. So an artist may lose the battle of having to agree to a 360 contract, but could very well win the war in the end.

The workings of a 360 deal - So what terms are actually negotiated in a 360 deal? A general 360 contract covers a wide variety of the artist's career including, but not limited to, records, pre-recorded music rights, endorsement deals, acting deals, spokesman deals, touring, music publishing, and merchandising. The big money makers in these agreements are in the merchandising, and touring aspects of the business, which is why these end up being the most heavily negotiated terms in a 360 record deal.

Merchandising Rights - As far as merchandising is concerned, these rights could be very lucrative depending on the artist and the approach the record company takes in promoting and marketing the artist. All the major record companies used to have merchandising companies that would give artist advances, but have gotten rid of them because they were not only making zero profit, but the advances paid were never recouped from record sales. Now, record companies have begun to partner up with affiliate merchandising companies to promote and market the artists brand and image. In these 360 record deals, merchandising is key to the day to day relationship between the record company and the artist which is why when a record company gets 15percent of the artist's merchandising revenue, the record company argues that they are actually earning every penny by working daily with the artist, instead of being a passive viewer like the good ole days when all a record company was worried about was selling records.

A majority of 360 deals have the record label asking for exclusivity for all rights under the contract (merchandising, publishing, sponsorships, endorsements, and sometimes touring) so the artist rarely has any say as to who runs each of these areas. More moderate 360 deals though allow what is called a 'Right of first negotiation' which basically means that if a record label has an affiliate merchandising or publishing company, the artist must first attempt to strike a deal with these companies before looking for other third party hires.

Touring - What record labels really want to focus their 360 deals around is touring because this is easily held out to be known as the big money ticket as far as most artists careers are concerned. When an artist is generally labeled as a touring artist such as the band Paramore, the record companies argue that they go through great lengths to make sure the artists touring is in line with the marketing and sponsorship of the artist's brand. The record company makes sure that they are going in the same direction as the artist's agent and find individuals with expertise within the area of music merchandising, fan club promotion, and touring instead of taking a music supervisor and throwing them into the merchandising department.

A record label's justification of receiving a certain percentage of the touring is that they are the ones who are helping to build the artist's brand, and say that the artist is known to be a 'touring artist', then the artist's overall revenue from touring could range from 50-99 percent of what the artist generates overall. So clearly, when the record label is spending the money to market, promote and cover tour support, they want to participate in the touring profits.

What the artist needs to do – marketing and promoting justifications: It is the artist's responsibility when negotiating the terms in these 360 agreements to make sure to ask for language that forces the record labels to clearly justify what they are going to do - in terms of marketing and promoting - to justify the label's participation in the most lucrative areas of the artist's career. It's not fair to the artist if the label simply creates a 360 deal because of the economic woes of the music industry, but instead show that they are putting in the time and money to transform the artist into a brand name. The labels do this by promoting the tour while marketing the merchandising line and interacting within the in-house departments and creating a fan base to allow fans to interact with the artist and know of the newest happenings in his or her career.

Another important aspect that has been a huge debate since the late 1990's is about the ownership of the artist URL. Many record companies are now requiring the artist to give over the exclusive right to run the artist website in order to control the traffic of the site along with marketing and all that good stuff. The artist should make sure they have the ability to set up their own fan website, which eventually, with a good fan base, will most likely turn into the major website for the artist anyways. This is because fans want to follow the artist, not the label. Emerging artists just need to know that they do still have negotiating power from the get-go, so don't be afraid to ask for certain things, just don't try to stretch it too far that the record label calls off the deal entirely. Obviously, artist's don't negotiate without a lawyer on these issues.

360 deals are the norm now so deal with it! Record companies are taking the 360 deals very seriously which shows why these types of deals can be lucrative for the artist, and also validates why big record companies deserve a little piece of the artist pie as well. This is probably why a majority of mainstream artists over the past eight years or so that sign to a major record label have been a part of a 360 deal.

This does not mean artists have to sign these 360 deals to make it in the music industry, and for many artist, signing a deal like this would be absurd. Small indie bands or smaller artists who play music that would generally not be considered top 40 would most likely not profit from a 360 deal and would be better off with self-promotion and marketing through the numerous social networking sites an artist has these days.

If you are a pop, urban, or even country artist and have hits that can get on the radio in relation to your demographic, then these artists may want to hitch on to a record label that can pay for the recording studio time, the marketing, promoting and tour support, generate a huge fan base and expect a little piece of everything in return. The decision is clearly up to the artist on whether to sign with a label or not, but if the opportunity comes knocking on the door, just know that the deal is going to be 360 or bust.

Much of my information comes from my personal experiences from working at major entertainment corporations, along with my music industry contracts class taught at Southwestern Law School. Some of the information may be my point of view and does not necessarily express everybody else's point of view, although I tend to think I may know enough about certain aspects of the music industry to talk about it!

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