

Finding a Manager

Success as a performing songwriter or band is very often a lot more than about just writing that elusive hit song. Breaking into a market where hundreds of songs written and recorded each year requires a whole lot more effort than coming up with that killer opening line or catchy chorus. A myriad of other factors will undoubtedly come into play in achieving national and international recognition, not least a lot of luck. But isn't it said that you make your own luck in this world, well this is especially true in the fickle world that calls it the "music industry". Raw talent alone on the part of a performer will never be enough to achieve longevity in this industry and one only has to look around at some of the Irish acts that have lasted the pace to see that it is also as much about getting the right team of people around you to help achieve a successful career in music. Whether that be business management, financial advisors, legal eagles or recording specialist all can play a major part in helping you make it to the next stage.

It is essential for any band's success that they build up a good professional team around them. This team usually consists of the following - :

1. A personal manager.
2. A music business lawyer.
3. A music business accountant.
4. A tour manager.
5. An agent.

The most important member of this team and the member that should be first employed is the personal manager. They will help you in the day-to-day running of your career and will also help you to employ the rest of your team. The primary functions of a manager are as follows - :

Early stages

1. To book gigs and rehearsal space for the band.
2. To send demos to record and publishing companies and make follow-up phone calls.
3. To keep abreast of events such as IMRO Showcases, In The City Unsigned, CMJ Music Marathon, Popkomm, MIDEM and SXSW and make sure that the band are entered for any such suitable events or tours.
4. To lend an objective ear to the recording process.
5. To write a biography of the band and keep it updated regularly.
6. To organise professional photographs for demo and promotional purposes.
7. To promote the band in national and local press and radio.
8. To create and maintain a press kit from any press coverage received.

Later Stages

1. To handle all negotiations on the bands' behalf with record and publishing companies.
2. To negotiate all business deals on the bands' behalf, e.g. merchandising deals, film soundtrack deals, fees for concert performance.
3. To hire all professionals associated with the band, e.g. lawyer and accountant.
4. To liaise with the agent regarding tour schedules.
5. To make sure that the record company is promoting any releases in conjunction with the tour schedule and that all releases are being treated as a priority.
6. To have comprehensive knowledge of the bands' legal and financial commitments and to provide sound business advice relating to these issues.
7. In short, to fight the bands' corner against the outside world.

As can be seen from the above list of duties, a good manager is integral to the success of any band. It is therefore important to make sure that a manager is brought on board as soon as possible.

There are several ways of finding a manager and these are listed below.

1. Approaching an Established Manager

It is possible to approach managers who already represent artists working in a similar musical genre or who are approaching their career in a manner that you think would be suitable for your band. Management addresses can be obtained from the Hot Press Yearbook or the artist's record company which is usually listed on the inlay card of a CD.

2. Advertising

It is possible to advertise for a manager. This can be done through industry magazines such as Hot Press. Alternatively, you could put up ads in rehearsal studios, recording studios and other obvious contact points.

3. Approaching a friend

Sometimes an enthusiastic friend could be recruited to fulfill the management role. It is important to ensure that this friend has some knowledge of the music industry as ignorance could lead to disaster. Even the most well-intentioned person could end up tying you into a contract which is of no benefit and ultimately damages your chances of success. It is also important to ensure that the friendship remains completely separate from any management/band conflicts!

4. Management Showcase

A showcase gig could be set up to recruit a manager. It is important to fax all potential managers before the gig and follow this up with a phone call to ensure attendance. The band should do a short set (preferably headlining the bill) and copies of a press pack and demo tape should be made available at the door to any managers who turn up.

5. Management Courses

There are several music management courses available at colleges around the country, e.g. Ballyfermot Senior College in Dublin. It might be possible to recruit from the graduates or current students of these courses as they hold an interest in the area and would have relevant education.

Sometimes it may not be possible to bring a manager on board as early as you would like and a member of the band may fulfill that role in the interim. If this is the case, the band member should try and gain a basic knowledge of the industry. An excellent book to read in order to gain this knowledge is "Everything you need to know about the music business" by Donald S. Passman, an American lawyer (Published by Simon and Schuster available at Hodges Figgis, Waterstones or Books Upstairs in Dublin or available by order in most bookshops). It is advisable to continue looking for a manager as the band member may find the two roles very difficult to balance. Keith Donald (ex-manager and band member of Moving Hearts) put it quite succinctly - "It's very difficult to play a good solo and count the heads in the audience at the same time."

Management Contract

When you have found a manager with whom you are happy, one of the first items of business is to draw up a management contract. This contract is between the band and the manager and details various issues.

i. Term.

This is the length of time for which the manager will be involved with the band. It can be goal based, e.g. a record deal within a certain time frame, or it can be solely time based, e.g. 3 years.

ii. Percentage.

The manager will want to negotiate a salary. This is usually 15% - 20% of gross receipts with certain exceptions such as performance royalties. Many managers will work for nothing at the early stages of a bands' career as they are aware that it will pay off should the band become successful.

iii. Areas of management.

This determines whether the manager will manage you in all areas of your career. For example, if your music career takes off and as a result you are asked to act in a film, it is important to determine if the manager has sufficient experience to manage you in this area or if this responsibility should be handed over to someone with more experience in this field.

iv. Territories.

This dictates the geographical territories the manager will manage you in. For example, it is important to ascertain if the manager has in-depth knowledge of the American music industry or if you should be managed by an American manager in this territory.

v. Key Man Clause.

If you have a contract with a management company, a key man clause is an important clause to insert into your management contract. You may have a relationship with a particular manager within the company and if this person leaves this means that you could end up being managed by someone else within the company with whom you have no prior relationship. If you have a key man clause within your contract it means that it is possible to terminate your contract with the management company once your "key man" leaves.

These are just five example clauses within a management contract. Each contract varies from artist to artist. It is of vital importance that all parties to the contract receive independent legal advice so that all parties are sure that their interests have been taken care of in an adequate manner.

It is also important that a member of the band be nominated to liaise with the management. The manager has intimate knowledge of the bands accounts, contracts and obligations and it is important for a member of the band to be up to date with this information, should the manager decide to leave.

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Management Contracts

(Extracted from Music Business - The Survival Guide by Davenport Lyons Solicitors)

Some people would say that the contract you sign with your manager is the most important one you'll ever sign. Whether that is true or not, it certainly is important as with every other sort of agreement you sign relating to the music business, we definitely recommend you seek independent legal advice before signing one. If you feel you are being pressured into signing a management contract, then the chances are you are a talented individual or band, and that has been spotted. As with all agreements, the relative bargaining power of the band and prospective manager will depend on a range of factors (including the manager's experience in the industry). Some of the basic issues and important terms are set out below.

Background

Relationships are important. Managers know that even if the artist has signed a contract, in practice they will not be able to force them to accept their services as a manager if the relationship breaks down. If the artist wants to walk away before the end of the term of the agreement without a good reason, the manager will be entitled to compensation for his loss. However, this may be hard to quantify and the manager will be left having to sue the artist to recover his loss unless a settlement can be reached.

Because of this lack of long-term security, some would-be managers are now signing their artists to production deals, under which they tie up the artist's exclusive recording services and secure the copyright in that artist's recordings. These deals are a very different matter and as mentioned above, an artist should always seek expert legal advice before signing one.

A useful resource for artists looking for management is the Music Managers' Forum a trade body that represents music managers who may be able to introduce artists looking for representation to potential managers. The Music Managers' Forum can be contacted through its website at <http://www.mmf.ie>

Terms of a Management Contract

Management contracts are fairly straightforward compared with some agreements, setting out the terms on which the manager will provide his services. However, there are a number of key important provisions that you should be aware of. As mentioned above, your ability to negotiate the most favourable terms will depend on your relative bargaining power. If you have a fast-talking mate who decides he's going to become your manager, but he actually knows nothing about the music industry, then the terms of any contract with him might be different than if you are signing with a large and established management company. Either way, the following terms merit particular attention:

The Term:

Commonly, the term of a management contact runs for between three and five years (although sometimes the period refers to album cycles). Sometimes after an initial period (often two or three years) the continuation of the term depends on the manager having achieved specific goals. This can be measured in a number of ways including by reference to the artists' earnings over a particular period of time or record sales.

For new artists it is important to ensure that you can get out of the contract at an early stage if your manager has not secured a record and/or publishing deal within a given period (usually nine to twelve months). This is the manager's main job at the early stage of your career and if he is not able to do that job then you should be free to go and find a manager who can.

Territory:

It is important to establish the geographical scope of a management agreement. Often a manager will manage your activities throughout the world. However, while he may well be familiar with the way the industry operates in Ireland, UK and Europe, he may have no experience in the US. Therefore it is common, especially with successful artists, for managers to be appointed for territories in which they have good contacts and particular experience of the industry. However, with new artists a manager is almost always appointed on a worldwide basis. If the management is worldwide, you should try to ensure that your approval is required before the manager can appoint other (sub) managers in specific territories and that any commission payable to any sub-manager is paid for out of the manager's commission (to avoid you having to pay double commission on income arising in the territory where the sub-manager has been appointed)

Scope:

All management agreements should have a clause that sets out which aspects of your career the manager is looking after (and therefore gets paid for). At its widest, a manager can be appointed in respect of all the artist's activities within "the entertainment industry". That would include not just recording and songwriting activities but also television appearances, acting, producing, remixing, merchandising and so forth. If you're engaged in activities which fall outside the music industry (e.g. acting or writing) it may be sensible to exclude them, as you may want to appoint a manager or agent specialising in those areas.

Commission:

This is how the manager gets paid. The income on which commission is charged will depend on the scope of the managers' appointment. Even where a manager is appointed over worldwide entertainment industry activities, you should try to ensure that you are only obliged to pay commission on income you actually receive from songs written (and ideally exploited) and records recorded (and ideally released) while he was managing you (i.e. during the term). Otherwise, you may find that you're paying commission to more than one manager on the same income!

A UK manager will generally expect to receive a commission of 20% on income earned and actually received from agreements you enter into during the "Term" and activities you undertake during the "Term". However, after the "Term", a manager should only be entitled to receive commission on income relating to agreements entered into during the "Term" and in relation to songs and recordings written, recorded and (ideally) released during the "Term". You should ensure that there is a "sunset" clause which ensures that the commission rate gradually tapers to nothing over say 10-15 years from the end of the "Term". This reduces over time and avoids you having to pay commission forever.

Before a manager's commission is calculated, you should be able to deduct certain costs and expenses from your gross income. These include recording and video costs, advances and royalties payable to producers and mixers, equipment costs, tour support, legal and other professional costs, expenses for which the manager is reimbursed and royalties credited against advances which the manager has already commissioned. You should also try to ensure that touring costs are deductible (these will typically include the costs of stage and lights, equipment hire, accommodation, travel, roadie and tour manager salaries and miscellaneous

expenses such as fees for session musicians and stylists). Why, after all, should a manager be entitled to commission on a loss making tour? The income which is left after all these deductions is referred to as "net income" and the manager will be entitled to his percentage of that income.

Expenses:

You will invariably have to agree to pay the manager's expenses incurred in promoting your career, although you should always try to ensure that this will only be repayable from actual income earned and received by you from your activities in the entertainment industry. This means that if you give up your music career then your manager cannot come after you for unpaid expenses. Your manager takes the initial financial risk.

In order to protect yourself, expenses can often be capped so that the manager can spend only a fixed amount each month. It is also a good idea to ensure that a manager cannot spend more than an agreed amount on any one item without your approval. If the manager wants to spend a larger amount - for example, on setting up a tour - he should obtain your approval.

A manager should be expected to pay for his own staff and office overheads from his commission other than international telephone calls and courier charges relating to your affairs.

Accounting:

Hopefully, during the life of the management agreement, you will make considerable sums of money. After all, that's the reason for entering into the management agreement in the first place. That money must be properly handled and an accountant will usually be appointed to manage your finances once the level of income justifies it.

The management agreement will specify whether you control and collect the income and pay the manager's commission or whether the manager controls and collects all the money, retains his commission and pays the balance to you. Obviously this is of particular importance when a dispute arises between the manager and you.

Broadly speaking, the person with control of the money is in a stronger position than the person who is owed the money. Therefore, it's preferable from your point of view to negotiate a position where you collect the money and pay the manager, usually with the help of an accountant. A manager will typically be accounted to for commission and reimbursed expenses every three months.

Restrictions on the Manager:

The management agreement should stipulate that the manager cannot enter into agreements on your behalf without your consent (except for minor contracts: for example, one-off live performances or TV appearances). This prevents the manager from entering recording or publishing agreements on your behalf unless you have first approved the terms of those agreements. Similarly, the manager should not be able to "contract out" his obligations without your consent. This provision is particularly relevant where sub-managers are appointed for foreign territories, for example, the US.

Key-Man Clause:

Where the manager is employed by a management company and the management contract is between you and the company, then the agreement should state that if the manager leaves

the company or fails to make himself regularly available, then you are entitled to end the agreement. This ensures that you don't end up being managed by a stranger.

Manager Duties:

The management agreement should always contain a clause that a manager will use his best efforts to further your career and provide the services normally provided by a first-class manager in the music industry (this is fairly standard wording). These will include negotiating and liaising with agents, promoters, record and publishing companies; organising, overseeing and supervising recording projects, live performances and touring; regularly liaising with the artists other professional advisers including lawyers and accountants; collecting income (if appropriate) and generally managing your affairs. There are also various duties implied by law, which impose on a manager the obligation to act in good faith towards you and to act in your best interest. Abuse of these obligations has often been used over the years by artists as a means of getting out of management contracts.

Termination:

If the manager goes bust you could find yourself being managed by a trustee in a bankruptcy, liquidator or receiver, who will generally have no experience of the music industry or artist management. To prevent this, a provision should be included in the agreement saying that you are entitled to terminate the agreement in the event that the manager (or management company) is affected by insolvency events such as bankruptcy or liquidation.

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