

## Making Your Way Around The 360 DEAL

By Craig Leach

**L**ike many aspects of the music industry, record deals are in the midst of a period of evolution. Dismal record sales that continue to wane as a result of the pervasiveness and ruthlessness of Internet piracy has devalued the album to such a degree that it has, in many cases, become one of a band or artist's least profitable commodities.



MIRO OBALLA

### ENTER THE 360

"These deals seem to be what's necessary in the industry," states Miro Oballa, an entertainment lawyer and partner at TMKO Entertainment and Media in Toronto. "Before the advent of the 360 deal," he explains, "record labels would share in the money that was made from the record sales, and that was it."

This was your standard deal. Bands were content because they kept control of their peripheral assets that generated additional income while labels were content because people still had record collections that you couldn't go jogging with.

Now, "essentially, what a 360 deal means," continues Oballa, "is that a label is

going to participate in all facets of an artist's income." This means that labels will now share in all streams of revenue that are a result of their marketing and branding of the band. This includes touring, merch, endorsements, sponsorships, television or movie syncs, ringtones, book deals, etc.

"The concept of the 360 deal, or multiple rights deal," says Steven Kane, President of Warner Music Canada, "has been around forever. Hell, the Quebec music business is built on it." Kane, who has spent 20-plus years in this industry and has witnessed substantial change over the last two decades, explains that the recent refocusing on the 360 deal is a result of "a market where you have limited sales potential," and the fact that "you can't build a business on just record sales" in today's environment.

Kane argues, however, that the move towards 360 deals is not purely economical; it is also a reflection of the role a label actually plays in the development of a band or artist. "In essence, at its simplest, I am a brand marketer. I help a band refine their identity, refine their brand identity, and take it out to market with them."

The labels' logic, observes Oballa, is that they are "the ones pumping all this money into the marketing of the artist. So therefore, when the artist makes money on touring, merch, sponsorships, or a book deal, the label will say 'That was all a result of our marketing.'"

"So in the end," adds Kane, "it would make sense for us to share in that income."

### HERE TO STAY

Like it or not, to ink that prized and elusive record deal nowadays, a 360 component is pretty much mandatory.

"I am not ecstatic about having to do these kind of deals," admits Shaun Frank, lead singer of Toronto-based rock band The Envy, "but I understand that moving forward in the music industry, we're all going to have to find a way to make the machine work better so that everybody can benefit."

Frank, whose band recently signed a 360 deal with Gene Simmons' record label, sees multiple rights deals as justified. "It's obviously not fair for record labels to have to pump all of this money into the band being on the road and the promotion and marketing of an artist, only to make money from the least valuable asset of the band."

The problem with the old deals, continues Frank, is that they were rife with conflicts of interest. Since record labels would only generate revenue from record sales "when the band is out there making millions on the road from merch and touring, [labels] would maybe not want to put as much money into the touring and put more money into the marketing of the record."

According to Kane, the 360 deal has the potential to erase these previous conflicts through an increased partnership and trans-



THE ENVY



**STEVEN KANE**

parency between band and label. By investing in all aspects of a band's image, Kane notes that labels now have a vested interest in making sure the band is successful in all aspects of their career. "If we are going to take a portion of that [revenue], I now have a greater responsibility to deliver on those promises."

### NAVIGATING THE WATERS

Record deals have never been an easy realm to navigate. "Even before the 360 deal, the standard record deal was still 55 pages of delicious legalese," notes Oballa, adding that the 360 components tag on an additional 10-15 pages. There are, however, some valuable pieces of advice that a band or artist faced with the prospect of signing a 360 deal can take to ensure signing a 360 deal is the right decision.

"First off," says Kane, "don't be afraid of being a brand. It sounds like terrible 'business speak,' terribly inartistic, but what all of us really are – is a brand. You're creating an identity for yourself. It doesn't have to be a dirty word."

In this world of all-encompassing marketing and image branding, Frank believes "the real key to 360 Deals is that everyone's interests are totally aligned. When the record label benefits, the artist benefits," and vice-versa. "As long as that is happening across the board, everybody wins."

Both Kane and Frank agree that before signing a contract, the artist needs to already have a strong identity.

"We find our biggest successes come from working with artists who really have a strong image of themselves and a strong image of where they want to take their art," notes Kane, adding: "We are there to facilitate that," and that facilitation is much easier if the artist has a sense of who they are and how they want their art to be presented. Frank echoes this, adding, "It is important for the band to maintain as much creative control as possible" to ensure their vision remains their own.

Oballa advises that any artist or band get legal representation to look at the deal when an offer is on the table. "Right now, the problem with the 360 deal, on the artist side, is they're still giving up everything they gave up before, plus more." Oballa notes that it is important for an artist signing a 360 deal to understand how long the 360 portion will last and whether or not the label wants exclusive rights in all facets of the band's activities.

He warns there is a difference between a label collecting "10 percent of an artist's merchandising" and the label getting the exclusive rights to become the merch company. "When that happens, it's like putting all your eggs in one basket. If the label

doesn't do a good job of running it, then not only are you giving up that piece; you're also giving up potential revenue if they are not able to do it properly for you."

### THE FUTURE

This incarnation of the multiple rights deal is still relatively new. The hope within the industry is that the 360 concept will evolve into mutually-benefiting relationships for all those involved.

"The deals themselves will continue to develop," says Kane. "The interaction between label and artist will evolve as these

deals mature. It's really the early days, but I think the idea here is we are going to have to be more transparent and the level of cooperation just has to increase. I think it's going to lead to better and deeper relationships with artists, the label, and managers."

"Who knows how this will play out in future deals?" contemplates Oballa. "Hopefully, later down the line, a label will ... almost become more like a service provider and it will be more of a partnership. That would be the hope."

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