



Music biz lawyers wary of labels' new grab

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By Susan Butler

NEW YORK (Billboard) - Like it or not, major record companies are expected to continue drafting their artist contracts so that labels share a piece of most -- if not all -- of the artists' rights in all types of revenue streams, not just record sales, but also concert tickets and t-shirts.

Artist lawyers say that their responses are as varied as the rights and terms in each label's "360-degree" deal. Some labels want to be the merchandiser, while others want rights only in certain types of merchandise connected to album cover artwork. And when it comes to artist royalties, some labels pay a royalty based on wholesale prices, while others are offering profit-sharing arrangements.

Billboard asked four top lawyers how they will respond to 360 deals in the upcoming year: GARY GILBERT (Sugarloaf, Death Cab for Cutie, Kenny G) with Manatt Phelps & Phillips in Los Angeles; ELLIOT GROFFMAN (Dave Matthews Band, Pearl Jam, Clap Your Hands Say Yeah) with Carroll Guido & Groffman in New York; J. REID HUNTER (John Mayer, the Fray, Manchester Orchestra) with Serling Rooks & Ferrara in New York; and ANDY TAVEL (the Cheetah Girls, Grace Potter & the Nocturnals, James Taylor) with Greenberg Traurig in New York.

WHAT IS YOUR TOP CONCERN ABOUT A 360 DEAL?

GARY GILBERT: Labels having a piece of things like touring, where bands can make money without having a hit record, makes no sense if they don't sell (enough) records.

ELLIOT GROFFMAN: The most important thing we want from the labels is distribution. The new distributors (are) cable companies, phone companies and Internet portals. Too many people are falling for the cry that they can't sell CDs so they need more rights. My concern is that we are going to allow (labels) to eat part of the artist's lunch while (labels) are starting to figure out the new distribution models, then in five to 10 years they're going to control distribution again and control a good portion of the artist's income.

J. REID HUNTER: Many of the labels don't just want a participation -- they want to have approvals over decisions traditionally made by the artist manager or they want to become your exclusive (merchandise) fulfillment partner. In negotiations, we're having to educate the business affairs folks on how the business runs in areas outside of records. That makes me worry about how prepared the majors are to get into these areas.

ANDY TAVEL: Labels need a different mind-set to pull it off. I want them maximizing income and focusing on the artist's career as a whole, not only on marketing and selling records.

WHAT SAFEGUARDS CAN YOU BUILD INTO THE CONTRACTS IN CASE

THE LABEL DOESN'T PERFORM WELL?

GARY GILBERT: Unless they sell a certain number of records in two LPs, there should just be a notice and an out. The performance level is different depending on the artist. If they don't sell 250,000 units on a new artist on album one, I wouldn't want to go to album two -- or maybe an aggregate of 500,000 on two albums. It is hard to meet, but if they only sell 100,000 units, I'm not sure that's good enough to merit participation in other income streams.

ELLIOT GROFFMAN: I have not seen standards evolve yet. It's important to inject some objective criteria so the labels don't skim off what is important development money. Early merch(andising) and touring aren't profitable unless you have a hit. Participation in touring shouldn't kick in, for example, until the group is regularly playing 3,000-seaters or more, or the group is running profitable legs for six months or more.

J. REID HUNTER: A new artist's leverage is rarely strong. Sadly, I simply don't see majors agreeing to reciprocal accountability anytime soon.

ANDY TAVEL: It all comes down to money -- enough for the artist to survive and thrive. Otherwise, the artist should be able to end the deal.

WHAT RIGHTS ARE MOST PROBLEMATIC -- PUBLISHING, TOURING,

MERCHANDISE?

GARY GILBERT: They're all problematic in different ways. In a recent (traditional) deal, the company proposed to be the merchandiser, but the business affairs guy didn't understand merchandising. We couldn't even get the deal done. The ivory tower sends an edict to start signing merchandising rights, but the poor business affairs guys haven't been educated in those deals.

ELLIOT GROFFMAN: You fight the hardest to avoid giving up a piece of publishing. If they want to be actively involved in your touring, that's problematic because they really don't understand the touring business. Try to limit them to passive participation at all costs.

J. REID HUNTER: Letting a label own copyrights or share in the income from publishing is simply too much. We do publishing deals to get a cash infusion into the artist.

ANDY TAVEL: That's entirely company-specific. Wherever they have the weakest in-house resources is problematic.

WHAT SHOULD LABELS DO TO MAKE THESE DEALS WORK?

GARY GILBERT: Sell records.

ELLIOT GROFFMAN: Make the deals shorter. The long-term recording agreement is a career-length deal at the labels' option. The only way to make this fair is to start doing three-album or five-year deals, saying to the artist, "Let's not get tied to the album per se. We'll work together for a lengthy, but reasonable, period of time as partners, we'll take a bigger piece of the records, you'll take a bigger piece of the ancillaries. We'll have overhead come off the top on both sides, and let's work together toward a collective goal." Artists are going to participate in the package more broadly when they have a chance to be a free agent at the end of the day.

J. REID HUNTER: Bring artists some meaningful opportunities that are traditionally delivered by management or the agent -- a clothing line or an enticing endorsement deal. Most new to mid-level artists are willing to give up a piece of the pie if the pie is bigger. Right now it feels like a sales pitch at the same time they're cutting staffs and fighting us over every penny they spend.

ANDY TAVEL: Either acquire other companies that have expertise in the other areas or partner with them.

WILL THE DEALS WORK FOR ESTABLISHED ARTISTS?

GARY GILBERT: I haven't seen one that works yet.

ELLIOT GROFFMAN: Paradoxically, they can work if the deals are shorter. Imagine a world where you have more established artists that are free agents who are able to say to a label and to a promoter, "Do you want to work together on our next cycle?"

Do promoters really need to be getting into the record business or (do) record companies really need to be getting into promoting? The labels are terrified of free agency because they lose control. But I think they will like free agency because it becomes a more predictable business. Pearl Jam is a free agent, making various one-off deals. Accountants can see that on (a band's) last cycle they had X tickets, X merchandise and X amount of sales. In many ways this model can work much better for established artists. You know what your economic base is, you know what you're going to do, and artists need people to help execute in different areas. So let's do a partnership deal. If the real goal is to share significant income streams of established artists, we might be able to evolve if there's an environment for it.

J. REID HUNTER: I don't see any of our more established artists doing one of these deals until the labels demonstrate the ability to add value.

ANDY TAVEL: Absolutely. They will work well because established artists don't need the financing and marketing that labels bring, so the economic splits can be far more favorable to the artists.

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