



360 deals: the changing landscape of recording contracts

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attorneys

Andrew C. Spitzer

As the music industry grapples with the economic and technological challenges of a rapidly evolving marketplace, artists and record labels increasingly are seeking creative ways to maximize their collective earning potential. This search has led to the rise of multiple rights contracts, often referred to as 360° deals, whereby artists and record companies attempt to make the best use of their efficiencies by aggregating a broad assortment of rights in one place. Under these 360° deals, the artist typically grants the record company a percentage of the artist's income from live performances, merchandising, licensing, publishing, endorsements, and/or fan-club fees. In exchange, the artist receives some combination of larger record royalties (including from downloads), a larger advance, more tour support, and/or a greater record company commitment to promoting the artist. These 360° deals present a number of new considerations for both sides and there obviously can be a great deal of money at stake. Points to consider include:

- *Offsetting Revenues:* The artist must consider the extent to which the increased record royalties, advances, and tour support offered by the record company will compensate for the portion of the merchandising and live performance revenue given to the record company. Conversely, the record company may want to seek greater control over merchandising, live performances, etc., to ensure that the artist generates sufficient income from these alternate revenue sources to justify paying a larger advance and/or larger record royalties. With the artist becoming more of a major investment, the record company should have more incentive to market and exploit the artist.
- *Ownership of Trademarks, Masters, etc.:* Some 360° deals give the record company full control of the artist's recording masters, publishing rights, and even ownership of the artist's name and associated trademarks. From the record company's perspective, such inclusive ownership and control are necessary to ensure that the artist is marketed and exploited effectively in order to maximize profits from the alternative revenue streams involved in



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these deals. On the other hand, an artist will need to ensure that he or she receives appropriate compensation for any control he or she cedes. Furthermore, some artists may want to negotiate for some control over what types of products are produced in their name and/or to whom their music is licensed. An artist may also decide to attempt to seek a return of certain rights after the termination of the recording agreement.

- *Cross-Collateralization Across Revenue Streams*: An artist traditionally has been paid an advance. Once the advance, recording costs, and certain other costs were recouped by the record company, the artist would start receiving royalties. In these new 360° deals, a record company likely will want to be sure that any additional expenditures in the areas of touring and merchandising also are recouped before the record company is responsible for paying royalties to the artist. On the other hand, the artist will want to negotiate for full cross-collateralization in the opposite direction - such that any money the record company receives as part of its cut of these alternate revenue streams is credited toward the recoupment of all costs, including the advance and recording costs.

The economic and technological challenges of a rapidly evolving music marketplace will continue to cause the various players to rethink what they want from a particular deal. As with the preceding questions, these issues and many others presented by the emergence of these new 360° deals will require the advice of experienced counsel.