MANAGERS SHOULDN'T BE ENDANGERED SPECIES
by Bob Donnelly

Good personal managers have become an endangered species in the music business today. In my estimation, it's one of the principal reasons that our industry is foundering both financially and creatively. Who drove experienced managers to the point of extinction? Primarily music attorneys, like myself.

Let me acknowledge at the outset that I may be somewhat biased in relation to this subject because I did my apprenticeship in this business by working for three years as in-house counsel to Leber-Krebs, which was one of the most successful management companies in the history of the music business. On the other hand, fearing that I will be dismissed as an apologist for managers, I feel the need to point out that the number of artists who I currently represent exceeds the number of managers by a ratio of more than 10-to-1. And I haven't forgotten that without the artists, there is no music business!

In the late '70s, it was common for managers to sign artists to the "blessed trinity of contracts": production, publishing, and management. Because they had so many potential streams of income from which to recoup their investments, managers seem more inclined to risk their own capital in the development of new artists.

In addition to doing the expected things like covering the costs of demo recordings and rehearsals, companies like Leber-Krebs would hire vocal coaches, purchase musical equipment, and put band members on weekly salaries so that the artists could concentrate solely on writing and recording great music (and all this occurred before there was a record deal). This was all part of a time-proven, but now discarded process called "artist development."

Today it would be unthinkable for a music attorney to encourage a new artist to enter into even two out of these three contracts with an entity controlled by the same individuals. The only exception to this rule seems to involve artists in rap and hip-hop, where, curiously, music attorneys permit the situation to occur with alarming regularity. At the very least, this results in a double standard that shouldn't exist; at the worst, this practice is an insulting form of racism.

I believe that in our vigor to protect our clients from a relatively small number of greedy, double-dipping managers, music attorneys may have caused the pendulum to swing so far in the opposite direction so as to strip away a considerable portion of a manager's financial incentive. The result is that most managers are no longer interested in investing in artists' careers. Even more disturbing is the fact that they are leaving the management business in droves. Here are but a few examples of the practices that discourage good managers.

1. Encourage artists to sign a record deal before seeking out a relationship with a manager. The rationale: "You can save yourself the 10%-15% that a manager would receive from the signing advance." I think this is bad advice for four reasons.

The first is that, in 22 years in the music industry, I've yet to meet an attorney who will devote as much time and attention to an artist's career as a committed manager. The second is that a manager can add immeasurably to the elements of a record deal by the contacts and experience that he or she brings to the "shopping" phase of this process. Third, as the person who coordinates and oversees marketing, promotion, and publicity, the manager is in a better position to know which label will make the best partner for a band (rather than simply making the choice based upon which company is willing to pay the largest advance).

And last, but not least, is the fact that by removing the financial incentives, the pool of good manager candidates will inevitably be diminished. Just remember that for most bands and managers, the advances for each album are significant money they will receive for two years (i.e. until they start the next album).

Would you want a job where you would be required to work very long hours, be on the road for a large portion of the year, and get paid only at the end of the first two years --if ever? Maybe that's why several labels have resorted to paying managers a monthly fee to manage their acts (does anybody know how to say "possible conflict of interest"?).

2. Forcing managers to accept a commission of 15% of the net rather than 20% of the gross. I don't object to the fact that the music attorneys are pressuring managers to accept a commission rate of 15%. And I don't object to the fact that music attorneys have changed the calculation from a "gross" deal to a "net" deal. What I object to is that they are trying to get both concessions in the same deal.

Even though many artists are still under the impression that their managers are paid out of their gross earnings, nothing could be farther than the truth. "The reason is what lawyers call the "exclusion clause." This allows for certain items to be removed from the gross income (e.g., the cost of making an album or video). To demonstrate how out of control this process has become, one need only look at the standard-form management agreement used by one of the industry's most successful law firms. It devotes four lines to describe what's excluded from gross income.

One music industry accountant estimated that a typical management deal in 1999 earns the manager 40% less in equivalent dollars than a management contract executed 20 years ago. Is it any wonder that so many of our most experienced managers are now working for record companies?

3. Convincing managers that they should have a short time limit on their right to receive commissions. It used to be that we viewed managers as the artist's partner in the creative process. They helped choose the best songs to record, find the right producers and studios, and work the record company to break a single in such a way as to create not just hits but a long-lasting career. In return, artists made a commitment to their managers that could be summed up, "If you help me break this record, you'll get paid every time I get paid."

Now lawyers are trying to change this with what are euphemistically called "sunset clauses." I understand why a producer who worked on an album project for only two months receives 25% of the artist's gross record royalties (e.g., 3% out of 12%) forever. What I don't

understand is, why should a manager who is receiving less than 10% of the artist's gross record royalties (e.g., 15% out of the remaining 9%) for working on the same album project for two years be precluded from receiving royalties once the management contract ends?
The ultimate hypocrisy here is that some of the same lawyers who demand these restrictive time limits for the payment of royalties to managers have generously awarded themselves 5% of the same artist's record royalties in perpetuity for simply providing legal services.

What's the solution? Here are my recommendations.

Allow artists and managers to work together for a three-month "engagement period" prior to entering into a formal management contract. A simple letter agreement can cover how to deal with any income that is generated during this trial period.

If the parties choose to work together at the end of the three-month period, they should sign a contract that provides that the manager will receive 20% of the artist's net earnings calculated in exactly the same manner for both parties (the commission rate should be less for "established" artists).

If the manager works a record for the full "album cycle" (i.e., until the last personal appearance tour associated with that album), the manager should be paid his or her full commission each time the artist receives a payment in relation to that particular record.

Eliminate deals in which the same individuals are serving as the artist's manager and production company (and let's acknowledge it for what it is most of the time -- a conflict of interest).

Let's stop portraying managers as people whose principal goal in life is to steal from their clients -- which, by the way, I'm happy to say it would be difficult for them to do so, since most bands use a third-party business manager or accountant who directly receives all of the funds that the band generates.

And finally -- let's let the managers manage.

This article originally appeared as a Commentary in <u>*Billboard Magazine*</u> *on February 13, 1999. It is reprinted with* <u>*Billboard's*</u> *permission.*