

# The Music Industry— It's Different Today Than It Was Yesterday

By Jessica R. Brown, Esq.

There is a great debate as to why the music industry has become what it is today. Some blame the digital technology, others blame Napster, the entitlement syndrome of the youth, or major record labels' inability to adapt quickly—that is an entire article in itself. There is no doubt, however, that the music industry is not the same today as it was yesterday.

The music industry has changed dramatically since the '90s, with the most notable change being the ability to digitally download music. CDs are now relics for the "older generation," and people who purchase CD burn them onto their iPods and then toss the CDs aside. This change seems rather expected. After all, 8-tracks and cassettes were replaced, so it's not surprising that new technology would replace the CD. But the extinction of the CD has repercussions and consequences to labels, artists, and everyone else in the music industry.

To the major record labels ("the Majors"), the death of the CD may be their demise. This is not necessarily the case, but there is absolutely a correlation between the steep decline in CD sales and the crumbling of the imperial giants.

For more than thirty years, the Majors operated with stable extravagance. They controlled the music industry. There was no such thing as a successful independent artist, and independent or "Indie" labels just could not

compete. The Majors threw their stature and opulence around, promising artists riches and fame. But this business model only worked as long as the Majors had a monopoly on the music industry and record sales.



The problem is that the Majors did not significantly change their business model in response to digital downloads. Any entertainment lawyer will tell you that the Majors have definitely made changes in how and what they

offer to artists, but at this point it appears to be too little, too late.

The most notable change the Majors made was in mid-2007 when they all moved to "360-Deals."<sup>1</sup> This is an industry term for recording agreements where the label takes in all artists' revenue streams. Prior to this change, the Majors made their money almost exclusively from CD sales. All other revenue streams, such as the sale of merchandise, touring revenues, and publishing revenues (income from the copyrights), remained in the control of the artist.

Now, the Majors offer deals to artists where the Majors get a cut of every revenue stream the artist has. So, Sony BMG is likely making a cut of every t-shirt Metro Station sells. The Majors now take the position that they make a significant investment in the artists and in their development and marketing.

Enter the artist's lawyer. Now, more than ever, it is of tantamount importance that an artist have a great lawyer. For the first time in over thirty years, there is the ability for actual creative negotiation of terms. And if the lawyer is tenacious, the 360-Deal is turned into more of a 180-Deal or a 270-Deal, with the artist keeping some of the key revenue streams, or at least whittling down the rights and income designated to the Major.

Artists are the most affected by the new face of the music industry. It appears now that getting a record deal with a Major is no longer the "holy grail." Artists signed to a Major have to work harder than ever to be successful. Artists are not just sharing their revenues with their managers and lawyers. They are now sharing their revenues with their label. Merchandise sales and touring have become the bread and butter for artists. Everyone knows there is no money to be made in selling CDs. So, artists are forced to develop a creative business and brand themselves.

Despite all of this, it is not all doom and gloom for artists. Artists can now achieve success without one of the Majors behind them. With the advent of MySpace, PureVolume, and other music sites, artists in the most remote

parts of the country can reach a national and international audience.

The music industry will continue to evolve; in fact, the Majors may become extinct. Without a doubt, tomorrow will be slightly different than today. But artists, labels, and lawyers should embrace this brave new world because the opportunities are limitless for those who can creatively think outside the box.

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<sup>1</sup>Interestingly, all of the Majors started offering 360-Deals almost simultaneously sometime around May or June of 2007. There is talk and speculation of "back room" meetings between all the executives of the Majors because they all made strikingly similar, yet drastic changes to their deals, and it happened across the board. There was not a single Major Label that did not adopt this model.

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*Jessica Brown is an attorney at the firm of Anderson Jones, pllc, and she represents and advises music artists in all scopes of their career. She is licensed in both Texas and California. She has also been named as a Texas "Rising Star" for 2006, 2007, and 2008 by Texas Super Lawyer.*

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