Musicians' unions stay out of digital debate

By Antony Bruno

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DENVER (Billboard) - Will the music industry ever get organized?

With digital distribution of entertainment as the focal point, the TV/film and music industries are embroiled in several disputes between those who create the content and those who distribute it. But while those disputes in Hollywood are well-documented -- with powerful unions like the Writers Guild of America and the Screen Actors Guild staging high-profile negotiations and, in some cases, strikes -- the perception in the music industry is that artists are largely left to themselves to fight for whatever they can get on their own.

"The only existing recourse for artists is to take on the record companies on an individual level," says attorney Mark Passin, who is representing Poison in a royalties dispute with EMI. "Artists need to get together as a group, as a joint force, to negotiate for better agreements and fairer treatment."

In fact, there are unions for music artists today, such as AFM (the American Federation of Musicians) and AFTRA (the American Federation of Television and Radio Artists). Instrumentalists are covered under AFM, while vocalists, including rap artists, are covered by AFTRA. Artists signed to a major label are automatically enrolled in one or the other, sometimes both.

These unions use collective bargaining to negotiate contracts between recording artists and their labels, which apply to every major-label deal. However, union contracts are largely limited to basic provisions covering minimal payments, health insurance and other benefits. Big-ticket items like royalty rates, advances and digital rights are left to separate contracts negotiated individually between artist and label.

To date, the bulk of artist-label disputes have centered on details contained in individual contracts, leaving artists with few options to engage their union for support.
Take the revenue split for digital downloads. The standard practice is that labels pay artists the same cut they get under their contract for CD sales -- around 15% after recoupable costs. However, many artists, managers and their lawyers argue digital sales should be treated as a third-party license, in which case they would get 50% of digital revenue.

"Every artist contract is an individual situation, and the labels use that to their advantage," says Perry Resnick, a business manager with RZO, which represents David Bowie. "Labels haven't budged on this issue at all . . . I can't think of any way to address it other than through the courts."

That's exactly what's happening. Sony BMG is facing a class action lawsuit initiated by the Allman Brothers Band and Cheap Trick over this issue for digital downloads and ringtones, and Universal Music Group faces a non-class status suit by some artists regarding a similar issue.

According to AFTRA national executive director Kim Roberts Hedgpeth, the unions have stayed out of that particular fight because they wanted to let the legal process take its course. However, she expects unions will take a much larger role in the near future.

The existing AFTRA contract is up for renegotiation in 2010, at which point the union intends to incorporate details historically left to one-on-one negotiations into a standardized individual contract for artists that can be used as a starting point for all artist-label contracts.

"Over time, issues that might have been appropriate to address on an individual basis become issues that you recognize need to be on the collective basis," she says. "We are at one of those moments in time. This contract we're in now is really a transitional one."

Digital rights are among the key provisions that AFTRA wants to include in a standardized contract. However, artists have yet to agree on exactly what those provisions should be. That could prove to be a headache for unions intent on increasing the collective leverage of recording artists.

"This period of time between 2008 and 2010 is a window of opportunity for artists to come together through their union to address an issue collectively that heretofore they have looked at as an individual issue," Hedgpeth says. "It's going to be very complicated and is going to need the input of artists as well as their managers."

And that's where the challenge lies. Sources at various artist groups say they are frustrated by the modest level of artist participation in their programs. Few volunteer to testify at hearings in Washington, D.C., and many are unaware they are even union members. What's more, the fragmented nature of the existing union structure means artists in the same band often find themselves represented by different organizations, causing confusion.

But managers are getting more organized themselves through such groups as the Music Managers Forum and are increasingly encouraging their clients to get more engaged in addressing their shared interests for the mutual good of all.

"Artists don't think in business terms," says Barry Bergman, an artist manager and president of the MMF's U.S. branch. "They want to make music, tour and play and do
what artists do . . . [But] they have to understand the world as it is today rather than as it used to be. In order for anything to change, they have to start to think as a group or a collective, and not individually, about themselves."

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