

Lawyers, guns and money

Last month's column identified a requirement for management only once there was something to manage.

With regard to contracts and money though, you can never be up to speed early enough.

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THE ESSENTIAL TOOLS of many trades were summed up neatly in the title of Warren Zevon's 1978 song 'Lawyers, Guns and Money'. And while all three seem to be regularly used components of careers in certain Urban music genres in the States (Yo, Puffy, don't put it *under* the seat!), at least two of them apply to all production careers. Last month, this space discussed the role of management for producers. But as it pointed out, the need for management exists only once there's a career to manage. When it comes to money and contracts, it's never too soon to start.

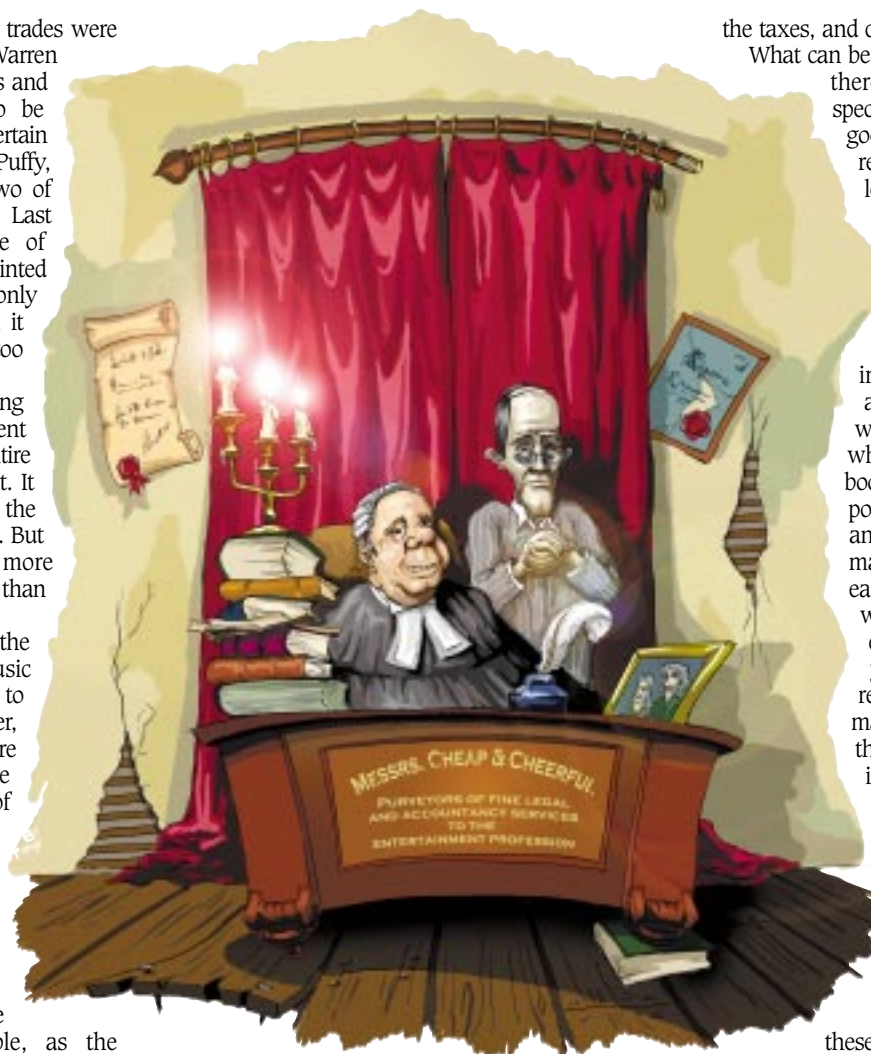
In fact, the sooner, the better, considering the changes in the music industry in recent years. There was a time when the entire machine was substantially more innocent. It always had its shysters and pitfalls – the Inland Revenue does pre-date the Beatles. But 20 years ago there seemed to be more accomplished on a handshake and a pint than there is now.

That's an inevitable byproduct of the corporate industrialisation of the music industry. And I don't mention that simply to mourn the passing of simpler times. Rather, to point out that, just as one must fight fire with fire, one must also be businesslike about business when faced by batteries of barristers, solicitors and accountants across a table.

Don't kid yourself that the interaction between record producers and record companies has not become more of an adversarial one – the Dixie Chicks are suing Sony and Courtney Love has extended the finger to her label on more than one occasion. It was inevitable, as the entertainment industry itself became a division of much larger media companies, all of which, from AOL Time Warner to Vivendi/Universal, now answer more directly to their stockholders than to their customers.

What hasn't changed, it seems, is the innocence with which many younger people enter the creative aspect of the music business these days. Learning courses abound that propose to educate neophytes to the ways of the music biz, and you can always flip on 'Behind The Music' to apprehend more ways of getting screwed than the Kamasutra could provide. But most bad experiences are obtained first hand, and perhaps that's just the way it is when one party is in it for love and the other for money. The extent of the burn, however, can be mitigated by putting a team together to back you early on.

Accountants have been the butt of jokes for hundreds of years. But of taxes, less lightness is made. Nonetheless, there's a dichotomous attitude in the matter. As Benjamin Franklin put it, 'There is nothing certain in this world except death and taxes'. On the other hand, it was Samuel Johnson who told us, 'It is



better to live rich, than to die rich'. The latter has been the credo for several generations of rock stars and their producers; the former is increasingly becoming the new mantra.

Except in certain countries (Japan and Ireland among them), under a limited set of circumstances, artists are not excused from paying taxes. 'One of the biggest mistakes that younger people in the music industry make is not dealing with taxes from the very beginning,' observes Bob Markman, a New York City accountant who has been working with musicians, producers and club owners for over 30 years. 'This is the thing that comes back to haunt you whether you're a big success or not, and the bigger a success you become, the bigger the haunting.'

Tax laws and regulations vary from country to country, state to state, province to province, city to city, and this space cannot give specific tax advice, except the obvious – which nonetheless has not seemed so obvious to many people in the music business – get an accountant, keep good records, pay

the taxes, and don't end up like M.C. Hammer.

What can be said is that there are accountants and there are accountants: find one that specialises in entertainment, then find a good one. The two are not necessarily related. Entertainment accounting has a lot of loopholes that can work in your favour.

Finding a good entertainment business accountant is done the same way one finds a good drummer – recommendations from friends in the business. A few important questions to ask of an accountant must include whether they will attend audits with you, and if so, what are the additional charges? Is a bookkeeping service available? On that point, be aware that there are tons of PC- and Palm-type programs out there that make the job of keeping records much easier and more accurate. Quicken is widely used, and can break down expenses into custom categories to fit your particular business. In this sense, record-keeping is much like record-making: if there's garbage on the tracks, there's only so much fixing you can do in the mix; if the receipts are in disarray or missing, there's only so much alchemy an accountant can render.

Most important, keep money on the side for taxes. Producers, like other freelancers in the music business, often get their money in chunks, or else by quarterly payments from royalties. Taxes are not automatically deducted from these payments in most cases. It's easy to overlook this fact. The single best action any producer can take is to set up a completely separate bank account, and depending upon the tax rate bracket he is in, put that percentage of each and every payment into that account. The way to look at this money, like it or not, is that it simply isn't yours.

If any one profession exceeds that of accounting as the subject of dark humour, it's the law. But lawyers are part and parcel of the music business, especially these days. 'Record labels view producers' contracts as profit centres, and anything they can claw back from them, they will,' observes Stephen Budd, whose management firm is regarded as one of the leading producer representatives in the UK. As a manager, Budd stresses the distinction between the broad strokes of negotiating a deal, which he can do, and making sure the small print don't taketh away what the large print giveth.

'A typical producer contract can run to 60 pages today,' he says. 'There's a million things in each one that can impact how much a producer actually gets in the end from a project.' These include how much

product is excluded from royalty accounting due to promotional purposes, and the dreaded but inevitable 'reserves' clause common to all contracts, which ostensibly cover returns from retail but which often are the equivalent of interest-free loans producers and recording artists make to labels.

Lawyers are critical allies at every stage of a production career, especially in light of the darker side of digital audio technology. Record labels have been

burned too often on unauthorised samples appearing on records, only to result in copyright infringement suits brought after the record is released. And the record producer has become much more exposed to that type of litigation as production contracts increasingly place the onus of responsibility for clearing samples on the producer.

There's a reason for this: the producer is often the only creative entity in a record project being directly

paid for his or her work, as distinct from the advance on royalties that artists receive. Thus, the monies from that quid pro quo payment are exposed in the event of an infringement suit, if the producer's attorney has not been able to secure an indemnification of liability in the producer agreement, which is increasingly harder to do. 'This is not an issue that only arises at the level at which a producer warrants management,' states Budd. 'This kind of liability thing could happen to any producer, at the independent label level. It could happen on your first production.'

The same goes for other intellectual property issues: who really wrote that song? Once your name is associated with a production, your bank account is connected to one degree or another with any liability it engenders. Run it all by the lawyer.

Attorneys do not solely exist to stir up trouble or defend you from it. They also act as conduits in the music business. Budd says an entertainment attorney's proactivity level is generally higher in the States than it is in the UK, but that's changing, and in recent years as many as a third of producers referred to him now come from attorney's recommendations.

The long and the short of it is, accounting and legal service are the ones every producer needs, and you need to start thinking about them as early on as feasible. These are services that don't take a percentage of the gross – they are professionals who set a rate and expect their fees to be paid when services are rendered. (Except attorneys, who usually prefer to work from prepaid retainers.) But the potential cost for not addressing these issues could be far greater than the invoices you get from the lawyer or the accountant. ■

THINGS TO REMEMBER

- *Someone versed in the economics of agriculture may be a good accountant, but may not realise the extent to which you can deduct cool shoes. (Which, incidentally, is the extent to which they are worn in the performance of your craft and cannot be worn otherwise.)*
- *Less experienced producers, those just starting out, are more vulnerable. They are more willing to do projects on spec, and too often even the terms of those agreements are not spelt out on paper. 'Get it in writing', no matter how small the scope of the project, should be your rule, under any circumstances.*

Fear of losing a gig keeps many from pressing this point, but if the truth be told, it actually makes you look more formidable. Any attorney will tell you that a willingness to walk away from a deal is the strongest leverage in any negotiation. This is an important thing to keep in mind, because Budd also notes that, 'There are far too many producers out there chasing far too little work'. It is not an easy thing to do, but remember that there's always something else around the corner.

