

## Regulating artist managers: An insider's perspective

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### *Abstract*

*It is problematic that artist managers in the international popular music industry are not currently subject to consistent regulatory frameworks, particularly given the increasing centralisation of responsibility with this role. This article examines the following research question: Can artist management practices be consistently regulated? In addition, it will address the following sub-research questions: What are the pitfalls that belie attempts to regulate for the betterment of musicians and the music industry? Is self-regulation a viable alternative?*

**Keywords:** Artist management, regulation, code of conduct

### *Acknowledgement*

*Many individuals have assisted and encouraged me throughout my research and work in artist management. I gratefully acknowledge the assistance of my co-manager, Rowan Brand, as well as the Boy & Bear band members: Killian Gavin, Jacob Tarasenko, David Hosking, Jon Hart and Tim Hart; without their support completion of this article would not have been possible. Dr. Catherine Moore at New York University and Michael McMartin of Melody Management also provided valuable advice and feed back. Furthermore, I received a Macquarie University New Staff Grant in 2009 that enabled me to travel and conduct research interviews and New York University graciously hosted me as a visiting scholar in 2010.*

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## 1 Introduction

It is problematic that artist managers in the international popular music industry are not currently subject to consistent regulatory frameworks, particularly given the increasing centralisation of responsibility with this role. This article examines the following research question: Can artist management practices be consistently regulated? In addition, it will address the following sub-research questions: What are the pitfalls that belie attempts to regulate for the betterment of musicians and the music industry? Is self-regulation a viable alternative? This article has four parts. The first addresses these research questions through the use of a participant observer methodology that will feature a case study of the Australian band Boy & Bear. Boy & Bear have been chosen as the case study band here because a) I co-managed Boy & Bear with Rowan Brand from September 2008 until December 2011 and therefore I have first hand knowledge of the regulatory frameworks that impacted (or did not impact) on the development of this project, and b) because this band won 5 Australian Recording Industry Association (ARIA) awards in November 2011 including: 'Album of the Year', 'Best Group', 'Breakthrough Artist (Album)', 'Breakthrough Artist (Single)' and 'Best Adult Alternative Album' and therefore this band was granted a position at the centre of the Australian music business. The second part makes use of qualitative research interviews with other managers in a comparative study, while the third and fourth sections offer some solutions to the issue of a lack of artist management regulation.

This study concerning whether artist managers can be consistently regulated is significant because the amount of artist management related entrepreneurship and innovation in the new music industries has increased dramatically due to the abundance of distribution outlets for music (Peltz 2011: 6). The scope for artist entrepreneurship/self management has also increased as the management role becomes even more central (ibid.: 7). Due to the impact that new technologies have had on the music business, without artist management (self manage-

ment included) the music industry could not function; however, it could function without record companies due to the substantial number of alternative revenue streams and distribution outlets for content. Furthermore, the artist manager is the only other individual, besides the artist, who gets to see and touch all the jigsaw puzzle pieces that fit together to create the artist's career, and therefore they have immense influence over every aspect of an artist's career. It is therefore important that research into the regulation of artist managers be conducted while also considering the following question: What are the pitfalls that belie attempts to regulate for the betterment of musicians and the music industry?

This article will therefore provide an overview of the regulatory frameworks to which artist management practices in the new music industries are subject, and it will offer a sustained focus on 'understanding' the processes that have driven, and continue to drive, the development of regulation for artist managers in the music industries.

## 2 Background

As Sydney-based artist managers, Brand and I were subject to the Entertainment Industry Act 1989 (the Act), which is legislation that exists in the Australian state of New South Wales (NSW).<sup>2</sup> This regulation is a useful starting point here and it forms the background for this study. This form of governmental regulation of the entertainment industry is unique in that it does not exist in the other Australian states, nor is there an equivalent in the UK, Canada or the US to the same extent (Hertz, 1988). The Act provides a suite of laws aimed at protecting performers in their dealings with agents, managers and venue consultants (commonly known as booking agents) and it therefore locates artist managers within a broader industrial context. The Better Regulation Office (BRO) in NSW argues that the Act was introduced because performers are often in a poor bargaining position with regard to their commercial

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<sup>2</sup> The Entertainment Industry Act 1989 is accessible via the following URL: <http://www.legislation.nsw.gov.au/fullhtml/inforce/act+230+1989+FIRST+0+N/>

relationships with agents, managers and venue consultants and therefore they should be protected from unfair practices.

A key feature of the Act is that agents, managers and venue consultants must obtain a license from the Office of Industrial Relations (OIR) to work in the state of NSW. This license requires compliance with a set of laws governing operations, including the maximum fees that can be charged and how money held on behalf of performers must be handled. If an artist manager has money in trust on behalf of an artist then they have to pay a \$2000 bond for a period of one year to the Office of Industrial Relations (OIR) for a provisional license and then have the trust account audited by an accountant at the end of this period.

NSW is the only state of Australia to specifically license entertainment industry representatives, although Western Australia (Perth) and the Australian Capital Territory (Canberra) require employment agents, which includes those operating in the entertainment industry, to be licensed, and South Australia (Adelaide) requires such representatives to be registered. The BRO in NSW completed a review of a range of occupational licensing, including entertainment industry licenses, in April 2009.<sup>3</sup> In response to the final report that this review produced, the NSW Government conceded that the licensing scheme is not protecting performers effectively and should be removed. However at this stage this is just a recommendation that needs to be enacted in legislation; the licensing requirements for artist managers operating in NSW still apply.

In October 2010 the Better Regulation Office, which is part of the Office of Industrial Relations in NSW, produced a final report outlining their review of the Entertainment Industry Act 1989.<sup>4</sup> This article specifically concerns Recommendation 14 "Code of Conduct" which states that:

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<sup>3</sup> The Entertainment Industry Act Review is located at the following URL:

[http://www.betterregulation.nsw.gov.au/targeted\\_reviews/entertainment\\_industry\\_act\\_review](http://www.betterregulation.nsw.gov.au/targeted_reviews/entertainment_industry_act_review)

<sup>4</sup> The Entertainment Industry Act Review is located at the following URL:

[http://www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0020/104807/Final\\_Report\\_Review\\_of\\_the\\_Entertainment\\_Industry\\_Act\\_1989.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0020/104807/Final_Report_Review_of_the_Entertainment_Industry_Act_1989.pdf)

*"A code of conduct should be developed which covers ethical behaviour and minimum competency requirements. Any person operating as a performer representative should be required to comply with the code and there should be penalties for misconduct. The code should be easy to understand, targeted at particular risks and consistent with the existing common law obligations."*

The results of the comparative study concerning this issue are provided below in part two.

### **3 Literature review and methodology**

Watson (2002) offers this definition of artist management: *"A manager is a person who earns a living from helping artists build and maximise their musical careers"* (2), while Woodruff (2002: 1) states: *"A manager's job is to create the perception that the band is successful"*. It is also evident that there is no such thing as a manager and this complicates attempts to regulate the profession (Watson 2002; Rogan 1988). In order to illustrate this point, Watson notes that managers wear many different 'hats' in order to build and maximise the careers of their artists. Managers can be organisers, negotiators, motivators, counsellors, editors, designers, manipulators, strategists and much more. Watson's argument is that every manager combines these different 'hats' in different combinations, thus creating their own unique and complex style (Watson 2002: 2).

Rogan (1988) argues that since management is more a question of personality than policy (or anything else), what defines a perfect management candidate inevitably remains elusive and ambivalent. The ideal candidate must be cautious yet innovative, intuitive yet empirical, forceful but sensitive to artists' feelings, aggressive in battle and reflective in victory, and wise but not intellectually intimidating. They must also be a sympathetic listener.

Rogan claims that the mythical 'perfect' artist manager lies somewhere between the hard businessperson, the medical doctor and the dedicated schoolteacher (ibid.: 382). The notion that one could develop

a framework of best practice for artist management is challenging because the various ways in which managers operate are not only dependent on the individual manager's personality. The methodologies artist managers employ need to be analysed within specific contexts. The distinct sections of the music industry in which individual managers operate constitute these contexts.

Every artist is different and therefore individual managers differ from one another. Watson (2002) notes that to understand a manager you have to first understand the artist they are managing. Therefore an artist manager's behaviour is somewhat dictated by the decision making process of the artist they manage. The dynamics between the artist and the manager should form the basis of any study of artist management; the managerial role is intricately connected to the artist and their work. No manager can be fully understood out of the context in which he/she and their artist(s) operate.

In contrast to the common argument that a strong artist-manager relationship is analogous to a good marriage, or that the personal manager is the alter ego of the artist (ibid.: 34), it is evident that the dynamic is in fact quite different to a stereotypical 'good marriage'. A strong artist-manager relationship is unbalanced as each personal manager is necessarily a function of their artist's unique combination of needs (and not necessarily vice versa) – therefore if the manager is the 'alter-ego', this alter ego is necessarily subservient and because the power balance shifts with success, this relationship can become an abusive one. If a mandatory code of conduct were to be established artist managers face the risk that their clients could use the code against them once the power balance has shifted in their favour. As Peter Jenner (2002: 1) notes: *"Nothing is forever, it's just a business relationship and not a marriage, and you should see losing an act as part of your development as a manager."*

Although it is just another business relationship the artist may form, Frascogna and Hetherington (1997: 34) note that more than any other person, the full-service personal manager is the most influential force behind an artist's career. His or her efforts are often critical to the

artist's ultimate level of success or failure. They assert that given the critical role the manager plays in planning, execution, and day-to-day career control, it is essential that the artist and manager be on the same wavelength both personally and professionally. Therefore there is a need to consider artist managers' interests when examining regulatory options rather than just focusing on the needs of the artist. An analytical approach is needed here.

In addition to this body of literature that concerns artist management, a number of researchers have examined artist management regulation specifically. These researchers include Gilenson (1990), Hertz (1988), O'Brien (1992) and Frith (1988). Gilenson (1990) examined artist and personal manager conflicts of interest in the music industry, Hertz (1988) examined the regulation of artist representation in the entertainment industry and O'Brien (1992) specifically examined the regulation of attorneys under California's Talent Agencies Act and presented a tautological approach for protecting artists. The work of these authors has informed this study. Frith (1988) provides a broader analysis of popular music and the entertainment industry and his work concerning the industrial process provides the theoretical framework for this article.

Frith (2001) argues that the music industry operates in the reverse direction to that articulated by the 'colonisation' argument. He (1988: 12) notes that the argument concerning music making being an essential human activity that has been colonised by commerce is flawed as it involves *"the suggestion that music is the starting point of the industrial process – the raw material over which everyone fights – when it is, in fact, the final product."* Popular music is often located at the end of the industrial process and attempts to regulate do affect musicians' artistic processes and output. Therefore regulation can have both a negative and positive impact on artists' career development for this reason.

This study into a Code of Conduct for artist managers in the international popular music industry will involve a case study of Australian band Boy & Bear, in addition to ethnographic interviews that were conducted with artist managers who were approached via the International Music Managers' Forum (IMMF). Between September 2009 and November

2010, a total of 18 artist managers were interviewed for this study. However, due to the scope of this article, not all of this material will be utilised here. I co-managed Boy & Bear with Rowan Brand from September 2008 until December 2011 and therefore this article uses a participant-observer method of research, a tradition that is well established in qualitative research practices. Boy & Bear were chosen because they are an award winning band that was allocated a position at the centre of the Australian music business and because as their co-manager I have a unique perspective on their career development. As the artist manager is "*the only other individual, besides the artist, who gets to see and touch all the jigsaw puzzle pieces that fit together to create the artist's career*" (Frasco and Hetherington, 1997: 6), in terms of participant observation, the artist manager is therefore in a useful position for acquiring in-depth knowledge of the dynamics and texture of artists' career development.

Case studies provide the ability to deal with a wide variety of evidence within a real-life, contemporary context and an opportunity to gain access to an explanation of causal links that are too complex for a survey (Eisenhardt, 1989; Mitchell, 1983; Walton, 1972; Yin, 1984). Therefore in this case study, as an artist manager, I observed the broader interactions between regulatory bodies to which artist managers are subject, in addition to interviewing 18 other artists managers from Australia, Canada, the UK and the US who are members of the IMMF. It must be noted that in terms of the discussion of the broader regulatory frameworks to which I was subject as manager of Boy & Bear, I am biased toward the manager's point of view.

#### 4 Case Study: Managing Boy & Bear

Boy & Bear's<sup>5</sup> album *Moonfire* was released in Australia via Universal Music Australia's Island Records imprint on August 5, 2011 and it

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<sup>5</sup> Boy & Bear consists of 5 band members: David Hosking (lead vocals, guitar), Tim Hart (drums, banjo, guitars, backing vocals), Jacob Tarasenko (bass guitar and backing vocals), Killian Gavin (lead guitar and backing vocals) and Jonathan Hart (keys and backing vocals).



reached Gold sales status (35,000) within 3 weeks. It achieved Platinum sales status (70,000) in December 2011. It was released in the UK via Co-op/V2 on January 16, 2012. The album was released digitally in the US via Universal Republic on August 9, 2011 but it is yet to be released physically there. Boy & Bear won 5 Australian Recording Industry Association (ARIA) awards in November 2011 including: 'Album of the Year', 'Best Group', 'Breakthrough Artist (Album)', 'Breakthrough Artist (Single)' and 'Best Adult Alternative Album'. There were a number of regulatory frameworks that Brand and I, as the band's managers, had to navigate before we could help the band achieve these results.

As stated previously, if an artist manager has money in trust on behalf of an artist then they have to pay a \$2000 bond for a period of one year to the Office of Industrial Relations (OIR) for a provisional license and then have the trust account audited by an accountant at the end of this period. If the audit is positive, the bond is returned, and the manager is issued with a license. I went through this process and was issued with a license prior to the commencement of my relationship with Boy & Bear. I then set up a co-management agreement with Brand. Because Brand was 20 years old at the time, he could not afford to put forth a \$2000 bond and because I was doing the band's accounting as a signatory to the band's partnership account, he did not have money in trust on behalf of the band.

During the start-up phase of an Australian artist's business it is common for the artist manager to also be their business manager. If the band becomes established and can afford business management services, the artist manager will often relinquish the business management responsibilities to a professional music business manager. The artist manager then focuses on the core areas of touring, marketing and the production of recordings. This was the case with Boy & Bear. One issue with the requirement of paying a \$2000 bond for a provisional license is that if I had not done a co-management agreement with Brand, he would not technically have been able to work as an artist manager because he could not afford to pay the bond.

However, many Australian artist managers do practice without a license, particularly if they are based in a state other than NSW where this form of licensing is not a requirement. This may be because artist managers are not aware of the licensing requirement in NSW, or because they have the perception that the requirement is not enforceable in any meaningful way. While I do have a license, it is my perception that the Entertainment Industry Act 1989 does not have much influence on how artist managers operate. While Brand and I are both members of the Association of Artist Managers (AAM) in Australia, which is a member organization of the IMMF, our membership of this organization does not currently require adherence to a code of conduct.<sup>6</sup>

## 5 Comparative study: Research interviews

In order to examine the question of how artist management practices can, or should, be regulated, my work with Boy & Bear will now be located in a broader context that includes the perspectives of other artist managers who operate internationally. All quotations from the research participants are taken from interview transcripts.

There has been much debate amongst the members of the IMMF concerning the establishment of a code of conduct for artist managers. While some interviewees argued that it is necessary and that membership of the IMMF should be tied to it, others argued that a looser set of guidelines would be more suitable/appropriate. One Canadian artist manager, Brian Hetherman<sup>7</sup>, commented:

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<sup>6</sup> The other association for artist managers in Australia is MMF Australia which is also a member organization of the IMMF. Membership of the MMF in Australia does require adherence to a code of conduct.

<sup>7</sup> In 1995, after a number of years at Canadian indie label Duke Street Records and MCA Records, Brian Hetherman became the youngest Director of A&R (Artist and Repertoire) for MCA Records and head of MCA Music Publishing. In 2001 Brian was offered the inaugural position as Executive Director of the Radio Starmaker Fund. After helming Radio Starmaker through its first couple of years, an opportunity presented itself for Brian to make his planned move into Artist Management and Indie label owner. Shortly thereafter Brian started Cerberus Artist Management and affiliated label Curve Music, representing such artists over the years as Garth Hudson (The Band), Holly McNarland, Suzie McNeil, Wide Mouth Mason, Andy Stochansky, Derek Miller and Peter Katz. Brian is also the President of the Music Managers Forum in Canada, and Vice Chair on the IMMF Board as

*"When I came on board as heading up the MMF in Canada, we had a code of conduct and we would make people sign a very short form agreement stating that as members they would operate under this particular guise. I think that the problem with this is that you are sticking people with a certain position, or a particular way to do their business and I think that in particular cases it's not necessarily fair."*

The general consensus was that there definitely needs to be an attempt made by artist managers to increase the level of professionalism and the level of accountability and responsibility, but quite how you word this, and would enforce it, is challenging. In my experience of managing Boy & Bear, it became evident that lawyers often make reference to industry standards when negotiating on behalf of clients though it became clear through this study that such standards do not exist. A number of the artist managers interviewed said that they felt threatened by the idea of establishing standards because they believed lawyers would use these against them in an unwarranted way.

Another point that was made by multiple interviewees was that there is more fiscal responsibility in being a manager now than there was before and that this is occurring during a time of industry transformation. This increases the need for a solution regarding a regulatory framework, and it also has ramifications for the way in which the industry is theorized. Frith (1983) argues that artist managers are largely subordinate to the demands of record companies though this is now changing. Frith traces some changes to the managerial role but argues that record companies are the central ingredient within the mix of entities needed for a popular music act to be successful. He states that:

*"The show-biz recipe for rock success is sufficient talent, efficient management and an enterprising record company, and the central ingredient in this recipe is indeed the company." (Frith 1983: 109)*

Frith asserts that because record companies are the legal owners of the master copyright within the finished recorded product, they expect

to exercise the rights of their ownership and this is why artists and artist managers are subordinate to their demands. However this is changing with organizations such as the Featured Artists' Coalition (FAC) encouraging artists to only license the master copyright in their recordings to record labels, rather than assigning the master copyright to them.

In addition, the notion of 'collapsed copyright' challenges definitions of copyright, asserting that the different copyrights no longer make sense when music is consumed online. This is because when a song is streamed online or is downloaded, a copy of the song is generated and the performance copyright in the song and the mechanical copyright are one and the same (Morrow 2011). Such online use also involves the copyright in the actual recording as well. Collapsed copyright therefore includes the performance copyright, the mechanical copyright and the copyright in the actual recording merging into the one 'creator right' (ibid.). This centralisation of copyrights (if it is realised) has important ramifications for the structure of the music industry. It would involve the royalty collecting societies, song publishing companies and record companies merging into one.

However an issue arising from this concerns the increased workload that surrounds the 'creator right' if all functions of the aforementioned entities were rolled into one, and how the manager of this 'creator right' would be regulated. This is one of the reasons why theorists such as Williamson, Cloonan and Frith (2011) have reconceptualised the music industry, shifting the emphasis away from record companies toward a more holistic view of the industry that considers all five key income stream groups (live performance, song publishing, record sales, merchandise, and sponsorship). One British artist manager, Tim Prior<sup>8</sup>, noted that:

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<sup>8</sup> Tim Prior has been in the entertainment industry for more than 30 years, a former Director of Arista Records, a Bertelsmann Group Company and an Artist and Rights manager. He has worked alongside many major artists and their managers, helping to redefine and develop the international entertainment industry's constantly evolving business models. Tim is also Chairman of UK ticket comparison site, Tixdaq.com, music consultant to Peter Gabriel's digital streaming service, We7.com, European "quarterback" for US based RedLight Management and is a board member of the MMF, Music Managers Forum. ([www.qmusic.com.au/bigsound2009/](http://www.qmusic.com.au/bigsound2009/), accessed August 21, 2012).

*"All of the rules of engagement have changed and continue to change very dramatically and very quickly. So the need for a code I think is central to a community of people who are fast becoming the gatekeepers of the relationship that I would call a creator, or a creative client, will have."*

Prior noted that in the UK artist managers were often discouraged from forming agreements with clients that were deeper than a straight service provision/commission generating relationship, but that this has now changed. Artist management involves building the systems, contexts and environments from which artistic creativity emerges and the music business is experiencing such fundamental change that an analytical reconceptualization of the possibilities for artist management agreements needs to take place:

*"For example, if a manager, who will have invested heavily with cash as well as time, put a proposal together to put to his client to become his publisher or his record label, there was a lot of mistrust. Frankly I think it was stirred up inappropriately by professional advisors – meaning lawyers."*

According to Prior, this mistrust is subsiding as the need for innovative management solutions increases. By allowing artist managers maximum possibilities for deal making by questioning the divisions that traditionally exist between record labels, song publishers and artist managers, more innovative artist management solutions can be achieved. The commerce versus creativity dichotomy that has informed a number of music industry studies needs to be reconceptualized in this context.

Frith (2001) and Negus (1996) have both commented on the 'colonisation' argument, Frith noting that music is located at the end point of the industrial process, and Negus positing that while the creativity versus commerce dichotomy may be clichéd, it is still one of the ways in which musicians make sense of what is happening to them. These arguments form part of an established debate in the popular music studies canon concerning the rock genre's struggle for authenticity in relation to the commodity form (see Frith 1996, and Adorno 1989). Popular music is

often considered to be unique in the extent to which the makers of this form of art struggle with their role as commodity producers. However, Radiohead, being the epitome of the (post)modern art rock band, is important here because with the release of their 2007 album *In Rainbows* they brought their own artistic sensibility to the organization of their own commodification (Morrow, 2009). Assuming other artists follow their lead, there will arguably be less perceived tension between creativity and commerce as artists (and their managers) increasingly organise their own commodification.

During the research interviews, statements outlining the need for a code of conduct that would enable the IMMF to become a self-regulating body often accompanied arguments such as this one, concerning the centralisation of responsibilities with the artist and the artist manager. Though these statements were often qualified with the managers saying that a mandatory code would be impossible to enforce. Some general comments supporting the establishment of a mandatory code of conduct were as follows. British artist manager, Dan Medland<sup>9</sup>, noted:

*"Yes definitely for me, I mean I've been in the industry for six or so years, and I guess I've seen many different incarnations of managers and horror stories that have occurred. I actually think that it is probably becoming less so the more professional the business becomes."*

While Canadian artist manager, Rob Lanni<sup>10</sup>, stated:

*"I think that it is necessary. I'm hoping that you would never have to refer to it, but just so that people know from the outset that these are things that we like to see our peers adhere to as a profession ... because historically there haven't been any rules for managers. Until the IMMF or*

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<sup>9</sup> Dan Medland works for global artist management firm *ie:music* and recently moved to Australia from the UK to manage *Ladyhawke* and *Passenger*. Medland is also overseeing a new full service artist management venture between leading Australian music sales and marketing company, *Inertia*, and *ie:music*. In addition to his role with *ie:inertia*, Dan continues to work with the existing *ie:music* roster. ([www.inertia-music.com](http://www.inertia-music.com), accessed August 21, 2012).

<sup>10</sup> Rob Lanni is co-founder of Toronto based full service artist management company *Coalition Music*. *Coalition Music* manages artists such as *Our Lady Peace*, *Finger Eleven* and *Simple Plan*.

*the MMF came into existence, managers came in all forms and did things in their own way. I'm not as familiar with the rest of the world, but in the US in particular, there have been some shady individuals over the years."*

A diversity of opinions regarding artist management practices can lead to more novel solutions (Sawyer, 2007) and therefore while the interviewees commonly agreed that there should be a code of conduct, another commonality between respondents was that it would be problematic to enforce a mandatory code of conduct. Because artist management services encompass an increasingly diverse range of economic activities, it is difficult, if not impossible, to develop a uniform method of regulation, within the territories concerned, that could lead to the establishment of one consistent international code (Johnson and Turner, 2010: 174).

The MMF in the UK has attempted to establish a mandatory code of conduct in the past and according to one British interviewee, Keith Harris<sup>11</sup>:

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<sup>11</sup> Keith Harris began work in the record industry in 1974. The first record company for which he worked was a small independent UK label called Transatlantic Records. The label represented mainly British folk musicians but also distributed the Blue Note and Milestone Jazz labels. In 1976 he joined EMI Records where he initially worked for several in-house EMI labels in the promotions department. These labels included Rocket where he worked on the Elton John album 'Blue Moves', Fantasy, Ariola and EMI International. He then joined Motown which was an EMI licensed label. He worked for Motown for two years ending up as General Manager for the label. During this period at the label he worked with artists such as Marvin Gaye, Diana Ross, Smokey Robinson, The Commodores, Rick James, The Supremes, Thelma Houston and Stevie Wonder. He left Motown in 1978 and moved to Los Angeles to work with Stevie Wonder and became operations manager for Stevie's companies. On his return to the UK in 1982 he formed his own management company and has been involved in the management of various UK based artists since. He has managed Junior Giscombe, Junior Tucker, Paul Johnson, & Omar. Keith managed Lynden David Hall until his recent death, and still represents Stevie Wonder. He is a Senior Fellow of the University of Westminster School of Music Film and Fashion. He is a former Chairman of the MMF, the Chairman of Musictank and he is also the chairman of the African and Caribbean Music Circuit, a music touring organisation funded by the Arts Council of England. He is also a Fellow of the Royal Society for the encouragement of Arts (FRSA). Keith is now Director of Performer Affairs at PPL. (Source: <https://www.musicstank.co.uk/resources/speaker-biographies/keith-harris-keith-harris-music-ltd-musictank-chairman-ppl-director>)

*"One of the things that came the closest to splitting the general consensus between managers was the different ways in which managers operate ... in the coming marketplace it is very difficult to develop a mandatory code of conduct because all managers are looking at different business models."*

Brand and I managed Boy & Bear in a traditional way. As managers we had a service provision agreement with the band and we organised for the band to license their master recordings to Universal Music Australia for Australia and New Zealand, and then for them to assign the copyright in their master recordings to Universal Republic in New York for the rest of the world. We signed the song writing members' song publishing to SonyATV for the world and we then engaged separate booking agents in Australia, the UK and in the US. While a conflict of interest clause in a code of conduct could arguably be applied to this way of working because the different roles (and copyrights) were treated separately and therefore the interests were not conflicted, it would be very difficult to have a code of conduct that is going to specifically cover all of the different business models that are now available to artist managers. Harris noted:

*"There are still some people who are using the traditional management model and there are others who are effectively going out to business angels to get the money in to effectively act as the record label. There are other people who are assuming the role of the record company on behalf of the artist without going out to a third party investor, they are instead just growing the business that way and so they are performing the record company functions but without the private investor, or without the private equity stake holder."*

Given these three different scenarios it is difficult for there to be a mandatory regulation because, according to Harris, people will say: *"what I'm doing differs so much from what he's doing."* Therefore if the code of conduct compartmentalizes the profession too much it may discourage innovation and may undermine attempts to unify artist managers. As Canadian artist manager Brian Hetherman put it:



*"In any situation the more stipulations you put on something the harder it is for a group to be in unison. Less a code of conduct and more a common sense outline of how to do business and how to operate and how to treat your artists."*

In response to a question concerning how such a broad code could be enforceable, Hetherman noted:

*"I think that it is socially enforceable for sure. And to be honest in some respects that has more of a bite to it than a legal one. You know I mean even though there are laws that need to be followed and laws of business, and while there's less now over the years there have been all kinds of shady managers out there. If you're more open and share stories about your experiences as a manager with other managers ... then people advise each other that 'you may want to avoid that person' or 'don't sign an agreement that looks like that', or 'don't fall into this trap'. I think what that really does is that it empowers the artist and it empowers the good managers."*

My experience of managing Boy & Bear however led me to conclude that such perceptions of 'good' or 'bad' managers are often subjective. Some managers commission on net profits, others have adjusted gross structures. While obviously artists will often argue that managers should commission on net profits, the agreement has to be sustainable for the manager(s) otherwise they won't be able to provide their service and the artist's career will suffer.

## **6 Solutions: Guidelines**

In addition to a socially enforceable and broad code of conduct, a common suggestion made by interview respondents concerned the establishment of a set of guidelines. The artist management handbooks that have been produced in both the UK and Australia have provided extracts from management contracts as examples of best practice, and this could be expanded upon. British artist manager Keith Harris noted that while:

*"You couldn't say: 'well there is a standard management contract' because a lot of very senior managers had never done a contract with their artists. They did it on verbal agreement ... So for the IMMF to set out a range of guidelines and key pointers of 'Dos and Don'ts' for the artist and so they basically understand what the various options are and what the options mean to them, so for instance ... if they are talking about 50/50 splits then make sure that they understand 'is it 50/50 of gross, or is it 50/50 of profits' and what is commissionable, and what expenses management is going to pay and all that kind of stuff ... And what I like about doing it that way is that it allows flexibility in order to have addendums as the new business models come on stream."*

A common point made by interview respondents was that a mandatory code of conduct would be impossible to enforce but that a solution to the issue involves education.

## **7 Solutions: Education**

The proposed solution put forth by Harris involves publishing very clearly exactly what the guidelines mean and then allowing the artist to make decisions as to what they want to enter into. The artists would also be encouraged to be guided by the advice of lawyers and other consultants. As previously discussed, rock music is often considered to be unique in the extent to which the makers of this form of art struggle with their role as commodity producers. It is different to other industries because the product (artists) sometimes actively resist their own commercialisation and, in the case of Boy & Bear for example, they do not want to think about the business side of music until there is money flowing through their business and this can lead to rifts between such artists and the service providers who helped them to achieve success later on. Frith (1988: 12) notes that in terms of the 'colonisation' argument:

*"Songs and singers are fetishized, made magical, and we can only reclaim them through possession, via a cash transaction in the market place. In the language of rock criticism, what is at stake here is the truth*

*of music ... the flaw in this argument is the suggestion that music is the starting point of the industrial process – the raw material over which everyone fights – when it is, in fact, the final product. The industrialisation of music cannot be understood as something which happens to music, since it describes a process in which music itself is made."*

Therefore education is needed throughout this process in order to counteract the effect that the commerce versus creativity dichotomy (or the 'colonisation' argument) has on the psyche of some artists. This set of guidelines could also be used to educate artist managers as well. Artists are often managed by a friend or relative and it is difficult to ask a new manager to comply with a code of conduct, or a set of guidelines, when the manager themselves may not understand them. As British artist manager Dan Medland put it:

*"I turned up into the industry and said 'right, well I've sort of booked a few tours before, but what really is management?' and no one could really tell me. It's largely a case of learning on your feet and I think that this would be massively helped if there were certain guidelines to take a young manager, he or she, through the process a little bit, because it all depends on what acts you've got, be it an R&B act or a rock act, it completely depends."*

The artist and artist manager relationship is commonly a very personal one and often artist managers do not come through a program of education first and then get into management. Some artist managers are resistant to the notion of a 'code of conduct' that would force them to operate in a certain way because they have not been subject to any qualifying process and therefore there is an issue of 'buy-in' from managers within the field of artist management. Medland noted:

*"I'd certainly be happy to go with a code of conduct and to sign up to something because I've been in the industry and that wouldn't scare me because I know the general areas of responsibility whereas for new managers this may not be the case. Unless it is embedded in the curriculum that they have studied ... But coming from a non-educational background that might be quite difficult to take. Maybe it's two things, may-*

*be you call it a code of conduct for your educational purposes and then it's a set of guidelines for people outside of educational institutions potentially."*

Rather than letting the clichés and stereotypes inform how the industrial process should operate, a number of British artist managers noted that a solution would be for a set of guidelines produced by the IMMF for artist managers to be linked to the Featured Artistes' Coalition (FAC).<sup>12</sup> With regard to the FAC, Harris noted that:

*"It's basically a good idea, to actually have an artist's voice, but there was always a problem with the IMMF, and I speak as a former chairman here, inasmuch as 90% of the time, artists' rights and managers' rights co-align, but then there is 10% of the time when they don't. And it's that 10% that does need to be addressed and the Featured Artistes' Coalition can kind of address that."*

Therefore Harris argued that while a solution would be for the IMMF or another similar body to put guidelines as to what the agreements mean up on a website, it actually might be more appropriate for the Featured Artistes' Coalition to be interpreting what these guidelines mean to the artist:

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<sup>12</sup> The Featured Artists' Coalition is an organization formed in the UK constituted by artists who produce original music and therefore have copyrights that they can license or assign. Their manifesto for 'fair play' in the digital age states that all music artists *"should control their destiny because ultimately it is their art and endeavours that create the pleasure and emotion enjoyed by so many."* They believe that:

- artists should always retain ultimate ownership of their music
- all agreements should be conducted in a fair and transparent manner
- rights' holders should have a fiduciary duty of care to the originator of those rights and should consult and accurately report to creators on all agreements that affect how their work is exploited.

The FAC is attempting to achieve this by:

- changing artistes' approach to agreements
- changing the music and technology companies' treatment of artistes
- changing the law and its administration.

Therefore the FAC is campaigning for laws, regulations, business practices and policies that protect artistes' rights. They note that: *"Together, we will stand up for all artistes by engaging with government, music and technology companies, and collection societies, arguing for fair play and, where necessary, exposing unfair practices."*

*"It is incumbent on the artists to go to the FAC to get the artists' point of view, and the managers to go to the IMMF to get the managers' viewpoint and then their independent advisors can actually negotiate and pick a suitable model. It's got an important role to play. And the good thing about the FAC is that it encourages artists to feel that they need to know, in the new environment, exactly what the business side means. There is no longer that attitude of 'OK, I'll leave that to my manager.'"*

Therefore rather than becoming a regulatory body, the IMMF could work with the FAC to fulfil an educational role.

## **8 Stereotype of the artist manager**

Although Rogan (1988) and Morrow (2006) have attempted to deconstruct the most prevalent stereotype of an artist manager – the familiar caricature of a cigar-smoking hustler who takes advantage of star-struck adolescents – this stereotype is still in existence. Furthermore, it strongly affects governmental policy and discussions concerning the establishment of a code of conduct and/or a set of guidelines for artist managers. There is a need to critically and analytically engage with this stereotype here. Negus (1996: 46) couches such an analysis in the following terms:

*"The idea of a conflict between creativity and commerce has also been used to illustrate the power of the music industry and has informed numerous everyday claims about how musicians 'sell out' to the system. On one side are the heroes – the musicians, producers and performers (the creative artists); opposing them are the villains – record companies and entertainment corporations (the commercial corrupters and manipulators)."*

Negus argues that this opposition is implicit in many music industry studies and it is a problem when such studies inform legislation that is then based on erroneous stereotypes. British artist manager Keith Harris noted that:

*"One of the things that has always bothered me is that there is always an assumption that the manager rips off the artist. It happens equally well the other way around. It is not unusual for the artist to rip off the manager. So you're going to enter into a working relationship whereby you have agreed that things will be split 50/50 after profits and all of that kind of stuff, and then the artist suddenly realises that 'well actually if I claim conflicts of interest here then I can get the manager back to 20% and I can get 80%' and it wasn't necessarily the original agreement."*

Harris argued that artists are smart people, that "they're not generally dummies, especially when it comes to getting their share of the money." While some artists do have problems because they do not understand the business at the outset, there are also a very large number of artists who are at the opposite end of this spectrum. These artists are now quite successful, well financed, well resourced in terms of legal advice, and so if rigid rules are put in place such artists can actually use these rules against the manager in an unwarranted way.

However, the relationship is more complex than this. The balance of power in the relationship between artist and manager is unique as the artist manager works for the artist while at the same time the artist follows the manager's lead. Throughout an artist's career trajectory, this balance of power tends to shift as success – both creative and commercial – accumulates. A rise in the level of success will see the power balance shift in the artist's favour. However, in the period before and after peaks of success the power balance will be in the artist manager's favour (Morrow 2006: 4). This power balance is constantly evolving, and differs across genres; it must therefore be considered on a case-by-case basis (ibid.).

The irony of the artist manager's position in the business is that the better they are at fulfilling their role in increasing the artist's commercial success, the worse bargaining position they themselves end up being in. This is certainly what Brand and I experienced in our relationship with Boy & Bear. This means that there is a built in disincentive for artist managers who are service providers. This in part explains artist manag-

ers' common desire to own and control artists' assets/copyrights. Regarding the NSW government's engagement with the aforementioned stereotype, Keith Harris argued:

*"First of all you say that they are in a weak bargaining position, but I would argue that this is not necessarily the case. Because usually artists get management that is on a commensurate level to their standing, so if they are starting out and they are offered a deal by a very big management company, then yes you can say that they have got lower bargaining power. However, the influence that the management company can exert on their career is also disproportionate to their current achievements if you like, so yes they have lower bargaining power but the effects of the management are going to be disproportionately great."*

Furthermore the management contract is actually a management 'service' agreement. This means that artists are always able to fire the manager, despite the term of the agreement, and all that will happen is that the courts will decree the level of compensation that they, the management, get if they are fired. This means that the artist and manager effectively end up with an adjudication process anyway. Artist management service agreements commonly feature sunset clauses that outline the post term commission. These clauses are built into management agreements to protect the manager.

The artist management agreement is different to the agreement between an artist and their record company because the agreement between the artist and the record company is a commercial agreement, as opposed to a service agreement. Harris noted:

*"A commercial agreement is enforceable by law and you can't walk away from it as an artist. Whereas you can effectively walk away from a service agreement and all that will happen is that the courts will determine what compensation the artist has to pay. And when it comes to a situation where the artist is highly successful then the bargaining power is completely reversed and you end up with management companies working for virtually nothing."*

When external regulators become involved there is a need to be careful with regard to problematic preconceptions. Harris argued:

*"This is driven by television and movies where the manager is always the bad guy. But it's not necessarily always the case. Particularly at the starting out level, where a young manager will get the artist as far as a record deal and then the record company encourages the artist to take on a more experienced manager and the young manager has done all the hard graft and is then left with nothing."*

This is one of the reasons why, according to Harris, there is a shortage of entry-level managers in the industry. Furthermore, government attempts to regulate the industry can also gravitate against entry-level managers. As noted above, in the state of NSW in Australia there is legislation that requires artist managers to be licensed, and as an artist manager who had money in trust on behalf of an artist I paid a \$2000 bond to the Office of Industrial Relations (OIR) and then had the trust account audited by an accountant, after which the bond was returned. However, Brand, as an entry-level co-manager, could not afford to adhere to these requirements and our co-management agreement provided a solution to this issue. Some Australian artist managers get around this by setting up an account in the artist's name. They then become signatories to such accounts so that they are not technically trust accounts. With regard to this legislation, Harris argued:

*"That's fine, but it does tend to gravitate against the entry-level manager, who can't afford to put up a \$2000 bond to start out. And this is something that you see in other countries as well, because France has a similar kind of system, which is that if you are managing two artists then you can commission 20% but as soon as you sign a third then you're not allowed to commission any of them more than 10%."*

While such regulation is obviously put in place in an attempt to protect the artist, a shortage of good entry-level managers is a problem for the industry. The Harris continued:



*"You end up with a situation where you have half a dozen very powerful, very senior managers and that to some extent tends to gravitate against the artists. I'm not saying that the managers aren't going to work in the artists' best interests, but what I am saying is that it is much harder for artists to get managers who will give them the attention, because the bigger the management company the bigger their clients will be and if you're a new artist then you are always going to be down the bottom of the pecking order. Whereas a new manager with a new artist tends to work that much harder in order to get them to that first base."*

While from a theoretical perspective legislation may be valid, it can have more of a detrimental effect on artists than a positive one: "The theory's great and I understand that they are trying to protect the artist from people stealing their money and so on and so forth but you just have to be careful that you're not putting the entry level too high for new managers."

## **9 Conclusions**

While it is problematic that artist managers in the international popular music industry are not currently subject to consistent regulatory frameworks, particularly given the increasing centralisation of responsibility with this role, governmental regulation would potentially restrict innovation and at times it would do more harm than good. This article examined the following research question: Can artist management practices be consistently regulated? The answer to this question is 'no', artist management cannot be regulated in a uniform way. In addition, this article addressed the following sub-research questions: What are the pitfalls that belie attempts to regulate for the betterment of musicians and the music industry? Is self-regulation a viable alternative? There are a number of pitfalls that belie attempts to regulate for the betterment of musicians and the industry and these have been outlined. Self-regulation is a viable alternative. Perhaps unsurprisingly, the interviews revealed that regulation can have both a positive and negative impact on artist's career development. This is because music is located at the

end point of the industrial process and therefore attempts to regulate do affect musicians' artistic processes and output. The task therefore is to find the balance between the artists' position and the managers' position. Education and guidelines would help to establish this middle ground and are therefore a major part of the solution here by forming the core of an attempt to self-regulate. Regulatory attempts that are informed by the assumption that artist's are always in a poor bargaining position are one dimensional and do not consider the fact that managers are often put in a poor bargaining position. Clichés and stereotypes of artist managers have too often informed how the music industry should operate and this can have a negative effect on the industry, particularly in the extent to which it decreases the amount of artist management service provision available. Popular music is not raw material that is then colonized by stereotypical villains, rather it is a form of art that is more often than not nurtured through an industrial process by passionate practitioners who deserve to be treated fairly.

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