

FOR MUSICAL ARTISTS: THREE STEPS TO DIY SUCCESS

INTRODUCTION

“THE TIMES THEY ARE A’CHANGIN’”

Bob Dylan’s 1964 song has never been more on point than in today’s music business. The same digital revolution that created our computer and smartphone culture has changed the ways in which people create, buy and use music. One of those changes is in the radical new ways that musical artists are “discovered.” In the “old days” (pre-2005 or so), a new artist had little hope of a rewarding career unless she was signed to a record label -- and that is still an important way-station for some artists.

But more and more artists are now creating careers for THEMSELVES through the “Do-It-Yourself” (“DIY”) route. The digital revolution makes it possible for artists to market themselves and their work directly to consumers of music. How do they do this? Here are the **three essential steps** to DIY success.

STEP ONE:

You need to have at least some composing and/or performing talent. While it is impossible to measure “talent” precisely, you can get a handle on this by asking yourself whether people who hear you rap or sing tend to stop what they’re doing and listen – or, even better, if they ask you for more. You should also know that it is MUCH better (and more lucrative) for you to compose your own beats/melodies and/or lyrics than to perform someone else’s. So if you have the innate talent to compose, you should do so. If not, you should try to gain an outright “sale” of the beat, melody or lyrics from the original composer, which must be in a written document signed by the original composer.

STEP TWO:

You need to find a music producer who’s good at producing the type of music that’s right for you. It may not be much help to work with a good pop-music producer if what you’re after is a collection of hip-hop tracks. Your producer will help you create 3-5 tracks of “demo’s” (short for “demonstration” songs) which you compose or buy the composer copyright in. Your 3-5 demos should cover all the styles (and languages) that you are comfortable with and lean in the direction of what seems to you and the producer to be most “commercial.” Before you open your mouth to sing (or rap), though, you need to be certain that the proper documents have been signed between you and your producer, or you may end up paying for nothing that you can ultimately use. The US Copyright Act says that any transfer of a copyright must be in a written document (email is okay) signed by the original owner. If you don’t have a signed document from your producer that says that the copyright in the composition and the demo-tracks have been transferred to you, the transfer never

happened. In that case, instead of owning the song, entirely, you're a part-owner. If the demo becomes a big hit, you'll have a partner that you didn't count on, and you may have trouble making money from that song. So, yes, because of the need for written copyright-related agreements, the music business is a very lawyer-intensive form of business. Lawyers sort of like that. ☺

STEP THREE:

You need to begin "getting out there."

On occasion, we at ChaseLawyersSM lay out a monthly DIY schedule for clients, designed to guide them in the early going of their careers. Here is an edited version of a three-month schedule we recently provided to a client:

MONTH #1:

- Develop a day-by-day calendar for Months 1-6, with each day's contacts/goals/estimated expenses filled in, so that you know what you should be doing (and how much \$\$\$ you can spend) each day to "stay on schedule". For example, during the first week, you can schedule one night at Club Cool, one night at a competing club, lunches with two radio station salespeople, and three afternoon recording sessions for you and your demo producer. During week two, you might want to begin interviewing choreographers who can train you for your live act, as well as photographers for taking your promotional photos on a "work-for-hire" basis (again, so that you'll own the photos). Depending on your time pressures -- DON'T QUIT YOUR DAY JOB -- you can also schedule more sessions with your demo producer. During week three, you're evaluating what kind of outfit(s) will be best for you to wear during your live gigs, as well as how much cash you'll need to save to buy them down the road.

- Develop a Planning Outline using ChaseLawyers' "Three-Legged Stool" approach. The three legs are: (1) Live performance; (2) Internet-based and brick-and-mortar sales; and (3) YouTube/social media promotion. For scheduling purposes, these elements should peak and launch your career after 6 months. So, "back-time" from your launch date. Assume that March 1 is when you are beginning to work on your Planning Outline, with a career-launch date of the second Tuesday in September. The earlier and more completely you begin filling in what you are going to be doing EACH DAY for the next six months, the more effective your DIY effort will be. For example, let's say you're aiming to unveil your live performance career at "Club Cool" on the third Saturday of September. Your first step might be to go to Club Cool several times for "reconnaissance" missions -- to focus on the physical layout of the club, how large the stage is, what kinds of acts they prefer, what the sound and lighting systems are like. It may turn out that Club Cool is all wrong for you when you evaluate it from the point of view of an artist and not a party-goer, and the sooner you know that, the better off you are. You

certainly don't want to commit yourself to a live-performance launch that is doomed before it starts because you picked the wrong venue. Assuming that Club Cool is your kind of place, though, the next step after your Month #1 reconnaissance visits might be to contact someone in club management and invite him/her to lunch. The more information you can gather about Club Cool the more you'll be able to target your first live appearance for that club. And if you hit it off socially with your lunch guest you are, again, ahead of the game because you have someone you can talk to for "off-the-record" guidance as you prepare your live act.

- Begin estimating and saving for the budget needs of each leg during the six months. Money is always limited; so you need to start saving as early as possible for unavoidable expenditures down the road. For example, you will want to consider very seriously producing a music video that you can upload to YouTube and other popular sites – timed to coincide also with unveiling your live act and launching your online and physical sales (more about this later). Producing a decent quality music video costs money, which is one of the reasons you need to start saving as soon as possible. You should plan for enough lawyer money (around \$750) to make certain that you have a good contract with the video producer, one that protects you in the all-too-frequent event that the producer you pick can't really deliver the quality you want for the price he quoted. Production of the video itself will cost you another \$2,000+. So you need to foresee this when you start your budget planning. Once your video is posted, of course, it becomes a handy place to send people to when they want to get an idea of your talent and style. Also, make sure that when your act and video "go live," your potential fan-base can locate your music at an online retailer (iTunes, etc.). As an indie artist, you can utilize "online aggregator" services such as Tunecore or CD Baby to handle your placement in the digital marketplace. Lastly, make sure all of these resources are available and presentable on your very own website. Remember: Once you're "out," you'll need to capitalize on any exposure you may gain. So a commercial online presence – where you can make actual sales and collect actual money – is absolutely crucial.

- **RADIO PLAY**

Before you think about paying for advertising or radio DJ spins, you need to identify the right station (or stations, if you have the money to advertise on more than one station) for your music. So, during Month #1, you should (1) find out what the audience base is for each local station based on its audience "demographics" (a fancy word for "who's listening"). These demographics are available from the sales department of every station; (2) HONESTLY evaluate who YOUR likely audience will be; (3) get to know the people at the sales department of the station you target – they'll be happy to talk to you if you're serious about becoming an advertiser; and (4) begin familiarizing yourself with rates for the advertising time-slots when your part of the

station's demographic is most likely to be listening. For example, if you're aiming for a teenage audience, you probably want to load up on late-night weekend advertising slots, since a lot of teenagers are in high school and don't stay up all that late on Sunday-Thursday. If you have more of an urban sound, you may want to try and get to know the "mixshow DJs" at the station, and simply make your music available to them. In addition to traditionally presenting urban musical subgenres (their specialty overlapping with yours), they usually have more liberty to support preferred artists in their radio programming (mixshows are more free form), and they may choose to do so if they care enough to support you.

■ "BRANDING"

You can also start developing a logo-design and choose a performing name (known as a "pka" name in the industry – meaning "professionally known as"), making certain that you use a qualified lawyer's work-for-hire form before anybody else gets his/her hands on your logo or name, so that you own the intellectual property rights in the logo/name once it is completed to your satisfaction. When you settle on a pka name and logo, you need to talk to an attorney about trademark registrations for each, and saving for the legal costs that are involved. Applying for a US Trademark will cost you about \$850, including the \$225 (or more) government filing fee. If you decide that you need to own the trademark for both musical purposes and, say, T-shirts, the costs go up.

- Strongly consider taking an "internship" at a major recording studio (or a record label) in your area. You'll meet people and learn practical things you'll need down the road. Even more helpful are the contacts you will make by "hanging out" at a studio – people who know people who actually have accomplished something in the music business.

MONTH #2:

- Live-performance Leg:
 - Physical visits and meetings with key people at venues which looked best to you during your Month #1 reconnaissance trips;
 - Begin working with a choreographer, voice-coach and anyone else who can help you develop your live act.
- Internet/Physical sales Leg:
 - Research and select a qualified web-designer for the www.Artist.com site, which does not need to be a complicated site but MUST be very user-friendly for purchasing a track. Negotiate and sign a favorable web-designer agreement (Your lawyer should prepare this agreement).
 - Familiarize yourself with important Internet download sites (iTunes, CD Baby, Rhapsody, etc.), how much of a cut they take from your gross

revenue, how they work from the consumer's point of view, how your demo tracks can be included;

- While physical sales are becoming less and less important, you may still want to research and begin talking to duplication houses to supply you with CDs. Network with brick-and-mortar specialty shops with which you can make distribution arrangements before your launch.

Month #3:

■ Live-Performance Leg:

- Continue attending clubs and other live-performance venues so that you can identify your likeliest targets and network with the people who run them.
- Continue meeting and "making friends" with people who can arrange your performance dates – call it your "First Local Tour" -- which should be coordinated with your sales-launch date.
- Continue developing your budget for live-performances (costumes, makeup, musical accompaniment, choreography).
- Start recruiting friends to attend your early performances, friends who will provide support and cheer you on, wildly – it can be "lonely" up there. There is no law against providing incentives to audience members -- you can set them up with a complimentary VIP table at your venue if you have the money. There is also no law against choosing audience members who are glamorous – contact a modeling agency if necessary.
- Begin developing your act – is it one song after another? Or are you going to spice it up with some personality/comedy content? Will you need dance training? If so, Month #3 is a good deadline for choosing a choreography instructor. Same advice for voice-training.

■ Sales Leg:

- Deadline for selecting Web-Designer and entering into an agreement
- Select duplication house for your CDs and enter into agreement
- Select photographer and/or artist for CD cover-art, using lawyer-prepared work-for-hire agreements
- Select an "Internet Download Aggregator" who can set you up with the major download sites
- Continue research on best chain (or chains) of physical CD stores for the **neighborhoods in which your customer-demographic lives**

■ Social Media:

Develop your Twitter and Facebook presence, AND KEEP THEM FULL OF UPBEAT CURRENT INFORMATION

- Continue networking with radio-station people. Give them your CD.
- Decide on your maximum feasible budget for radio ads at the rates prevailing during your scheduled launch-week (the rates will vary from month to month).

A FEW LEGAL POINTS:

As we've said, the music business is particularly dependent on lawyer-drafted documents. This is because it is all about ownership of "intellectual property", mostly under the copyright laws. Just ask yourself what the difference is between owning a CD of a Mariah Carey album (which millions of people do) and owning the right to MAKE MONEY off the tracks in the Mariah Carey album (which only the "owner" can do). The difference is that you don't own the "intellectual property rights" in the tracks. Somebody else – usually a record company – owns those rights. How do we know who the real owner is? We know because the owner has documents which let you follow the ownership of each sound you hear on each track – from the musician or singer who first made each sound all the way to the company which ends up owning ALL of the sounds. It is a paper-trail that is sometimes called a "chain-of-title," and it is useful to think of it as a "chain" whenever you are dealing with intellectual-property ownership.

So here are the legal points you need to know as a DIY musician/business-person:

1. **The person who creates a sound (or a logo-design, or a website-design, or your cover-art photographs) initially owns the copyright.** The only exceptions are (1) a full-time employee, all of whose work is immediately owned by his/her employer, and (2) a "work-for-hire" situation, where there is a document (part of the chain-of-title) signed by Person "A" which says that, even though Person "A" made the sound, it was made for the purpose of being owned by Person "B."
2. **Everything you do in regard to copyright ownership MUST be done in writing, and the timing of the documents can be crucial.**
3. **There are ALWAYS two copyrights in every piece of recorded music:** (1) the composer copyright (aka "music publishing") and (2) the sound-recording copyright.
4. You are unlikely to be successful in the music BUSINESS without the advice and assistance of a qualified music attorney. Making money in the music business is greatly dependent on taking full advantage of the copyright laws, and what those laws say is not always intuitively obvious to non-lawyers, or even to very smart lawyers who do not practice in the music business.

Here are 10 steps that EVERY artist should follow to start his/her career properly:

1. Register a business entity in your state and open a business bank account.
2. Get an agreement drafted between you and your partners.
3. Trademark your logo and build your brand
4. Obtain and use Songwriter-Split Agreements.
5. Obtain and use Work-for-Hire Agreements.
6. Register the copyrights in your music.
7. Develop and manage your own website.
8. Make and post a music video under a written video-producer agreement.

9. Make your music commercially available online through an aggregator.
10. Affiliate with a Performing Rights Organization (ASCAP, BMI, SESAC).

GOOD LUCK! The opportunity is out there as never before. Give it your best shot.

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