Back To The Future

Author: John McLellan

As alluded to elsewhere in this publication, the kind of 360° deals which are now de rigueur in the West have been a staple of the entertainment industry in Asia for quite some time. My focus will be on the so-called Greater China region (the Peoples' Republic of China (PRC), Taiwan, Hong Kong, Singapore and Malaysia, being the Chinese-speaking markets), with some comment on Japan and other South East Asian territories.

>>Greater China

It may seem strange to take a view of the Greater China entertainment industry from the perspective of a territory with just over 7 million people. In the context, however, of the Chinese language entertainment industry, there is little doubt that Hong Kong has had a major role in shaping this. Its significance is largely the result of political, economic and strategic forces. From 1949 until 1979, the PRC was a closed shop to foreign investment. It was culturally closed to outside influences. All media was tightly controlled by the state.

Taiwan and the PRC have not, historically, enjoyed the cosiest of relationships. There were no direct flights between these two countries until 2008. Taiwan was under martial law until the mid-1970s because of the perceived threat of "imminent" invasion from the PRC. Hong Kong, being a British territory for 149 years, and a special administrative region of the PRC since 1997, has acted historically as China's portal to the world and a bridge between China and Taiwan for many years. It is the major financial centre for Asia (ex-Japan) and enjoys a stable legal system.

To understand the evolution of 360° deals in Greater China, it is necessary to look back at the 1950s and the emergence of the Shaw Brothers Studios (SBS) empire. Initially, a South East Asian movie distributor and theatre owner, SBS started life in Singapore and Malaysia. With the foundation of the PRC in the late-1940s and the consequent influx of talent from Shanghai (which was the Chinese film industry's principal production centre at the time) to Hong Kong, Run-run Shaw saw the opportunity to expand his company's role in the film industry by establishing a production centre in Hong Kong.

This production centre was structured largely on Hollywood's successful "studio system" which had centralised and systemised film production and distribution allied to talent (directors, actors and scriptwriters) who were signed on an exclusive basis. Arguably, Shaw improved upon the talent side of the "studio system" by creating perhaps the most complete 360° model possible. This required artists to sign employment contracts, thereby securing their exclusive services for the duration of their contracts across all aspects of their entertainment career. Whilst SBS did not have a record label (at that time), it licensed EMI to produce recordings of its soundtracks and its artists.

In the early-1970s, SBS acquired a terrestrial broadcaster in Hong Kong, TVB. Seeing this "new" media as a means of further monetising its film production and developing talent, TVB did (and still does) sign artists to exclusive employment contracts, controlling all of their services in all of their artistic endeavours – not just their services for TV. TVB pioneered scripted TV dramas and these quickly became staple TV viewing in Chinese markets around the world.

It was not too much of a stretch for SBS to see that it could extend its reach further into the music industry by establishing a record company. It did this by setting up the label, Capital Artists, in the mid-1970s. This gave SBS something close to a media monopoly. The theme songs to its TV dramas became huge hits in their own right. The TVB annual singing contest rapidly became the pre-eminent talent contest in Greater China. Naturally, Capital Artists had first call on the contestants. A number of the top Chinese recording artists (Leslie Cheung, Anita Mui, Coco Li and Eason Chan) all started out with Capital Artists.

The mid-1970s saw the beginning of the end of the SBS Empire. Ironically this started with Raymond Chow who was a product of the SBS system, leaving in the early-1970s to establish Golden Harvest, with one emerging Chinese action actor, Bruce Lee and an unknown comedic action actor: Jackie Chan.

The mid-1970s saw the international major record labels look to extend their reach into the music industry in Asia and to take on the local independents in Greater China, chiefly Capital Artists. Polydor, EMI and Warner Music were the dominant majors of the time with Norman Cheng at Polydor (and later, PolyGram) championing the new wave of so-called "Canto Pop". BMG bought out its remaining licensees in the region in the late-1980s and early-1990s and MCA arrived in the early-1990s. By this time there was a full compliment of major labels in the region, all with headquarters in Hong Kong. The majors embarked upon an acquisition binge in Asia which mirrored those in Western markets. By the mid-1990s, there were very few independent labels of note left, the stand-out being Rock Records (a Taiwanese independent label that had successfully ridden the increasing popularity of Mandarin popular music (so called "Mando Pop"), driven by an increasing prosperity in Taiwan and the opening of the mainland Chinese market to artists and music from that territory.)

Norman Cheng's PolyGram remained pre-eminent in the 1980s and through much of the 1990s. Notwithstanding the dominance of the majors at this time, none ventured into the "360°" market, despite some consideration of whether they should do so (particularly at PolyGram). The majors were making too much money from recorded music to be involved in artist management, film or concerts. [*1]

The Asian entertainment industry came back down to earth with a crash in 1997/1998 with the Asian financial crisis. The effect of the crisis across the film and music markets was profound. Chinese producers and artists could no longer depend on presales across the region to support what had become bloated production budgets. The financial crisis together with the emergence and ubiquity of illegal MP3 music file-sharing over the Internet (in what is a technologically-advanced region anyway) dealt the music industry in Asia a double blow, from which it has yet to recover.

> "Given their dominance in the music industry in the region, it could well be that the next 360° model involves a mobile operator"

Given this, it would seem a strange time to enter into the market. However, the mid-1990s and early-2000s saw the emergence of two new entities in Hong Kong who would do much to pioneer a new 360° model. Emperor Entertainment Group is a subsidiary of a much larger Hong Kong conglomerate comprising property, retail, financial services, hotels and tourism interests and whose chairman is a rather enigmatic character, Albert Yeung Sau-Sing. The Emperor Entertainment Group also includes film, record and talent management divisions. Emperor makes it a policy that any talent signed by the company must sign exclusive management, recording and music publishing deals. The deals, by and large, are not generous in nature from the artist's perspective. A typical management deal for a new artist sees an initial term of 10 years with an option (at Emperor's election) for a further 10 years. Commission rates range from 50% and up to as much as 80% on a worldwide basis. Mirroring a similar structure to Emperor, is the Rich 'n' Famous/East Asia Music/Media Asia group under the patronage of Peter Lam Kin-Ngok. This group has perhaps more autonomy across its various divisions but it still looks to sign management, recording and publishing.

Driven by the economic realities of the market and the practices of their competitors, the majors are signing similar deals. It would be impossible now for any new artist to be signed by a major without that deal comprising management, recording and publishing, albeit upon terms which are not as harsh as those requested by Emperor. [*2]

>>Litigation

Given the prevalence of what have been rather extreme examples of 360° deals in the region, there has been a surprising dearth of litigation. This perhaps reflects the rather different societal norms in Asia and possibly reflects the stranglehold which the entertainment groups exert over the marketplace; if any artist were to take on his or her company in litigation this might be considered professional suicide. Recently, though, there have been signs that some artists may have had enough. Earlier this year, suit and countersuit was filed by Emperor and one of its young artists, Isabella Leong, in relation to an alleged breach a contract by her.

In a move which echoes those suits filed by artists elsewhere in the world, Ms. Leong alleged unreasonable restraint of trade and breach of fiduciary duty. Ms. Leong made it very clear that she no longer intended to be bound by her contract with Emperor. She signed a management contract with a new company founded by Michelle Yeoh and Terence Chan. Press rumors have suggested that Ms. Leong's case (and indeed her new management company) are being funded by the son of one of Asia's richest individuals and himself a founder of a new entertainment group.

In November of 2008, at the door of the High Court, a settlement was struck which saw Ms. Leong released from her contract and receive some compensation as well as a contribution to her costs from an assignee of her contract with Emperor. Emperor was at pains to wish Ms. Leong well in her career and to deny that any payments were made on its part to Ms. Leong. My firm has been involved in a similar case involving the singer songwriter group, Soler, who signed a 360° deal with their manager/record label/ publisher. The group has also alleged unreasonable restraint of trade and breach of fiduciary duty. They are currently awaiting a verdict from the High Court of Hong Kong, due at the time of going to press.

>>Other markets

Japan

Historically, as with the rest of the world, record companies and management companies in Japan worked independently and cooperated efficiently in the world's second largest music market. There was more than enough money to go around and record companies were very comfortable with management companies assuming a large degree of the financial risk associated with the career of an artist. Many of the top artists were effectively paid a salary by their management companies with an override on record sales.

Lately, however, most of the record companies have their own artist management company/division. The largest and most profitable are Sony and Avex. Warner recently acquired a mid-sized independent management company. The main reason for Avex and Sony's success is the in-house talent scout function of the management company. These companies are able to develop an artist from scratch and, therefore, secure a larger piece of the pie. [*3]

Thailand

The entertainment market in Thailand is, and has been for some time, dominated by one player. Grammy Music Group controls 70% of the local language market. It requires its artists to sign broad long-term exclusive contracts covering all aspects of their entertainment career. Grammy controls the market through a variety of labels which ostensibly compete against one another. Grammy is also one of the largest film producers in Thailand and controls prime-time terrestrial broadcasts by acquiring blocks of airtime.

Grammy failed in its attempts to extend its role in the entertainment industry outside of Thailand. Offices in Taiwan and PRC were opened in early-2000; they, however, closed shortly thereafter with significant financial losses. The only other significant player in the market is RS Promotions which replicates the Grammy model, but on a much smaller basis.

Philippines

The entertainment market in the Philippines is dominated by two players: the Viva Entertainment Group and Universal (no relation of the International major label of the same name). Both companies comprise artist management, music production and film production with Viva holding a slightly more dominant position from Universal. As with Grammy in Taiwan, both companies look to 360° deals as the norm.

>>Conclusion

Live Nation has recently entered the Asian market. However, it has yet to sign any 360° deals with recording artists. It was rumoured that Live Nation was signing a 360° deal with Faye Wong (an iconic Chinese artist of the late-1980s/early-1990s). But this has not happened yet. Given the dominance of aggregators and mobile operators in the music industry in the region, it could well be that the next 360° model involves China Mobile or one of the strong mobile service providers in the PRC market (e.g. Rock Mobile, Tom, Netease, Sohu and Baidu etc). One of these companies could well acquire a record label/ management company and look to bundle recorded music with its company's offerings.

>>Norman Cheng [*1]

Norman Cheng is president of Typhoon Entertainment which recently acquired the EMI Greater China music catalogue. He has been involved in the music industry in Asia for over 40 years, initially as a musician and then as the Asia President of PolyGram, Universal and latterly EMI.

"In the 1970s at Polydor, we did not have the management resources to manage artists or to get involved with film or concerts. By the 1980s and early-1990s, PolyGram, had established itself as the pre-eminent major label for Chinese talent. By default, we got involved in brokering a number of deals for our artists (mainly concerts and endorsements) but didn't see any reward for this.

I did discuss the possibility of our developing an artist management division within PolyGram at this time; but it was felt that it was not our business and that there might be legal issues, particularly in the US. We did get very close to acquiring a large independent film production/distribution/theatrical business in Asia. That would have changed the profile of our business in Asia in a major way. Structural changes in the company at the time, however, meant that this was not to be and the opportunity passed us by.

I believe the key to the success of any 360° deal is that the company has the competency to exploit the rights acquired. There is no point in taking on artist management, for example, if you do not have that core competency in-house. At Typhoon, I believe that we have such competency across a range of activities from artist management, concert promotion and production to film production (not forgetting recorded music!). As such, I have no doubt that we offer an attractive proposition to artists looking to break or develop their career in the Greater China region."

"Despite the prevalence of what have been rather extreme examples of 360° deals in the region, there has been a surprising dearth of litigation"

>>Adam Tsuei [*2]
Senior Vice President for Greater China, Sony

"It is now normal practice for a record company, when an artist is signed, to try to sign full management rights as part of the deal. As you may know, the physical record business has declined a great deal in the past few years. Selling only CDs will not help a record company survive. Therefore we need to earn income from other sources like artist management, endorsement deals, merchandising, concerts & publishing, etc. That's why, whether in Hong Kong, Taiwan or China, we insist on signing all these rights."

>>Sampei Yamaguchi [*3]
"If you take Sony Music Japan (SMJ) as a whole, it's been doing 360° deals by having record labels and artist management companies (mainly a company called Sony Music Artists) under its umbrella. Recently, there have been some moves to explore doing 360° deals within its divisions/subsidiaries (i.e. within a label or within a management company).

Some SMJ labels now act not only as a label but also as management for a couple of their artists and Sony Music Artists just started setting up a label. At least for now, this is in an experimental phase and definitely not the main way for them to do businesses with the majority of their artists. But I think they all are trying to see what works best.

Historically, many artist management companies in Japan owned master rights which were either licensed to labels or assigned to labels. In relatively rare cases, management companies had their own labels and contracted major labels to do their distribution. (A notable case is the Johnny's Entertainment labels which are distributed by Sony Music Distribution.)

This is my personal view; but I think the following two points are key to the future of the music industry.

1. *Who will find, develop and invest in artists and who will get a return out of the effort and investment? Labels, management, publishers, concert companies, or other types of companies all have to find a proper balance.*

2. *Expertise in each business segment in the music industry. To do a 360° deal properly, you should have expertise in all of the various areas. Or you could do 'networked' 360° deals with other companies, and that way find a proper investment/return balance.*

I'm still not sure which of these two types of 360° deal will succeed. But one thing for sure is that the music industry has to compete with (and sometimes cooperate with) other forms of entertainment companies."

Special thanks: Janelle Zai and Arthur Cheung