

BY SUSAN BUTLER

(John Frankenheimer)



The art of the deal has become more of a skill than ever as Wall Street and investors begin to take a closer look at the music industry and its growth areas. As technology advances and consumers are drawn to a variety of digital music services, delivery systems and platforms, these outside investors see fresh opportunity for mergers and outright acquisitions.

The second-oldest law firm in Los Angeles, Loeb & Loeb, has been involved in the conventional areas of finance, banking, litigation and real estate since its inception in 1909. But the firm has also long been part of the entertainment industry. Founders Edwin and Joseph Loeb played a major role in helping establish such institutions as the Academy of Motion Picture Arts and Sciences and Union Bank of California.

Today the firm represents all sectors of the entertainment industry. John Frankenheimer is partner/co-chairman of the firm and chairman of the music group. His practice centers on the entertainment and media industries, often advising on the acquisition, sale and restructuring of companies.

Billboard caught up with Frankenheimer shortly before his participation in the 2006 Billboard Music & Money Symposium, to be held March 2 in New York.

Q: What is the most significant change in the music industry during the last year that makes it attractive to outside investors?

A: I don't think there's any one thing. I think it's all a continuing trend, if you will. If there is one thing that perhaps re-focused everyone's attention, it certainly was the Grokster decision [by the U.S. Supreme Court]. That finally—and hopefully with the Australian Kazaa [lower court] decision—have put to rest any lingering question or uncertainty in the space about the rights of owners and their ability to monetize and protect their assets. I think that lifted that cloud of uncertainty that perhaps it needed.

Q: Is there any particular sector of the music industry that attracts the attention of outside investors more than others?

A: The investment community appreciates the potential stability of proven catalogs with demonstrable cash flows. It is equivalent to film libraries and similar transactions where they have experience in evaluating the exposure and upside. Notwithstanding the uncertainties surrounding other aspects of the industry, music publishing travels across all platforms and will retain its

relative value irrespective of technological changes in delivery systems.

Q: What are some advantages for a music company to seek—or accept—outside investment rather than funds from another music company?

A: Typically, when major [music companies] provided funding for a smaller, independent [music] company, they were assured of obtaining distribution or administration rights, which tied the “borrower” to them for an extended period. [The arrangement also] protected the “lender/investors,” because they also received fees off the top. That is avoided with a financial investor—you have more flexi-

bility in choosing industry partners. You also have the opportunity to have experienced, sophisticated investors aiding you in shaping and executing your business plan.

Q: What are some disadvantages for a music company accepting outside investment?

A: Financial investors may not be in it for the long run. Their responsibility is to their investors. If they can capture a solid return, they may exit the business through a sale of their interest.

Q: Many indie labels have built their businesses hoping that the majors would someday acquire them. Is that still happening?

A: Yes, but the real issue is the timing of that acquisition. Deals improperly structured often result in a premature transaction, which means the seller didn't have time to fully realize the value of the company and thus never achieved a favorable price. If the entrepreneur can sustain long enough to build a solid roster with long-term potential, the interest [and price] is always far greater.

Q: Are you seeing more investment in music companies in any partic-

ular part of the world? **A:** The United Kingdom seems very active, as does the United States.

Q: In any particular region of the United States? **A:** Not really. The good thing is that experienced investors are used to finding assets everywhere, although it helps to have sophisticated representatives in the various entertainment capitals.

Q: If outside investors jump into the music industry with a three-to five-year exit plan rather than planning to build a long-term company, what effect can that have on the industry? **A:** [That is] yet to be determined. One of the industry-wide problems plaguing the industry now is short-term

current management be allowed to stay in place? If so, for how long? What will the composition of the board [of directors] be, and who will have ultimate control? Will there be a business plan with benchmarks, and what will be the consequences if they are not met? What is their track record in investing in this space [or in general]?

Q: What are some of the most important things a company should be working toward achieving in order to groom itself to attract investors?

A: Continuity of experienced, successful management. Established, long-term relationships with banks and other financial institutions. Solid balance sheets and a demonstrable ability to run a profitable business [irrespective of the current size or scope of the business]. Time spent in the early years learning about the financial side of the business and investing in general will be invaluable later on when decisions have to be made under time restraints. Do your homework, prepare to meet your goals.

Q: When should a music company that is selling or acquiring assets involve a broker in addition to its attorney?

A: When there is not a clear-cut or limited number of potential buyers, an experienced investment adviser—familiar with the industry—can be very valuable. Similarly, if the attorney is not well-versed in the type of transaction contemplated—or does not have the requisite breadth of experience—investment and/or financial advisers, or even other legal counsel, should be retained.

HIGHLIGHTS

JOHN FRANKENHEIMER

1973: Graduates with J.D. from the University of California at Los Angeles School of Law

2000: Honored with the Spirit of Music Award from UJA-Federation of New York

2004: Receives the Torch of Liberty Award for Community Service from the ACLU of Southern California