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Attorney Spotlight: Howard Hertz



If it's a nationally recognized music act from the Detroit area, chances are, Howard Hertz is or has been its lawyer. His clients include Eminem, the Bass Brothers, George Clinton, and Jack White. "I work in the whole range of the business, from artists to songwriters to producers to managers to agents," Hertz said in a June 2004 interview with Music Connection magazine. "I represent them in negotiating and drafting contracts. I also represent artists in civil cases." Currently, he's representing the publishing company that administers Eminem's publishing in a copyright infringement case against Apple and MTV for having used "Lose Yourself" by Eminem in an i-Tunes commercial without permission.

Hertz is a cum laude graduate of Wayne State University's law school in 1976. He described himself in a March 9, 1997 Oakland Press interview as a "frustrated rock 'n' roll artist" who turned his love of music into the focus of his work as an attorney. He's said in a Jewish News interview that from ages 6-18 he knew every word of every song in the top 40. Out of law school, we worked in a juvenile defenders office when a friend referred a musician's contract to him for review. That client led to other clients through word of mouth, and within a year, Hertz had begun working as a lawyer specializing in entertainment law.

In 1979, Hertz helped found Hertz, Schram, and Saretsky, P.C. of Bloomfield Hills. Hertz is also the manager of band The Go, owns management and publishing company Hertzrentatune, and founded an independent record label, SuperString Records. He was also recently elected to the Chicago Chapter of the Board of Governors of the National Academy of Recording Arts & Sciences, which hosts the Grammy Awards. Hertz serves on the ArtServe Board of Directors and is active in Volunteer Lawyers for the Arts and Culture, commending the program by saying, "If you can't afford a lawyer, that's something VLAC is for." He took half an hour to talk with ArtServe about the importance of legal representation and consultations for beginning artists.

Describes Hertz, "It's a business. A music business. You can't just be an artist and not approach the business aspect of it.... Having business people take care of the business side of entertainment frees up an artist. For artists—who are for the most part not business savvy—bringing in a lawyer or a manager takes a load off of them, allowing them to concentrate on art, which is what they do best."

"A lawyer experienced in the industry can see an offer for what it is," says Hertz, "and recommend that it be accepted, rejected or negotiated—I've learned that everything in life is negotiable. It's a give and take process." He continues to say that lawyers have the ability not only to "see the offer for what it is, but also see it in comparison to what other deals are being made for (other artists) in similar situations." According to Hertz, a lawyer can help determine the fairness of a deal, but the ultimate choice of whether or not to go ahead remains with the artist. "It's up to the artist to decide whether to take a bad deal. We can say if it's good or bad, in the realm of good or bad, or good or bad (in relation to) what's standard based on where (the artist) may stand in the hierarchy."

Lawyers may not be for everyone. Says Hertz, "If you're selling art out of a booth or your house, you may not have a need for a lawyer, but if you're selling art through an art gallery, you may want to review the form of that contract. (For example,) if there's shipping involved, at what point, if it breaks on the truck, who pays for it? That should be clarified."

Artists should seek representation "as soon as they are in the marketplace, if not advancing their act/taking (it) to the public, to find out what their needs are," and "as soon as anything is put in front of them to sign," adds Hertz. He recommends that artists find an attorney with experience in the specific medium in which they

create. Many lawyers have specialized areas of knowledge and practice. "For example," says Hertz, "I know nothing about sports law."

At the very least, Hertz stresses that artists read a book about the business and legal side of the art or media that they choose to create and sell. Directs Hertz, "A musician should read about the music business—where their streams of income are coming from. If they don't know about performing arts societies or ASCAP—organizations that will collect royalties and provide income for them—they're missing out on income.... They should know what royalty rights are applicable and what typical rates are.... It's important for a group or band to know what their rights are among members of the band; (the) toughest and most complicated issue is to decide who owns the songwriting rights."

Another example of the uniqueness of the issues presenting each art media, and the need to research one's media is photography. A photographer will need a form contract that protects him or her and keeps their copyright, and should investigate such issues. "They don't want to sell it outright.... As for the copyright—who's going to own it, or whether it's work for hire—to assign a copyright you must have a written instrument to say expressly what you're doing," Hertz says.

Hertz's most basic legal advice for artists is this: "Anyone who's selling art should get a written contract, negotiated and drafted properly, to protect their rights," he said. "One thing (artists) could do if they're not sure they need a lawyer is to talk to one, and the lawyer may set aside an hour for a free consultation. That way, the artist can see if they need a lawyer, and if they don't need one, they can at least learn at what point (they will) need one."

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