

Band Agreements – Do You Need One?

Later in this newsletter there is an article by entertainment lawyer, Wayne Logan, about having an agreement in place when co-writing music. In this article I would like to briefly explore the benefits of having a band agreement. As with all contracts, agreements made between musicians can be verbal or written, but in either case are enforceable by law. So rather than creating a he said...she said...they said scenario, a written agreement is by far a more desirable option especially if the arrangements need to be reviewed in the future. I must stress that this article is for general knowledge and that each case is individual. It can be as simple as a 'do it yourself' document or you could consult with a lawyer when finalizing the details of such agreements.

A partnership agreement is the usual route that many bands go in the beginning and is considered the default position if no agreement exists. It is usually less complicated, less expensive to set up and can be used to incorporate if and when the time comes. One thing to understand is that partnerships bind the members individually and as a group. Some things to consider in your initial discussions would be member responsibilities or duties, financial arrangements, decision making, who owns the band name etc. It is always best to have these discussions prior to any problems arising. To this end disagreements are held to a minimum and the real priority of performing and creating music can be the main concern of the group.

Some examples of member responsibilities would include performance obligations, whether musicians are tied exclusively to the band or if they can take other employment opportunities. Who is responsible for booking, promoting or marketing the group? Who deals with the agents or the management of the band? Are there fees attached to those duties? What about recording and touring? Which musician is to act as band leader? Who handles the money and the expenditures the group has to make? Are the band duties divided equally among the other members and so on? Again who owns the band name is very important going forward. Try to include any and all issues that you think are relevant to running a good operation.

Financial arrangements are probably the area of most contention. Since your band may have revenue from various sources, it is a good idea to decide beforehand how the money will be divided. In most partnerships, everyone has an equal share of both profits and losses. How is revenue and expenses from live performances or royalties and income from record sales and merchandising divided? Equally or is there another formula that reflects other scenarios? Songwriting royalties usually go to the writers. Publishing royalties are something else and need to be addressed especially if the band is producing its own product or is selling that product to a label. Sometimes that can be a totally separate agreement.

Another area for agreement would be the decision making process. Who makes the decisions, does it need a majority vote from the band members or does it need to be a unanimous vote; or what happens when someone leaves the band or the band breaks up? Band assets, who owns them and their disposition are extremely important and need to be addressed.

Once you've sat down, reviewed and studied the possibilities and probabilities, it's time to put it in writing. Again you can do it yourself or bring in the lawyers to make it official. They'll probably be able to touch on topics you haven't thought of. In any case a signed written agreement is the desired result. Once the business arrangement has been formalized, it will be easier to take on the task of making and playing music.

Basically I've dealt with a partnership type of band arrangement, but there are other options such as the advantages of incorporation to investigate. The same principals can be applied. In any band situation it is helpful to know and understand the dynamics of the group, where you fit in, what your responsibilities are and what the band's responsibility is to you. The AFM has various agreements that cover band recordings such as the Limited Pressing or Joint Venture Agreements that can assist you in defining your circumstances. I also have other information about being 'married to the band' that could be useful and Wayne and I have an agreement for an initial consultation on these matters that is free for members.

If you need some assistance, we can always sit down and talk through it. Give me a call.

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