

Band Agreements

Extracted from Music Business - The Survival Guide by Davenport Lyons Solicitors

If you're in a band that practices and gigs regularly, then you'll know just how hard it is. It's a relationship that needs to be worked at, and sometimes even getting everyone to practice on time can seem impossible. You may well all be best mates now, but that can change and tensions can easily develop once that band starts making money.

Although your legal relationship with each other is probably not what you'll discuss after your first jam, it is going to be something which has a huge impact on your career. Therefore it's sensible to think about how to avoid things going wrong further down the line, by which time it might be too late. This need not necessarily be a negative exercise.

Even if you don't have a band agreement between yourselves, various rights and obligations will be implied by law. These are often either ignored or overlooked due to the fact that there are more rewarding things to be getting on with. You've only got to look at the court battles involving the likes of The Smiths and Spandau Ballet to see that.

Careful thought needs to be given to the rights and liabilities of each individual band member. To avoid falling foul of rights and liabilities as imposed by law, some bands draw up a band agreement. This can be used to override or vary any such implied terms.

The following list of issues are some of the main points you should think about when you first start performing or writing together. It can be dealt with in a relatively short band agreement, setting out who is responsible for what, what assets are partnership assets and who can use them, who gets what, and what happens if someone leaves.

Communication:

The effective running of your band requires good communication between the members and your manager. It's sensible for the band agreement to include a provision for regular meetings, including meetings with your manager (if you have one)

Group Income:

As you can imagine, the issue as to how the band should share profit can often be a source of great tension, as demonstrated in recent court cases involving former members of The Smiths and Spandau Ballet. Issues you should think about include each individual's contribution to the group (about ownership of instruments maybe), songwriting and what happens to the income of a member who is also pursuing a solo career.

Of particular importance is how publishing income should be split. If the agreement doesn't cover it each songwriting member is entitled to all of the "writer's share" of publishing income generated by his songs. However, it's common for an agreement to say that a proportion of this income is distributed to other band members in recognition of their contribution as performers, which in turn generates income for the songwriting members through record sales and live performances.

Expenses:

It would be normal to agree to share expenses in the same proportions as group income shared. However, there may be grey areas such as, for example, when a band member decides

to spend money in areas totally unconnected to the band's activities or decides to take his girlfriend on tour (not a good idea by the way)

Equipment:

Any decision to sell or buy equipment using band money which is supposed to be owned jointly by the band should be a joint decision. On the other hand, if a member has paid for equipment personally, he can take it with him when he leaves.

Band Name/Merchandising:

A band's name can be its most valuable asset. Unless the band's name is that of one of its members, or is owned by one member as an asset, it will be owned equally by the band members. If it's not dealt with in a band agreement, this can lead to competing claims when a band splits (as famously happened between Dave Gilmour and Roger Waters over the name "Pink Floyd"). It is a common to have a provision that leaving band members cannot use the name of the band without the consent of any remaining band members.

Merchandising and sponsorship income - where the band's name and image are licensed or a product endorsed - can make large amounts of cash. The Spice Girls are a good example of a group who capitalised on their image and created a strong recognisable brand and The Rolling Stones tours are reputed to generate many times more income from sales of merchandise than from tickets.

The name can usually be protected by registering it as a trademark (as long as it's distinctive and no-one else is using it). Even without the protection of a trademark, bands can protect their names against unauthorised use by others under an area of law called "passing off", though this can be more difficult than bringing an action for the infringement of a registered trademark.

It is always worth checking whether there are other bands with the same name. One place you can do this is with the National Band Register at www.bandreg.com.

Leaving and New Members:

In the absence of any agreement to the contrary, changes in the line-up of a band must be agreed by all the members. Normally a leaving member will continue to be paid royalties and a share of advances on albums and other tracks on which he has performed, but he shouldn't continue to receive a share of any publishing income if he has not contributed as a songwriter or on future merchandising income, because it relies on future participation as a member of the band.

Any new member joining the band must be careful and clear about what liabilities he is inheriting from those leaving the band.

Other Matters to Consider:

There are lots of other matters that need to be considered, including the following:

- The opening of a bank account
- The choice of band members to be signatories on the account
- The appointment of accountants
- The appointment of solicitors
- The appointment of a manager
- Whether there is to be unanimous consent for issues such as loans
- Creative decisions
- The appointment and dismissal of members
- The procedure when entering into recording and/or publishing agreements
- Whether decisions require unanimity, majority voting or merely approval by a simple majority

Other Options:

If you don't like the sound of a partnership, then there are other options, including setting up a limited company or a limited liability partnership (an 'LLP'). Deciding which choice of business structure is most suitable may well involve tax considerations and the suitability of one over the other may be driven by specialist advice from an accountant, taking into account activities such as overseas touring.

Conclusion:

When bands seek legal advice, they tend to focus on their dealings with third parties, such as record companies and publishers. However, they often ignore the relationship with each other and how this should be governed and regulated. All too often one hears the phrase, "we're all mates and we trust each other." That's fine, but things can change, especially when money, success, creative tensions and egos are thrown into the mix.

As with any creative relationship, there will be driving forces within the band and members will have varying degrees of talent and temperament (insert your own drummer gag here). A band agreement will help give a more structured and secure environment to work in.

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