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GROUP AGREEMENTS



location : The Bay Horse, Manchester

WHAT IS IT?

This chapter covers:

The legal implications for a band governed by partnership law

The pros and cons of setting up a limited company

The type of issues that need to be addressed between band members

WHY DO I NEED TO KNOW ABOUT THIS?

Most artists and managers would be extremely alarmed to find out that even without signing any documentation, when a band is formed, there is a presumption in law that a partnership has been formed. Even more alarming is the fact that UK partnership law is governed by the Partnership Act 1890, legislation which is over 100 years old and considered by many lawyers to be antiquated and unnecessarily complex.

An alternative option is to operate the band through a limited company where each band member becomes a Director and Shareholder of the company. Many musicians may be put off at the thought of becoming a company Director and as a result of this, many bands simply do nothing unaware that antiquated partnership laws could have serious and far reaching effects upon the internal administration of the band.

FOR THE PROJECT, PLEASE SEE CHAPTER 3 PROJECT

NOTES AND GUIDANCE

PARTNERSHIP LAW

Where several people are carrying on business together with the same purpose, the presumption that a partnership exists arises. In reality this means that unless there is a specific agreement in writing to the contrary all bands and groups are legally a partnership.

This is very serious for band members because band members rarely realise that they are actually in a "partnership situation".

Partners share things equally

If you do not have an express partnership agreement to the contrary, it is an established provision of partnership law that all partners share the partnership assets in equal shares.

Partnership assets will include such things as:

The band name itself

All of the band's income
(this can include the songwriter's royalties)

All of the band's losses and expenses.

A band with four members may have only one song writing member. Even if it is understood within the band that the song writing member is entitled to the royalties from the exploitation of those songs, if there is no express partnership agreement confirming this, the Partnership Act provides that all four members of the band should share all income equally. The songwriting member may not want to share his songwriting royalties (which he is personally entitled to) with the other members.

Another example is the ownership of the group name. Frequently, there may be one or two founder members in a band that have actually thought of the group name and consider it their property. However, if the band splits up and there is no express partnership agreement that specifies who owns the band names, all members of the band would be equally entitled to the use of the name.

The Partnership Act basically provides that all partners share everything equally. If this is not the general intention within your band, it is crucial that you seek advice and arrange for a Partnership Agreement to be drafted which sets out your agreement with all of the other band members. This is less important if the philosophy of the band is to share everything equally.
See more on Partnerships in chapter 5.

IMPORTANT NOTE

Partnership law is very old (the original act dates back to 1890) and the Government is currently working on a new Partnership Act. You will need to keep abreast of any changes to the law if you intend to form a partnership.

LIMITED COMPANY

Some bands prefer to form (or ‘incorporate’) a limited company.
All band members will then be Directors and Shareholders of the company. The actual cost of setting up a company is only a few hundred pounds, however, many musicians may be put off by the idea of what would appear to be such formal arrangements.

Is the membership of the band relatively stable?
Generally, it would not be advisable to incorporate a company unless the membership of the band was relatively stable.

Limited liability

One benefit of incorporating a company is the protection of limited liability. Generally speaking, with a limited liability company the band members do not risk their own personal assets, if the company goes into liquidation. On the other hand however, if the band is operating as a partnership, all partners are jointly liable for group liabilities and there is no limit to that liability, so for example it is possible that band members could lose their home, cars etc. if the band falls into debt.

Resolve your key issues first

Whether a band decides to operate as a partnership or as a limited company, it is important that key issues are resolved between the band members at an early stage and reduced to writing either as a inter band agreement or a partnership agreement. In most cases, a partnership agreement will be the appropriate document as most bands that have taken no steps to formalise their legal arrangements will be governed by partnership law.

POTENTIAL ISSUES OF CONCERN TO MUSICAL PARTNERSHIPS

Group Name

The ownership of the group name must be agreed and what happens to the name if the band splits up or if various members leave.

Partnership Property

The band members need to agree what they consider to be partnership property, so for example a new guitar is bought for the guitarist, does that become the guitarist's personal property or is it a joint partnership asset which he has to return to the band if he leaves.

Sharing of Profits, Losses and Expenses

Remember that the presumption will be that all profits, losses and expenses are to be shared equally. If this is not the intention of the band members, any agreement should state very clearly how profits and losses are to be distributed.

Drawings (Salary)

If the band is in a position to pay each band member a salary then this should be specifically agreed in writing in the agreement.

New and Departing Members

It is usually when there are changes in the membership of a band that disputes arise. A good partnership agreement will set out clearly what the liabilities of a departing member will be and what right they have to future income (if any).

Voting

Partnership agreement should set out which types of decisions within the band need to be determined by a vote. The Partnership law assumes that each partner will be given one vote and that a group decision should be reached by a majority vote.

Expulsion

It is important for a partnership agreement to state exactly upon what basis band members can be expelled from the group. Many musicians would be surprised to realise that the Partnership Act provides that a partner may not be expelled, the only way to resolve this is for the partnership to split and a new partnership to be formed.

Royalties

In addition to a provision setting out how profits and losses should be distributed, it is advisable to include a provision setting out how publishing royalties are to be divided amongst the band. Again without an express provision clarifying this, all band members will share publishing royalties equally.

Dispute Resolution

Last but not least, a good partnership agreement should include a provision setting out how disputes within the band are to be resolved.

Things to consider about partnerships

Will your partners contribute to the business?

Who will do what?

How will you share the profits?

How will you make decisions?

What happens legally if you disagree with policies?

What will a leaving partner get from the business?

Want to know more?
For more information and more tasks,
look at P84-85.